

HAWKEYE POLICY REPORT

2023-2024

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Abby and Keaton were integral members of our team in the Fall of 2023 but were unable to be part of the Des Moines Delegation for the Spring of 2024.

Managing Benefits, Benefiting Iowa: Reducing State Spending on Prescription Drugs By Modernizing Iowa’s PBM Contracts

Malvika Khadiya, Isabella Sager, Kyle Schubick, Ryan Westhoff

Executive Summary

The topic of pharmacy benefit managers (PBMs) has become an important issue in the United States as legislators and scholars alike aim to tackle the issue of rising pharmaceutical drug spending. PBMs play a large role in state Medicaid and employee health plan contracts but do not hold much power, presenting an opportunity for states to modernize their agreements as PBMs become better understood. This paper evaluates Iowa’s current relationships with PBMs through their managed care organizations (MCOs) and state employee health plan providers, and assesses policy alternatives using a set of evaluative criteria. We find that the best individual policy alternative is reverse auctioning, as it has been rated by us to provide substantial savings to states similar to Iowa while posing a low risk to the system, a significant potential for high levels of transparency, and likely bipartisan support. However, we recommend Iowa uses a reverse auction in combination with, and to select, a single state-contracted PBM with a pass-through pricing model for the state employee health plan and all three MCOs. We believe that when combined, these three alternatives strengthen each other’s weaknesses and would produce the most positive change.

Introduction: PBMs, Drug Prices, and State Spending: America and Iowa Today

As pharmaceutical drug prices have skyrocketed across America in recent years,

so has state spending on drugs. From 2013 to 2017, the average state and federal spending on prescription drugs increased by 14.8% annually (Waldrop and Caslyn). This number is more than ten times greater than the average consumer price index inflation rate over the same period, which clocks in at a mere 1.32% annually (“Consumer Price Index”). Prescription drug spending for Medicaid and other state-sponsored health plans is taking up an increasingly large portion of state budgets, with Medicaid spending on drugs going from an average of 1.3% of state budgets in 2008 (Waldrop and Caslyn) to 4.5% in 2018 (“Facts About Medicaid”)— a whopping threefold increase in just a decade.

This phenomenon has caused a dilemma for state legislators across the country. In the face of rising prescription drug spending, how should states react to these hikes and remain fiscally stable? Should the state cut other spending? Reduce benefits in state health insurance plans? Limit Medicaid eligibility? Increase premiums and copays? Raise taxes? Many of these potential solutions are unattractive to policymakers either because they would be politically unpopular, or are focused on fighting the symptoms instead of the causes of high drug prices. Some policymakers have chosen to take a more direct approach—changing regulations regarding the state’s relationship with pharmacy benefit managers (referred to as PBMs for the remainder of the paper), crucial intermediaries in the pharmaceutical drug supply chain. While PBMs are not the sole cause of the increase in drug prices

(Fiedler et al.) and serve as just one lever that policymakers could pull, they present an opportunity for the state to change its relationship with the prescription drug industry in a way that prioritizes transparency and cost savings.

In this policy paper, we seek to chart a path forward for the state of Iowa by changing its relationship with pharmacy benefit managers. In doing so, we examine several prominent policy options developed in other states, ranging from those that seek to change the ways that states bid PBM contracts to those that reshape the state's relationship with PBMs entirely. These policies are evaluated across factors relevant to determining which regulatory routes to pursue. These alternatives include how politically feasible they are, how risky they might be in terms of knock-on effects, what their ultimate effect on state spending will be, and how much they will improve transparency regarding PBM business practices.

What are PBMs?

At the most basic level, PBMs are the middlemen between pharmacies and drug manufacturers. In the 1960s, PBMs were created to help contain drug spending when health insurance plans started to offer prescription drugs as a health plan benefit ("Pharmacy Benefit Managers"). Their original purpose was to determine what drugs were offered on formulary lists². Ten years later, PBMs started to adjudicate prescription drug claims. By the 90s, PBMs were being obtained by drug manufacturers themselves.

As of 2020, The top ten PBM companies share 97% of the PBM service market (Hatton). There is an abundance of horizontal and vertical integration within PBMs, so now PBM company mammoths like Express Scripts and CVS Caremark, who

merged with other, smaller PBM companies, control over half of the market (Fiedler et al.). This is important because PBMs are the bridge between healthcare payers, pharmacies, and patients. PBMs can be employed by the government, and even employers (Fiedler et al.). Their intended purpose is to maximize the benefits of prescription drug insurance benefits through multiple avenues, including: negotiating prices and rebates with drug manufacturers, creating drug formularies, connecting pharmacy networks, and processing drug claims (Fiedler et al.). These actions are intended to control the costs of drugs to ensure lower prices for both pharmacies and patients.

Perhaps the most important purpose of PBMs is to negotiate drug prices. Negotiating drug prices is connected to every other function of PBMs. PBMs will begin negotiating prices by creating a formulary. These entities will then go to drug manufacturers and offer a spot on their formulary in exchange for buying the manufacturer's drug at below the listing price. Manufacturers will usually offer a rebate in return, which is compensation to the pharmacy benefit manager based on how many patients a drug is dispensed to within the plan. This is enticing to manufacturers because getting their drug on a formulary gives patients better access to their drug, as it is available to more pharmacies. Formularies are also tiered based on price and level of specialty/how generic the drugs are. PBMs will also offer manufacturers to be integrated into the pharmacy network themselves, giving the manufacturer access to more healthcare plans, thus selling more drugs (Fiedler et al.).

PBMs: A Solution to Drug Prices?

In recent years, PBMs have drawn heightened scrutiny from policymakers

² a list containing drugs covered by a health care plan (Fiedler et al.)

seeking to address rising drug prices because of their growing role in the prescription drug and healthcare industries. In 2020, over 266 million Americans were covered by health plans that use PBMs, highlighting the importance of properly understanding their effect on drug prices (Waldrop and Calsyn). One reason for this interest in studying and regulating PBMs is the increase in Medicaid spending on prescription medications. The combination of complex PBM operations and an overall lack of transparency has led experts and lawmakers alike to suspect that they play a part in this increase. At the same time, concerns about anticompetitive behavior by PBMs have grown because of increased vertical integration and industry concentration, with just three PBMs controlling 79% of the market (Fiedler et al.). The FTC responded by putting the industry “on notice” in 2022, warning that they would enforce competition and consumer protection laws if PBMs and rebate schemes were found to restrict access to low-cost drugs (“FTC to Ramp Up”). Rebate aggregators, third parties who negotiate rebates for PBMs, further obscure data surrounding rebates and how they are passed through the supply chain (Levitt et al.). PBMs also use additional fees to make up for lost revenue when they are required to pass rebates to health plans (Fiedler et al.), which presents a challenge to policymakers trying to reduce total costs to health plans and consumers. Finally, in *Rutledge v. Pharmaceutical Care Management Association* in 2020, the Supreme Court upheld an Arkansas law that regulated how PBMs compensated pharmacies (“Rutledge v. Pharmaceutical Care”), giving states the authority to regulate PBMs concerning their effect on drug prices. This change has resulted in states taking greater action to control drug prices within their borders.

The State of Iowa’s Relationship with PBMs

When assessing PBM regulation as a solution to prescription drug spending in the state of Iowa, it is necessary to understand what role PBMs play at the state level. Iowa is currently involved with PBMs in two main places: the state employee health plan and Iowa’s Medicaid managed care organizations. According to the Iowa Department of Administrative Services, the state’s employee health plan is currently provided by Wellmark Blue Cross and Blue Shield (BC/BS) (“Health Insurance”). Wellmark’s official website states that they work with the PBM CVS Caremark, a giant in the industry (“Pharmacy Resources”). Iowa’s Medicaid program is managed by three private insurance companies, or managed care organizations, each of which contracts with their own PBM. These three insurance companies are Molina Healthcare of Iowa, Amerigroup Iowa, and Iowa Total Care (Ramm). Molina Healthcare of Iowa contracts with the PBM CVS Caremark, Iowa Total Care (Centene) contracts with the PBM Express Scripts, and Amerigroup Iowa contracts with the PBM CarelonRx (Mahobe and Leo).

Iowa also participates in the federal Medicaid Prescription Drug Rebate Program (MDRP) which provides rebates through an agreement between the manufacturer and the United States Secretary of Health and Human Services. As a result, Iowa does not allow their managed care organizations (MCOs), or subcontractors of the MCOs (including PBMs), to receive rebates or other forms of reimbursement from manufacturers on behalf of Medicaid enrollees (“Ninth Amendment”). An exemption to this rule is made for Iowa’s Hawk-I program. All 50 states participate in the MDRP and many of them allow their MCOs to negotiate additional rebates (“Medicaid Drug Rebate”). Iowa does, however, participate in the Sovereign States Drug Consortium (SSDC), a group of

Medicaid states that use their collective purchasing power to negotiate higher rebates from drug manufacturers through the supplemental rebate negotiator Change Healthcare (Sovereign States Drug Consortium).

One thing that sets Iowa Medicaid apart from other states is its uniform preferred drug list (PDL). A PDL is a list of specific prescription drugs that a state has decided to cover through its Medicaid without needing extra authorization steps. Only 16 states have a uniform PDL (either all drug classes or some drug classes) across all their MCOs (Gifford et al.). This PDL helps keep a majority of prescription drug coverage universal across the state's MCOs.

Finally, the Pharmaceutical Researchers and Manufacturers of America (PhRMA) report that for the fiscal year 2021, 5.3% of Iowa's total Medicaid budget was spent on retail brand and generic prescription drugs. That figure is slightly higher than the national average, which sits at 4.7% of the total Medicaid budget ("Facts About Medicaid").

PBM Regulation Across America

In the past decade, states have increasingly taken steps to reduce their health insurance benefit costs by regulating their interactions with PBMs. The states adopting these reforms do not fit into a box— they are red states, purple states, and blue states from all across the country. Leaders in regulating PBMs' interactions with state benefit programs include states as different as New Jersey, Ohio, and Louisiana. Many different approaches have been taken and movement toward passing and implementing these regulations has come quick. In the past decade, several different novel approaches innovating the relationship between PBMs and state benefit programs have been introduced and signed into law. The exact nature of these laws varies. Some are targeted

provisions introduced to limit PBMs' abilities to engage in certain practices while under contract with the state, while others alter the PBM contract acquisition process by introducing new methods of bidding or consolidating the state's contracts. In particular, we focus on four alternatives that have come to the forefront of state-level debates— the pass-through pricing model, adopting a single state-contracted PBM, utilizing a reverse auction in the PBM contract acquisition process, and carving out prescription drug benefits from Iowa's privatized Medicaid program.

Defining Our Evaluative Criteria

To determine which alternative would best serve Iowa, we analyzed selected policy alternatives using four different evaluative criteria: political feasibility, economic and system risk, effect on state spending, and effect on transparency. Each was selected based on what we believe are the most important and encompassing aspects of proposing legislation. The criteria and how they will be applied to policy alternatives are explained below.

Political Feasibility

Political feasibility is a measurement of the likelihood that a given policy alternative might be taken up by the legislature, signed by the governor, and implemented into state law. In determining the political feasibility of policy alternatives in the area of PBM reform, there are several important factors. The first of these factors is partisan support. Iowa is currently governed by a Republican trifecta (one-party control over the Governor's office, State Senate, and State House). For any policy alternative to have a reasonable chance at passing, it must have a viable path to significant Republican support. Importantly, there is evidence of substantial bipartisan support for PBM reform across the country. Many of the policy

alternatives outlined in this report have garnered support in red states and blue states, and are sponsored by Senators from both parties on the federal level.

A second important factor is the likelihood that the legislature will take up a policy alternative for consideration. One way to examine this factor is an alternative's legislative history. If a policy alternative has been brought before the Iowa Legislature in the past, how the policy 'failed' can provide insight into the likelihood that it might advance through the long and convoluted process that is legislative policymaking. For instance, a policy that has previously made it through one of the legislature's two bicameral bodies will likely have a greater chance of making it through the legislature than a bill that has repeatedly died in committee. Also factoring into political feasibility is the likelihood of resistance to a given policy from interest groups both during and after the legislative process. The pharmaceutical lobby is a significant force in legislative advocacy (Wouters), and resistance to a given policy alternative could sink that alternative before it can get off the ground. Manufacturers are especially powerful, but both PBM advocates and pharmacy associations engage in meaningful advocacy efforts, with actors like the Iowa Pharmacy Association and the Pharmaceutical Care Management Association often staking out positions in front of the Legislature. Some policy alternatives pit different actors within the pharmaceutical drug supply chain against each other (for instance, manufacturers might support a policy alternative that PBMs and/or health insurance providers oppose), which may have some effect in canceling out these lobbying influences.

Economic/System Risk

Economic/system risk will look at how each policy alternative is going to affect

the system itself. This criterion will evaluate the effect of the selected policies on how well PBMs can negotiate, and therefore keep drug prices down. It will also look at how this will affect drug manufacturers, health plans, pharmacies themselves, and the patients. It is important to keep these factors in mind as the relationship between PBMs and pharmacies/drug manufacturers is quite complex and not fully understood. It is imperative to consider what could happen to the system when you fundamentally change said system. The focus of this evaluation is to look at the incentives of each side of the relationship (PBM and pharmacy/drug manufacturer/health plan). Each side needs some sort of incentive to do their part (still primarily making a profit while saving others money). This can be done by looking at states that have implemented similar policies as are proposed in this paper.

Effect on State Spending

The effect of a given reform on state spending is the measure of how much money Iowa is likely to save with the implementation of each alternative. In measuring the effect on state spending, three areas will be considered: Medicaid spending, state employee health plan spending, and costs of implementation. All three of these predictions will be based on data from other states that have implemented specific alternatives, and fiscal reports from Iowa's Legislative Services Agency (LSA) that have been prepared for proposed policies in the past. Examining potential savings to the state is an important aspect of PBM reform as the efficient use of taxpayer dollars for Medicaid benefits the state at large.

Effect on Transparency

The effect of a policy on transparency refers to how much information the state will be able to access related to the PBM being used and its operations. Information about the

inner mechanisms of PBMs is so opaque that many describe them as “black boxes” that even healthcare experts can’t completely understand (Rowland). Transparency is key to effectively addressing PBMs’ effect on drug prices, because many of the details around their rebate negotiations and contracts with third parties, like rebate aggregators, are kept confidential. If states can access more of this information, it will allow them to enact more targeted and better-informed policies.

For example, in 2021, Ohio officials discovered that PBMs were charging the state what they reimbursed pharmacies for filling Medicaid prescriptions, as the law required, but then used clawbacks to collect additional payments from pharmacies (Rowland). Clawbacks happen when patient drug copays, which are collected by pharmacies, exceed the actual cost of a drug, and PBMs “claw back” the excess from the pharmacy. PBMs and pharmacies set their reimbursement rates, but clawbacks allow PBMs to collect an additional retroactive payment from pharmacies (Van Nuys et al.). In Ohio, the PBMs were technically in compliance with the law, and were exploiting a loophole related to what was considered a pharmacy “claim” (Rowland). Lawmakers had not intended to allow clawbacks, and when this practice was brought to light, it gave them the opportunity to address the issue. Ensuring that the state’s access to necessary data about the operations and financial activities of PBMs will be crucial to enacting successful legislation to lower drug prices.

Evaluating Policies

Based on the given criteria, we will propose and evaluate each policy alternative that we believe to be promising at addressing the issues with PBMs. The policy alternatives we will discuss include the status quo, a pass-through pricing model for state PBM contracts, a single state-contracted PBM for Medicaid and the employee health plan,

reverse auctioning to select a PBM for the state employee health plan, and carving out pharmacy benefits from Iowa’s Medicaid MCOs. It is important to note that the pass-through pricing model, single state-contracted PBM, and reverse auctions are all non-mutually exclusive, meaning they could be implemented together. However, there can be conflicts between the implementation of the pharmacy benefit carve out and single state-contracted PBM.

Status Quo

The most recent change in Iowa’s PBM regulation was a bill passed in 2022 which introduced a ban on clawbacks, prohibited reimbursement discrimination against pharmacies unaffiliated with PBMs, and set transparency standards for maximum allowable cost (MAC) lists (“2022 Iowa Legislative”). Iowa’s current PBM regulations also include a ban on gag clauses, requiring annual reports of rebates and administrative fees to the Iowa Insurance Division, and limiting patient cost-sharing (“State Pharmacy Benefit”). Some of these policies, like the ban on gag clauses, have been enacted in many states while others, like the ban on clawbacks, are less common. However, there are still concerns about the role of PBMs in the state, one of which is pharmacy access. Pharmacies across the country have faced financial difficulties because of PBM reimbursement practices, and independent pharmacies have been hit especially hard. In Iowa, this has led to independent and rural pharmacies actually losing money by filling prescriptions, and as many shut down, “pharmacy deserts” are cropping up around the state (Tevis). Though other factors contribute to pharmacy shutdowns, experts believe that PBMs play a significant role in creating an increasingly hostile environment for pharmacies.

Another concern for the state presented itself in 2022. Centene, which

owns the MCO Iowa Total Care, reached a number of settlements in other states for overcharging their Medicaid programs, including a \$165.6 million settlement with Texas. During this time, Centene approached the Iowa Attorney General's office to settle with Iowa, though they admitted no wrongdoing. The AG's office said that Centene used its PBM, Envolve, "to deceptively receive payments that it was not entitled to; falsified reports related to the work under its provider agreement with the state; and misrepresented the cost of pharmacy services" (Ramm). The terms of the settlement included requirements for greater transparency in pharmacy claims going forward to prevent this from happening in the future. This case is an example of the potential consequences of inadequate PBM regulation.

Political Feasibility

The status quo regarding the state's management of PBMs for public health plans is unlikely to remain politically feasible for much longer due to building momentum in favor of greater PBM regulation. Just this past year, the Iowa Pharmacy Association (IPA) formed the PBM Accountability Project of Iowa, a coalition of experts, advocacy groups, and industry leaders committed to lobbying for better oversight of the actions of PBMs ("IPA Joins Coalition"). The National Community Pharmacists Association (NCPA) also supports policies that would introduce more robust regulations on PBMs interacting with state programs ("Spread Pricing 101"), and a national class-action lawsuit led by an independent pharmacy from Iowa (United States District Court) is likely to push this issue further into the public eye in coming months and years. Additionally, as the Governor continues to seek out ways to reduce state spending, taking on state PBM contracts is a natural route for state action. As bills considered (SF

554 in 2023) and passed (HF 2384 in 2022) by the legislature in recent years show, the 'status quo' on this issue is unstable.

Economic Risk

Already, there has been an evident pushback against PBMs. People are calling out for systematic reform because drug prices will continue to rise without it. While Iowa has already taken the initiative in passing legislation, it will not be enough in the long run. Rural and independent pharmacies are still closing every year, and people are struggling to pay for their prescriptions. Research from the University of Iowa showed that 16% of the nation's independent rural pharmacies closed from 2003 to 2018 (Henderson). The system is failing, and without more changes, it will continue to negatively affect all Iowans.

Effect on State Spending

Iowa's current state-level PBM provisions like uniform PDL and rules defining how MCO-subcontracted PBMs can generate revenue put it in a better position than many states when it comes to managing state spending. Imperfections still exist in Iowa's system that allow PBMs to make away with millions of taxpayer dollars unnoticed, such as the 2022 case that resulted in a \$44 million settlement that hinged on Centene bringing the case to the state while admitting no wrongdoing (Ramm). What seems to be a lack of transparency from PBMs that Iowa interacts with will continue to make it possible for taxpayer money to go missing. Despite looking good on paper, Iowa's status quo does not bode well for state spending on Medicaid and the employee health plan, as control over and transparency into the PBMs working with the state is low.

Effect on Transparency

In Iowa, PBMs are required to report the aggregate amount of all rebates and

administrative fees they receive, including the amount that is not passed along to payers, to the Iowa Insurance Division. Though this gives the state greater information about PBM activity, the state's settlement with Centene is evidence that greater transparency is needed to protect patients and control state spending. The example of Medicaid clawbacks in Ohio illustrates another situation where having information about PBMs was key to tightening legislation and protecting patients.

Pass-Through Pricing Model

One approach Iowa can take is to require a pass-through pricing model for PBMs subcontracted by the state's MCOs as well as by the state employee health plan sponsor, Wellmark BC/BS. A pass-through pricing model requires of a PBM several things:

- PBM revenue comes solely from an administrative fee;
- One hundred percent of pharma-generated revenue is passed on to the health plan, which includes rebates and other fees (including any percentage that might be retained by rebate aggregators or similar affiliates);
- Access to all data and visibility of financial and operational business practices;
- Single maximum allowable cost (MAC) list and ban on spread pricing ("Understanding the Pass-Through").

The case of Ohio's implementation of a pass-through pricing model in 2019, after its state auditor discovered that PBMs had charged a spread of 31% totaling over \$200 million between April 2017 and March 2018, resonates with Iowa's settlement with Centene for overcharging the state's Medicaid program ("Auditor's Report").

Political Feasibility

Adoption of a pass-through pricing model is likely to have bipartisan support, as evidenced by its implementation in red states (Arkansas), purple states (Pennsylvania), and blue states (New York) alike ("Spread Pricing 101"). Pharmacists and pharmacist interest groups have demonstrated their support for the adoption of a pass-through pricing model, showing that at least one of the four major players within the prescription drug supply chain (manufacturers, PBMs, health plan providers, and pharmacies) is actively on board. PBM resistance to this model also appears to be loosening. Express Scripts, the largest PBM in the country, recently announced the creation of the ClearCareRx program, which would utilize a pass-through pricing model with private partners. Similar action has also recently been taken by CVS Caremark, a potential sign of a shift in the industry (Reed). Willingness to 'bend' on the part of PBMs, even in situations where they maintain control over the rollout of the program, is a strong sign for the legislative feasibility of this policy alternative.

Economic Risk

One of the biggest problems with the current system is that it is too complicated. This policy recommendation quickly simplifies it, but does so by getting rid of PBMs' primary revenue stream. The instance of Express Scripts' previously described plan has shown that passing 100% of the rebates on to buyers will not pose a risk to the system itself, but states will have to be careful not to lower the incentives for PBMs to negotiate the lowest prices for drugs. PBMs will not generate their revenue from drugs themselves, but rather just the administrative service they are providing. This can pose a potential problem because PBMs will try to clawback their revenue through these fees,

which could raise prices for health insurance plans, and ultimately the drug consumers (Fiedler et al.).

Effect on State Spending

The pass-through pricing model would have slightly different effects on the state's spending on its employee health plan and Medicaid prescription costs. While the exact details of Iowa's contracts with employee health plan sponsor Wellmark BC/BS and its PBM are unknown, narrowing the amount paid to a single fee as opposed to allowing PBMs to generate their own revenue will increase transparency and allow Iowa to better understand how its money is being spent. Any revenue generated between the PBM and manufacturer would be required to be passed through to the health plan sponsor under this alternative as well.

In the case of Iowa's Medicaid, the PBMs are not allowed to collect rebates or other forms of revenue from drug manufacturers that would need to be passed on. So in theory, no additional money would be passed on to the health sponsor. Pass-through pricing would also require that PBMs report how much they pay to the pharmacy and how much they charge Iowa's Medicaid in order to prevent spread pricing. This requirement would go a long way in helping ensure that Iowa knows how much it is being charged and create a system that can catch PBMs who accidentally or purposely overcharge. Ohio's pass-through plan was estimated to save the state more than \$16 million, but would likely not save Iowa any money at face value (Anthes et al.). The pass-through pricing model would rather give Iowa tools, such as increased transparency, to implement other changes deemed necessary.

Effect on Transparency

In addition to reducing Medicaid spending for the state, a pass-through pricing model would enhance transparency by giving

Iowa an opportunity to mandate access to all financial and operational data from the PBMs used by MCOs. Under this model, the state will be able to see the exact amount that drug manufacturers pay in rebates and other fees/discounts, allowing for better enforcement of the pass-through requirement. The exact level of transparency the state gains will be determined by the language of pass-through legislation, which makes it important to ensure there are no loopholes allowing PBMs to hold on to more of the rebates than they should.

Single State-Contracted PBMs

Another approach used in states like Kentucky ("Medicaid Managed Care") is to select a single PBM that will administer all Medicaid drug benefits. This policy would primarily impact Iowa's Medicaid program, since state employee health plans are managed by Wellmark and not the MCOs that this policy deals with ("Pharmacy Resources"). There are two main ways that states have implemented this policy. In Kentucky, MCOs remain involved with drug benefits but must contract with the PBM chosen by the state. Ohio took a slightly different approach: their Department of Medicaid contracted directly with the single PBM, carving drug benefits out from the duties of MCOs (Hinton et al.) Iowa currently uses three MCOs for its Medicaid program, each contracting with their own PBM (Krebs), so Kentucky's model is likely to be more achievable. One major benefit of this policy is that it simplifies the process of providing Medicaid drug benefits for both pharmacies and patients by putting all of the drug benefits under one entity. For pharmacies, working with one PBM instead of three cuts down the time they spend getting approval for medications under different health plans, managing different formularies, and seeking reimbursement (Close). This benefit would extend to Medicaid patients,

who will enjoy more consistent drug coverage and pricing across the three MCOs. Pharmacies may benefit further if the chosen PBM is unaffiliated with any pharmacy chain, although Iowa already prohibits discrimination against non-affiliated pharmacies (“State Pharmacy Benefit”). Kentucky took this approach by selecting MedImpact, which is unaffiliated with any pharmacy chain (Close).

Consolidating Medicaid pharmacy benefits under one PBM also provides the state with significant financial and oversight benefits. The selection process allows states to set certain conditions for PBMs— in Kentucky, lawmakers banned spread pricing and prohibited forcing Medicaid patients to use PBM-affiliated pharmacies (Kentucky Senate). As a result, Kentucky saved a total of \$283 million from 2021 through 2022 on Medicaid— \$56.6 million of this was state money, and the rest went to the federal government (Close). Ohio, which combined this policy with other MCO reforms and a ban on spread pricing, saved \$184.4 million over the state fiscal year 2023 (“Next Generation of Ohio”). Though exercising greater oversight requires additional administrative spending, the savings associated with a single-PBM contract will more than make up for it. In addition, this policy allows Iowa to maintain MCOs so that the state will still generate revenue from the 2.5% MCO premium tax, which is set to begin in 2024 (Iowa Legislature). This revenue, and the other savings that result from this policy, can be used in a variety of ways to address issues faced by Iowa Medicaid patients. For example, Ohio’s 2019 state budget included \$100 million to be given to pharmacists over the next two years to make up for the damage done by PBM reimbursement practices and spread pricing (Cawley). Using the savings from this policy could go a long way toward combating issues faced by many Iowans

today, including addressing pharmacy deserts.

Political Feasibility

Legislation establishing a single state-contracted PBM has been passed in a number of states with conservative majorities similar to Iowa’s, including both Ohio and Kentucky. In past legislative efforts, pharmacist associations (like the Iowa Pharmacy Association) have been significant proponents of such bills, citing reductions in administrative burden for pharmacists and improved status for independent pharmacies. These bills are often pitched by proponents as being part of a larger package of PBM reforms encompassing the actions of PBMs in both the public and private sectors.

One area where the political feasibility of requiring one state PBM contract across all MCOs may run into issues is pushback from PBMs. Binding MCOs to one contract would restrict MCOs’ ability to negotiate their own contracts as they see fit, a move that may save the state money but generate resistance among MCOs. Iowa’s Medicaid managed care organizations have at times been marred with controversy (Leys), but the transition to privatized Medicaid remains an important accomplishment for former Governor Branstad and Iowa Republicans. If MCOs were to voice meaningful opposition to this policy, conservative policymakers may grow hesitant to pursue this particular alternative.

Economic Risk

This policy recommendation poses a moderate risk to the overall system. Eliminating the options for a PBM contract might offend other PBMs that Medicaid was previously working with. Usually, contacts include as many as three PBMs, so MCOs would have to deal with PBMs that may potentially sue the state and disrupt the drug system. Furthermore, MCOs would have to

bear the load of responsibilities that were dispersed between PBMs in a non-single contracted PBM model. Ohio, which has implemented a single-PBM contract, has had its fair share of complications. The single PBM model has been hazy about responsibility, especially between operational support vendors and PBMs themselves (Schladen). The division of labor is now too uneven, and PBMs are struggling to find a balance. While this may seem discouraging, it does not necessarily negate the potential of this policy recommendation. A single PBM would require more management, but as we have seen in states like Kentucky, states are willing to step up and have more authority over Medicaid benefits. Additionally, Iowa's prohibition on discrimination against pharmacies unaffiliated with a PBM would also mitigate the risk of the single PBM abusing its position for its own gain.

Effect on State Spending

When Ohio implemented a single-state contracted PBM (SPBM) across their MCOs, Ohio Medicaid Director Maureen Corcoran expected to save at least \$150 million (Rowland). According to the Ohio Medicaid Pharmacy Services, the single PBM resulted in savings of \$128 million in SFY 2022 and \$184 million in SFY 2023 ("Next Generation of Ohio"). This figure may look slightly smaller for Iowa due to differences in the size of each state's Medicaid, but savings nonetheless. As mentioned above, Kentucky also saved over \$56 million in a year when it switched to a single-state contracted PBM in 2021 (Close).

According to the Ohio Department of Medicaid, a direct contract between the PBM and the state allows for greater quality, transparency, and accountability in the services the state receives; increases data accuracy and timeliness which supports program pay-for-performance initiatives; and

unbundles functions of PBMs to identify and eliminate conflicts of interests ("About the SPBM"). A single PBM also eliminates redundant administrative costs and risk margin that MCOs were each paying to their respective PBM ("Next Generation of Ohio").

Effect on Transparency

The effectiveness of this policy in improving transparency would depend on the specific contract used, but in general, it would allow the state to "strengthen MCO contract language" to set minimum transparency standards ("Medicaid Managed Care"). Although Iowa would not write the contract between MCOs and the PBM, the power to select the PBM for Medicaid still puts the state in a better position to negotiate terms of transparency and oversight with PBMs. As mentioned earlier, Kentucky required that the final PBM contract include a ban on spread pricing. In Ohio, the contracted PBM must disclose "any received financial benefits such as drug rebates, discounts, credits, clawbacks, fees, grants, chargebacks, reimbursements, or other payments, including disclosure of all direct and indirect fees charged to pharmacies" ("Governor DeWine Signs"). Ohio's contract also gives the state a way out of the contract with Gainwell, their selected PBM, if it fails to meet their standards (Rowland), which further protects the use of taxpayer dollars. Access to this data is crucial for the state to exercise proper oversight and ensure the success of the single PBM model in reducing drug costs.

Reverse Auctioning

The use of reverse auctions in state PBM contracting is one approach to addressing state PBM costs that has come into the spotlight in recent years. Reverse auctioning legislation is usually relatively limited, focusing primarily on state contracts

with PBMs for state employee health insurance and occasionally Medicaid programs³, as was the case in a bill introduced in Pennsylvania in 2022. Passing reverse auction legislation would enable Iowa to begin the process of setting up a program by which the state solicits bids from PBMs that want the state's business. Iowa would develop a uniform contract with its own formulary list and then solicit bids from PBMs who compete against each other anonymously to see who can provide the services requested for the lowest price. This approach to PBM contracts would shift the focus from both services and price to concentrate squarely on the issue of contract pricing. To implement such a policy, the state would first be required to contract with a third-party technology vendor whose platform would be used to host the anonymous and competitive bidding process.

In 2016, New Jersey became the first U.S. state to authorize and implement a reverse auction program for PBMs. In the years following, other states (Maryland, New Hampshire, Colorado, Louisiana, and Minnesota) followed suit. New Jersey's program, while focused solely on its public employee healthcare plan, immediately reaped significant benefits. According to the National Association for State Health Policy, NJ is expected to save \$2.5 billion in drug spending from 2017 to 2022 ("States Save on Rx"). Those savings came from numerous different aspects of the procurement program: \$1.6 billion was saved in the initial 3-year contract with OptumRx, an additional \$485 million was saved in a second three-year contract after the first was suspended by a state court, and an additional \$45.9 million was saved through the use of the technology contractor to conduct PBM contract

compliance ("States Save on Rx"). The ultimate savings would be expected to be much less for a smaller state like Iowa. However, they would likely still occur— a study by the Josiah Bartlett Center for Public Policy estimated that New Hampshire was likely to save between \$42.5 million and \$53.1 million over three years.

Political Feasibility

One advantage of a reverse auction as a policy alternative is that its passage and implementation are likely to be very politically feasible. In 2023, Iowa's State Senate passed Senate File 554, a bill that would have implemented a reverse auction policy for the state employee health plan, nearly unanimously, voting yes 48 to 1. The bill was sent to the House of Representatives, but it was never taken up on the legislative calendar. The history of SF 554 reveals two things about reverse auctioning— support for this policy alternative is bipartisan, and it has significant momentum in Iowa's General Assembly.

Evidence from other states supports this basic assumption drawn from Iowa's own experience. Across the country, PBM reverse auction legislation has been bipartisan, with policies implemented in states as blue as New Jersey and as red as Louisiana. The appeal for conservatives, who make up a majority in Iowa's legislature, is obvious— reverse auctions are a clear cost-saving measure that makes competition easier and reduces burdens on state taxpayers. State Senator Daniel Laughlin (R-PA) makes this exact point in his introduction of a reverse auction bill for Pennsylvania's Medicaid prescription drug purchasing— arguing that such a bill would "ensure taxpayers that Pennsylvania's Medicaid

³ While this likely would be easy to implement for state employee health insurance contracts, whether or not reverse auctioning would work for addressing

state Medicaid pricing would likely depend on whether the power to negotiate Medicaid contracts was brought under state control. We discuss this further in our conclusion and ultimate proposal.

system utilizes the most competitive drug pricing” (“Laughlin to Introduce”).

Economic Risk

Reverse auctioning seems like a satisfactory alternative to the current PBM model. While this model does simplify the system, it has the potential to ‘offend’ PBM companies. It will be a balancing act for the state to ensure that their auction does not favor one PBM over the other. This happened in New Jersey, where the state was sued because its contract was deemed to favor one PBM's services over another. The reverse auction process had to be restarted all over again (Sullivan).

One way the reverse auction system addresses the worry about favoritism is that it puts some of the power in PBMs’ hands. PBMs themselves determine how low they are willing to go to get a contract. This is great in lowering economic risk because there is no negative effect on the relationship between the state and PBMs. States would have to revise their system of negotiating because typically their contracts use terms and prices that widely vary to the point that most contracts cannot be compared.

One thing plan sponsors (the state) will also have to do is gain extensive knowledge about PBM practices to protect themselves against PBM abuse. While New Jersey has proven that it saves money through reverse auctioning once it completes its contract, they have had a problem with cost-containment within their contacts because of loopholes it was not made aware of (Lee). While states may know that they need to become experts on PBMs before negotiating with them, this will be impossible until PBMs are more transparent about their business practices.

Effect on State Spending

Reverse auctions to select a PBM are usually done for a state’s employee health

plan. Many states have implemented such a program that has saved states tens of millions of dollars. New Hampshire, half the size of Iowa, was projected to save between \$40 million and \$50 million as a result of the reverse auction (Winegarden). Therefore, it seems likely that Iowa would save tens of millions of dollars on its employee health plan spending as a result of reverse auctioning. Reverse auctions save states money by maximizing the specificity of contracts to fit their various needs and compute the best PBM and contract to do that kind of work for a state.

The idea to implement reverse auctioning for Medicaid does not seem to have been done before, but follows logically, especially in combination with the single state-contracted PBM alternative. When selecting a single PBM to represent Iowa’s MCOs and employee health plan, it makes sense that a reverse auction would take place and help cut costs the way it has been shown to be implemented for only employee health plans.

Effect on Transparency

By forcing PBMs to bid lower than their competitors to win contracts, reverse auctioning would give the state a clearer estimate on what working with each PBM would cost. It would also shift the burden of evading PBMs’ attempts to manipulate their proposals from state officials to competing PBMs (“Minnesota Will Capture”), making it more likely that Iowa will reach a fair deal once bidding ends. The specific system Iowa uses during the reverse auctioning process would also affect the level of transparency achieved over the term of the contract. Minnesota’s auctioning platform was also used later for “automated, ongoing, real-time validation” of PBM invoices to make sure they were in compliance with the contract (“Minnesota Will Capture”). This increases transparency because these kinds of

platforms can assess charges from PBMs more quickly and more frequently than a typical audit, and will allow any discrepancies to be addressed early on.

Carve Out Drug Benefit From MCOs

Carving out the drug benefits from MCOs means that the state manages prescription drug benefits for Medicaid as opposed to an MCO. MCOs are managed care organizations that handle all of Medicaid's benefits. We are proposing that they no longer handle the drug benefits of Medicaid, and instead have the state handle the benefits themselves. They "carve out" pharmacy benefits by excluding them from the MCO contract and covering drugs in fee-for-service (Gifford).

While some states just carve out certain drugs from their plans, others have completely carved out PBMs. Wisconsin and North Dakota are two states that have already done this. North Dakota's DHS has estimated that they save \$3.9 million in net savings due to lesser administrative fees (than if they had used a PBM) (Bendicksen and Kesselheim). North Dakota also claims that they have saved an estimated \$2.1 million in pharmacy claim cost savings from additional utilization management efficiencies. In addition to saving money, carving out the drug benefit from MCO allows for more universal implementation of revising programs within Medicaid (Bendicksen and Kesselheim). It also can improve access to drugs for certain Medicaid beneficiaries (Bendicksen and Kesselheim). Carving out the drug benefit from MCOs allows for a broader pharmacy network, therefore providing coverage to more patients.

Political Feasibility

Carving out prescription drug benefits is a policy alternative that garners significant political support from legislatures in other GOP-led states, including West

Virginia and North Dakota ("Spread Pricing 101"). PBMs themselves are not necessarily in support of or opposed to this particular reform. They state that it would likely have little effect on the bottom line of the industry as a whole (Small)— a benefit for the policy's political feasibility. One way this might change, however, is if Iowa uses this policy arrangement to aggressively pursue PBM oversight— something the state will have the option of doing because state officials will have access to pricing data under a new state contract. If this were to occur, it would be reasonable to anticipate PBM resistance like that faced by Ohio.

Similar to the single state-contracted PBM proposal, the potential for resistance from managed care organizations will likely make pursuing a prescription drug carveout a difficult task politically. According to Eric Linzer, the CEO of the New York Health Plan Association (a trade group for health plan providers in New York State), carve-outs are likely to "undercut the ability of health plans to work with providers and patients to ensure that their care is integrated" (Small). The resistance of MCOs to carve-outs is likely to complicate any attempts to pass this policy, especially in a legislature led by members of the party that originally supported Medicaid privatization. This particular alternative is likely to generate even greater MCO resistance than the single state-contracted PBM approach, limiting its chances of passage.

Economic Risk

Most states chose to only carve out certain subsets of drugs, rather than the full benefit (Gifford et al.). This takes the responsibility off of the shoulders of MCOs a bit, but it also means that states need to take the burden of that responsibility. They need to be prepared to run the system effectively, which we have seen is possible in states such as North Dakota. Carving out drugs from

MCOs also incentivizes them to steer Medicaid beneficiaries towards drugs that prevent non-pharmacy expenditures that will greatly benefit payers without affecting the bottom line of the provider (Bendicksen and Kesselheim). Overall, this seems like a great alternative with low risk systematically and economically for PBMs, the state, pharmacies, and patients.

Effect on State Spending

In regards to state Medicaid spending, the effects of carving out prescription benefits are hard to measure. While publicly-administered Medicaid generally comes with cheaper administrative costs than managed care, it has also been estimated that if all Medicaid beneficiaries had their pharmacy benefits administered by an MCO then outpatient drug spending would drop by 22% (Bendicksen and Kesselheim). Benedicksen

that carving out prescription benefits from MCOs would have no effect on the spending related to the state employee health plan. Carve-outs specifically deal with Medicaid and MCOs and would likely not change the workings of the state employee health plan.

Effect on Transparency

Carving out pharmacy benefits would increase transparency by giving the state greater visibility into Medicaid drug costs to improve the program for patients. When the state manages prescription drug benefits itself, it has more control over the formulary and payments and may be more effective in negotiating rebates with drug manufacturers with oversight over the full benefit program (Small). Experts believe that with full visibility into Medicaid drug costs, states will be better informed to negotiate rebates and bring drug prices down than the PBMs

Table 1: Policy Evaluation Matrix				
	Political Feasibility	System Risk	Effect on State Spending	Effect on Transparency
Status Quo	2	2	3	2
Pass-Through Pricing Model	4	4	3	4
Single state-contracted PBM	3	3	4	4
Reverse Auctioning	5	3	5	5
Carve out pharmacy benefits	2	2	2	4
1: Worst 5: Best				

and Kesselheim also found that the use of carve-outs in terms of maximizing the number of beneficiaries for use in negotiating rebates can lead to heavy discounts, especially when only carving out specifically expensive drugs. It is also important to note

currently employed (Small). They will also be better able to determine which medications are costing Medicaid patients the most and focus their efforts on bringing those costs down.

Conclusions and Recommendation

After evaluating options Iowa's legislature can take to regulate relations with PBMs at the level of state contracts, our first recommendation is that the state of Iowa adopt a reverse auction mechanism similar to SF 554. In our analysis, the reverse auction policy alternative was marked positively on every criterion and scored far ahead of the other alternatives. Reverse auctioning's implementation has been proven successful in states like Pennsylvania, New Jersey, and Maryland just to name a few. Along with its positive track record, reverse auctioning has already been introduced to the Legislature and even passed out of the Iowa Senate nearly unanimously. When similar legislation is likely brought forward in future legislative sessions, we recommend that policymakers support it. The reverse auctioning plan allows the state to compute and decide the best contract offer for the state employee health plan and sometimes Medicaid from competing PBMs.

While the reverse auction has worked well with the state employee health plan whose contract is handled solely by the state, the situation with MCOs and Iowa's Medicaid gets more complicated. In the case of Iowa's Medicaid, we also recommend implementing a single state-contracted PBM to handle pharmacy benefits for all three of Iowa's MCOs. While likely less politically easy than solely adopting the reverse auctioning alternative, switching to a single state-contracted PBM has several positives that make it worth adopting. First and foremost, opting for a single state PBM contract is likely to expand the potential for cost savings and transparency in state dealings with PBMs, as the records of both Kentucky (Close) and Ohio ("Next Generation of Ohio") show. Our analysis shows that this alternative's performance across our evaluative criteria is meaningfully superior to that of the drug carveout

approach, the other method through which the state could exert some level of control over the state's Medicaid program's relationship with PBMs.

Further, we find that adopting the pass-through pricing model offers an attractive way for the state of Iowa to manage its contracts with PBMs, further enhancing the transparency of the PBM's activities. This particular policy option has generated bipartisan support elsewhere, and PBMs have shown a willingness to come to the table, as evidenced by the conduct of Caremark and Express Scripts in recent years. The biggest benefit of this model is simplicity—it makes the revenue stream of PBMs more clear, simple, and transparent. While this policy does leave room for forms of revenue clawbacks that may limit its savings potential, Ohio has experienced savings since adopting this model and it offers a new way of catching and preventing waste and overbilling. If written well, the adoption of this model would also create a significant opportunity for transparency in the state's dealings with PBMs.

Our ultimate recommendation is that the state incorporate these three policy alternatives into a modernized system for acquiring and managing state contracts with PBMs. All three alternatives address specific problematic aspects of the state's relationship with PBMs, and all three can be combined into one larger model encompassing what contracts the state negotiates (empowering the state to negotiate one PBM contract on behalf of all of the state's MCOs), how the state negotiates those contracts (competitive bidding through reverse auctioning), and what requirements are found within those contracts (including the adoption of a pass-through pricing model). All three alternatives appear to be relatively politically feasible, with significant bipartisan support and a lack of significant and organized interest group resistance. Additionally, all three, especially

when adopted together, would have positive impacts on both state spending and transparency in the state's dealing with PBMs, introducing opportunities for oversight and cost savings across different aspects of the state-PBM relationship.

One area where our policies do not solve the state's problems, however, is the possibility of risk in the form of knock-on effects. The pharmaceutical industry is incredibly complex, with a difficult supply chain that involves many different actors and could produce complications in any number of areas. No policy alternatives currently considered entirely avoid these risks (although the reverse auction alternative scores well on this criteria), but steps can be taken to minimize the impact of these risks. One way this can be done is through a continued focus on increased transparency—the more the state knows about how PBMs operate and what the effects of state policies are on the market for pharmaceutical drugs, the quicker policymakers can respond to head off unforeseen consequences and ensure that Iowans still receive the benefits they need at a reasonable price to the state. Another way to minimize unknown systematic risks would be to thoroughly blend these alternatives together. For instance, combining pass-through rebates with reverse auctioning will help with the risk of PBMs trying to claw back their revenue through administrative fees, because auctioning the contracts will generate cheaper services. Any “solution” to the problem of drug prices and regulating PBMs is unlikely to be permanent, as the industry itself continues to change and respond to a shifting regulatory environment.

If not all three alternatives can be adopted, we recommend that policymakers prioritize the adoption of a reverse auctioning process for bidding on the state employee health plan. This particular alternative, while not as far-reaching and significant in scale as many of the other alternatives considered in

this paper, is the only alternative that scores unanimously positive across all four of the relevant criteria that we consider. Such a step would be small, but we believe that it would be a step in the right direction for saving state money and making dealings with PBMs more transparent.

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Worker Misclassification and Protection

Emily Harkin, Isabel Meade, Joe Dunlay

Executive Summary

With the ever-expanding use of outsourced labor, the United States has seen recent stark growth in what is known as the “gig economy.” The gig economy references the growing labor market sector that relies on companies contracting workers, known as independent contractors, instead of explicitly hiring them as employees. Independent contractors in the gig economy have disproportionately been implemented in sectors like construction and other trades, including newer sectors such as the ride-share and food delivery app industries. With the rise of gig work, there has also been a rise in the misclassification of workers as independent contractors. This paper seeks to diagnose the implications that worker misclassifications have on workers, businesses, and the State of Iowa, as well as offer suggestions that Iowa may be able to implement to address the growing problem. The paper will start by exploring the background of the issue on both federal and state levels by reviewing existing literature. Then, the paper will move into discussing possible solutions to worker misclassification. This paper will evaluate these solutions through a system of multiple criteria outlined using a -/0/+ rating. Finally, the paper offers two finalized policy solutions that are not mutually exclusive and have the most significant positive effects on lowering worker misclassification in Iowa. These policies include implementing ABC Tests to clearly define a worker’s status as an employee or independent contractor as well as investing and expanding a worker misclassification and wage theft task force.

Introduction

The lack of permanent and inclusive legislation covering independent contractors, both in Iowa and the United States on the whole, has become increasingly apparent with the expansion of the gig economy over the past 40 years. Businesses with gig economy services have exploded with the demand for services fueled by gig economy work and investment into companies that employ gig work (Azar). The gig economy “is characterized by the phenomenon in which the companies we purchase goods or services from do not actually employ the workers who deliver those goods or services to us,” and these companies are outsourcing their labor to independent contractors, who get paid by the “gig” (Azar).

The recent growth of the gig economy has led to a massive increase in independent contractors, as 36% of workers said they were classified as independent contractors in 2022, while 27% of workers said they were classified as independent contractors in 2016 (NCSL). This development of the new-age gig economy impacts everyone but has become commonplace in “industries such as construction, trucking, and stagecraft” but has especially seen a recent influx in on-demand workers who use the Internet or various applications on the web to receive jobs (Carré). This includes many well-known companies like “Uber, Lyft, Amazon, Doordash, Grubhub, Postmates, Instacart, Handy, TaskRabbit, Wage” and various other companies (Azar).

The growth in the number of independent contractors, the market for them, and the diversity of industries where independent contractor positions are available comes because there are many

heavily emphasized perks like autonomy and flexibility for workers; however, independent contractor classifications come with their own set of downfalls. Independent contractors are often misclassified, creating negative implications for the workers themselves, law-abiding businesses, and federal and state governments. When a worker is misclassified, businesses “avoid paying taxes, overtime, unemployment insurance; may avoid workers’ compensation coverage; may fail to follow wage, contractor registration, labor laws, and other employment laws; and may be more financially capable of underbidding honest, law-abiding businesses that are paying all taxes owed” (IWD). Even with these obvious negative implications, there has been a lack of legislation, which presents a growing problem nationwide, especially in Iowa, threatening Iowa’s economy, businesses, and workers.

Status Quo

Federal Legislation

In 1938, the Fair Labor Standards Act (FLSA), one of the most significant labor protection acts, was implemented, with exceptions to the various amendments over the years, by the Senate and the House of Representatives of the United States “to provide for the establishment of fair labor standards in employment in and affecting interstate commerce, and for other purposes” (The Fair Labor Standards Act of 1938). This federal law establishes full-time and part-time worker protections for employees across the United States in private and public sectors, including protections for child labor standards, minimum wage, overtime pay eligibility, and recordkeeping (DOL). Despite all the protections it establishes for employees, independent contractors and the misclassification of independent contractors are largely ignored within the FLSA and

other primary work-related legislation within the federal government and Iowa.

Although there have been no stable significant pieces of federal legislation since the FLSA that protects workers from misclassification, a newly proposed independent contractor rule is attempting to change classification under the grounds of the FLSA. Ultimately, who qualifies as an employee or contractor depends on a worker’s dependency on their hiring entity. The worker’s dependency on their hiring entity is determined by what is known as an “economic realities test” that considers a total of six factors. These factors include “the extent to which the work performed is an integral part of the employer’s business; the worker’s opportunity for profit or loss, the nature, and extent of the worker’s investment in their business; whether the work performed requires special skills; the permanency of the relationship; and the degree of control exercised or retained by the employer.” This economic realities test has been used by the Judicial Branch and the Department of Labor for over seventy years to determine the classification of a worker (Federal Register).

Over the past decade, with the expansion of the gig economy, the increasing problem of independent contractor misclassification has created various viewpoints about their classification under the FLSA, with presidential administrations changing the distribution of importance of the factors in economic realities test. The Trump administration favored the nature and degree of control over the work and the worker’s opportunity for profit or loss and determined these to be the “core factors” (Federal Register). These classification rules limited who could be qualified as an employee under FLSA and thus expanded who qualified as an independent contractor.

This distribution of importance and this narrowing of worker classification

changed on October 13, 2022, as Biden’s Department of Labor published a rule proposal to revert it to what it was under the Obama administration. This rule proposal has proceeded with various difficulties in the Eastern District of Texas federal court as the final version of the worker classification rule was delayed until October 2023. The Department of Labor was granted a 120-day delay to further proceedings after the Eastern District Court of Texas rulings by the U.S. Court of Appeals Fifth Circuit (Misclassification of). The Department of Labor has submitted the rule as of September 28, 2023, and is waiting for the final acceptance or denial of their proposed rule (Dol).

Current Legislation

Recently, there has been an overall positive federal change to the issue of independent contractor misclassification with definitions and targeted enforcement tactics; however, Iowa’s recent state regulations concerning workers’ protections have seen a highly alarming series of rollbacks. However, even before these rollbacks, Iowa lacked protections for independent contractors, conveniently leaving them out of the prominent worker’s protection acts – like the Iowa Wage Payment Collection Act – that explicitly excluded independent contractors and only included employees. Overall, Iowa legislation and policies regarding independent contractors have been little, if any.

Even though there is a lack of legislation in Iowa about independent contractors and their misclassification, the definitions of employees and independent contractors are embedded within the Iowa Code. In Iowa Code Chapter 252G, an employee is currently defined as “a natural person who performs labor in this state and is employed by an employer in this state for compensation and for whom the employer

withholds federal or state tax liabilities from the employee’s compensation.” In comparison, in the same Iowa Code (252G), a contractor is defined as “a natural person who is eighteen years of age or older, who performs labor in this state to whom a payor of income makes payments which are not subject to withholding and for whom the payor of income is required by the internal revenue service to complete a 1099-MISC form.” To enforce passed legislation and statutes for all workers, Iowa and the federal government have developed agencies like the Iowa Division of Labor, Iowa Workforce Development (IWD), and the United States Department of Labor (DOL).

Labor Agencies and Enforcement

Several agencies in the federal and state governments enforce labor laws and statutes; however, these agencies could be more effective. Workers experiencing misclassification or a different violation of workers’ rights are recommended against using state or federal agencies like the Iowa Division of Labor or the U.S. Department of Labor because the wait time for a response to their claim can be anywhere from several months to years with a low success rate after they accept a claim (Common Good Iowa). Even when state or federal agencies receive and handle the complaint, most employers caught violating labor rules are not heavily pressured by the state, providing little to no incentive for businesses that violate these rules to stop, as “in over 95 percent of cases, employers completely get away with violating state payment laws, and IWD’s website states that most offenders will face no penalty” (Finn).

Within the Iowa agencies, several units, like the Wage and Hour Unit and the Misclassification Unit, use the Common Law test that has the worker prove they are an employee rather than assume they are an independent contractor to review

independent contractor misclassification issues. The Iowa Division of Labor Wage and Hour Unit, which handles wage theft cases, is critically understaffed and too lenient, with some sources only appointing two active investigators to manage and investigate occurrences in the entirety of the state, totaling 1.6 million jobs (Finn). Additionally, Iowa has a Misclassification Unit that is meant to sort out independent contractor misclassification; however, staff and funding have decreased rapidly, despite its success, since its implementation in 2010. For example, in 2016, “lawmakers allocated about \$450,000 for three employees this fiscal year for the misclassification office, roughly half of what was recommended eight years ago” (Clayworth).

Consequences of Misclassification: The Worker

Misclassifying employees as independent contractors sets workers, especially low-wage and immigrant workers, up for increased vulnerability to exploitation concerning their labor rights. People who work in low-wage jobs experience misclassification more frequently because employers who do not adhere to labor regulations know that they are making profits off of people who have specific barriers like “educational attainment, language, country of origin, [and] skin color” (Bruce). Jobs with annual earnings that are relatively low are more susceptible to independent contractor misclassification, like “construction workers, truck drivers, janitors and cleaners, home and health personal care aides, retail sales workers,

housekeeping cleaners, landscaping workers, call center workers, security guards, light truck delivery workers, and manicurists and pedicurists (The EPI)” as well as workers from app-dispatched jobs (National Employment Law Project).

More specifically, improper classification deprives employees of “minimum wage, overtime pay, contributions to Social Security, the right to collective bargaining under the National Labor Relations Act, workers’ compensation, unemployment compensation, and protection from discrimination” (National Employment Law Project). Further distinctions in the rights of employees can be observed below in Figure 1. When workers are misclassified, nonpayment of wages, commonly known as wage theft, is almost always the result of “overtime and lack of record keeping” (Bruce). In Iowa, employers take over \$900 million every year out of workers’ wages, impacting one in seven workers, while less than 1% is recovered by government agencies (Finn). Upon further analysis, a typical construction worker labeled an independent contractor would lose \$16,729 in income and benefits compared to a typical construction worker labeled as an employee

Figure 1 (provided by the Economic Policy Institute)

Comparison of workplace legal protections for employees and for independent contractors in the United States

Labor standard	Employee	Independent contractor
Minimum wage	✓	✗
Overtime pay	✓	✗
Unemployment insurance	✓	✗
Workers' compensation	✓	✗
Paid sick days	✓	✗
Paid family leave	✓	✗
Health and safety protections	✓	✗
Right to a union	✓	✗
Discrimination and sexual harassment protections	✓	✗

Source: EPI analysis of federal and state laws. Employees receive these protections in places where they are statutorily prescribed.

(The EPI). Additionally, misclassified workers lose rights to employment promotions, like unemployment insurance benefits and workers' compensation, and face further economic disparity as they have self-employment and quarterly estimated income tax burdens from being independent contractors (Bruce).

Consequences of Misclassification: The Government

Misclassification of workers is pervasive as a study in 2000 commissioned by the DOL found that 10 to 30 percent of companies audited in nine states misclassified at least some employees (Economic Policy Institute). Independent contractor misclassification seriously impacts the government, as businesses avoid paying employment taxes and insurance. Social Security and Medicare (FICA) are mandatory payroll taxes, and unemployment insurance (UI) and workers' compensation insurance must also be paid to the government. This problem is statistically significant as a study from the Internal Revenue Service (IRS) in 1984 discovered "15 percent of employers engaged in misclassification and misclassified workers as independent contractors, resulting in an estimated loss of \$1.6 billion in FICA tax, unemployment tax, and income tax combined" (Carré). When comparing this to modern-day values, accounting for inflation, as of 2014, would equal around \$3.5 billion (Carré).

When a worker is labeled correctly or incorrectly as an independent contractor, they must pay the total FICA tax – rather than the traditional 50-50 split between an employee and an employer (Carré). As of 2013 and 2014, Social Security and Medicare total 15.3% of gross wages (Internal Tax Revenue Service 2015). On the occasion that the IRS finds an employer to misclassify employees as independent contractors, the IRS has "few,

if any, ways to seek redress and lost tax revenue" through Safe Harbour Rules that allow more room for employers "to treat workers as independent contractors for employment taxes" (Carré). In a study by the Congressional Research Service in 2010, the government could have made an additional \$8.71 billion from 2012 to 2021 by narrowing the Safe Harbour Rules created by the IRS (National). Furthermore, in regards to insurance, misclassification of just one percent of workers annually can result "in a \$198 million hit to unemployment insurance (UI) trust funds" (National Employment Law Project).

Consequences of Misclassification: the Business

Despite the worker and governmental focus found in most cases of attempting to correct independent contractor misclassification, businesses are also harmed. Businesses that abide by the law are in the same labor markets as businesses that do not abide by the law and can face economic disadvantages that stem from a failure of companies to oblige labor-related requirements under the Fair Labor Standards Act as well as state laws that dictate employee protections like minimum wage and overtime (Carré) Overall, employers who misclassify their workers as independent contractors can save up to 30% of taxes and payrolls meant for properly classified employees (National Employment Law Project). In Iowa, the second report of the Misclassification Task Force found that 230 employers failed to oblige these labor standards – giving these employers an economic advantage over an approximate 72,000 employers that abide by the law (National).

Policy Alternatives

This section focuses on policy alternatives aimed at helping with the current

rise of worker misclassification, especially with the rise of the gig economy. This section will give examples of policy alternative implementation across the United States, when possible, and examine the effects the policy had in those locations. In efforts to promote transparency in this complex issue, some of these policy alternatives have not existed for more than five years and were implemented amid the COVID-19 pandemic, so there is minimal data on their effects.

ABC Tests

Currently, Iowa uses what is known as a Common Law test to determine if a worker should be labeled as an independent contractor or an employee of the employee or business in question. Section 871-23.19(96) of Iowa's administrative code outlines specific statutes that the state uses to determine the presence or lack thereof of typical employment⁴. Some of the statutes are, but are not limited to, the presence of an employee's workflow being at the will of an employer or the presence of an employer providing materials, such as tools, to the worker. State Common Law tests resemble federal Common Law tests that use three subsections (Behavioral, Financial, and Relationship) to ambiguously divide statutes that would prove a worker is an employee rather than an independent contractor. Inversely, ABC tests follow three guidelines, hence A-B-C, to determine whether a worker is an employee or an independent contractor. This contradicts the Common Law test, which automatically assumes the worker is an independent contractor and relies on the worker to prove they are an employee if they believe the former label is incorrect.

ABC tests have an employer prove that a worker is an independent contractor through each of the following: (a) the work being done is without the direction or control of the employer, (b) the work performed is

outside the usual scope or course of the employer's usual business, and (c) the work is done by someone who has their own independent business or trade doing that type of work (Economic Policy Institute). Placing the responsibility of classification on the employer voids the responsibility of that same employer to provide them with the benefits that official employment offers. As of March 2023, 27 states use ABC tests to determine whether a worker is an employee, a contractor, or if one qualifies for unemployment benefits (World Population Review). Some examples of states that use the ABC test include Nebraska, Kansas, and Illinois. Fifteen states still use Common Law tests, and eight states use a combination of both.

ABC tests are a relatively new policy in the United States, with California being the first to adopt a full ABC test policy in 2018 to determine unemployment benefits. In 2019, California expanded ABC tests to determine the classification of workers (Shouse Law Group). However, data has been limited and not up to the expected benefits of the policy for several reasons. First, there was severe uncertainty that the policy would be upheld and implemented permanently with the pushback from companies that base their business models around misclassifying workers as independent contractors. These fights were widely unsuccessful – except for the rideshare and delivery company legal exemption in November of 2020. Second, the COVID-19 pandemic severely impacted the Californian economy two months after implementing the ABC test and shifted focus away from misclassified workers to other labor problems that the pandemic brought. Despite the lack of data and lowered ability to implement the policy, estimates since the passage of AB5, the law that implemented ABC tests in California, show that

⁴ Link to the current legislation can be found [here](#)

Workforce’s small team of misclassification auditors “cited almost 2,000 misclassified employees and \$745,000 of recovered employer contributions in Fiscal Year 2020 (Finn). However, with a reinvigoration of this Unit, the administrator mentioned above even “said that [the] number can triple if the operation is fully staffed” (Clayworth).

Expand Benefits

Another alternative policy to correct the disadvantages suffered by independent contractors and de-incentivize continued misclassification would be using portable benefits. This policy would expand the safety net for independent contractors, a concept implemented nationwide through programs like Social Security and the Affordable Care Act (Steward). This helps retain independent contractors’ flexibility while ensuring a safety net. Legislators, businesses, and workers have been looking at portable benefits to replace traditional employer-sponsored programs, including health insurance, retirement savings, and paid time off. Portable benefits are attached to individuals and do not have to be administered through employers.

Independent contractors often are not eligible for many benefits typically offered by employers, including paid sick leave, workers’ compensation, retirement plans, and health insurance” (NCSL). However, they tend to have considerably lower rates of workplace benefit coverage. Even businesses involved in gig work agree, as in late 2015, there was a letter signed by many stakeholders in the gig economy like co-founders CEOs of Handy, Instacart, Esty, co-founders of Lyft, union leaders, think tanks, professors of business, and venture capital firm partners, stating, “[e]veryone, regardless of employment classification, should have access to the option of an affordable safety net that supports them when they are injured,

sick, in need of professional growth, or when it is time to retire” (Azar).

At least nine states, including Alabama, California, Connecticut, Georgia, Massachusetts, New Jersey, New York, Washington, and Vermont, have proposed bills that would extend certain benefits to independent contractors, specifically targeting app-based contractors’ benefits like accident insurance and other health benefits since 2018, according to NCSL. However, portable benefit policies came to a significant test in 2020 with California’s bill Proposition 22, which “allowed gig companies to offer app-based drivers limited benefits, such as accident insurance, a health care stipend for drivers who exceed a threshold number of hours worked, and a partial ‘earnings guarantee,’ while cementing their status as independent contractors” (Brief). Many ride-sharing companies backed this measure, but its constitutionality has been debated within the courts. Opponents allege that Proposition 22 is unconstitutional because “[i]t sets limits on the State Legislature’s ability to oversee workers’ compensation for gig drivers; [i]t included a rule restricting them from collective bargaining; and [i]t set a seven-eighths majority vote of the Legislature as the bar for passing amendments to the measure related to collective bargaining – a requirement that was considered impossible to achieve” (New York Times). Thus, a comprehensive portable benefits program has yet to be enacted. However, parts of portable benefits programs have been implemented in Utah in 2023 and Washington in 2022. Utah’s SB 233 bill “allows government entities or private businesses to offer portable benefits plans” (LexisNexis). This bill is optional and has a diverse set of options for benefits. Employers can choose whether they want to participate in what the bill offers and which benefits they wish to extend. This approach is very well accepted throughout Utah, as “80% of self-employed workers

prefer access to flexible or portable benefits” (Palagashvili). Moreover, Washington’s HB 2076 bill “established minimum per-trip payments, paid sick leave, and workers’ compensation benefits for rideshare drivers.” Additionally, bills containing portable benefits continue to be brought up in legislative sessions in 2023. For example, Massachusetts bill HB 961 and New Jersey bill AB 789 are looking to extend portable benefits for “app-based-delivery drivers” and “workers who provide services to consumers through contracting agents” (LexisNexis).

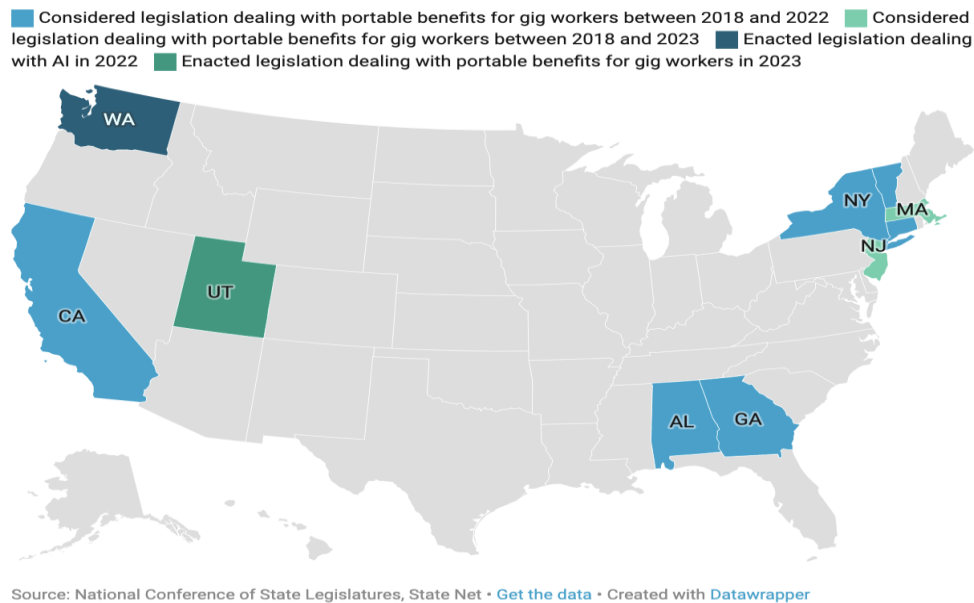
Funding for such programs is largely skewed between proposed bills. In efforts to promote and prioritize stability, portable benefits should be provided through government funding in addition to businesses’ subscriptions to the service through payments or a percentage of revenue. This concept is seen in “Pennsylvania’s 2021

money each sector or business pays to offer their contractors these portables could vary, depending on state-fronted costs. Additionally, subscriptions by these businesses could be percentage-based, pulling from revenue or a single product or service. The state funding in this formula would be supplemented by other social security programs on a case-by-case basis, with cases being funneled through current administrative offices.

Criteria

In the following section, this paper will analyze policy alternatives mentioned previously through the lens of 4 different sets of criteria: Equity and Effectiveness (combined into 1 criterion), Political Feasibility, Business Impact, and State Cost. A summary of the paper’s evaluations in table format is below. The assessment is held

Figure 3 (provided by LexisNexis)



proposed legislation [which] would require network companies to pay an initial fee of \$20,000 as a condition of membership in a portable benefits fund” (Portable Benefits for Independent Contractors). The amount of

in values of -, 0, or +. The “-” represents that the alternative ranks negatively for this criterion. The “0” represents no effect or no change within this criteria. The “+”

-/0/+	Status Quo	ABC	Strengthen Enforcement	Extend Rights
Equity/ Effectiveness	-	+	+	+
Political Feasibility	0	+	-	-
State Cost	0	0	+	-/0
Business Impact	0	-/0	-/+	0

represents that the alternative ranks positively in this criteria.

Equity and Effectiveness

The first piece of criteria to evaluate alternatives encompasses both equity and effectiveness. Both aspects are included in one criterion because the data collected proved mutually exclusive. If a policy alternative is effective, it will cease to allow discrimination by workplaces against employees by failing to allow them to misclassify their workers as independent contractors, which would strip away benefits they would reap if they were an employee. If an alternative scores positively in this area, it is estimated that it will either lower the amount of worker misclassification in Iowa or it may also score positively if it allows for more action to be taken by the state against employers who misclassify their workers. If the alternative scores negatively, it is not likely that this alternative will positively influence employers to classify their workers correctly, allowing continued discrimination by employers against workers based on job sector, race, etc., or increasing the incentive to misclassify employees. Neither the alternatives nor the status quo score neutrally

in this category, as they are all viewed to have some positive or negative effect on worker misclassification, as shown by the data observed.

ABC Tests: +

ABC Tests give the “benefit of the doubt” to the worker implicitly granting them the protections and benefits of employees and, in turn, allowing them to reap the benefits of that title. It is then not up to the worker to prove whether they are an employee or an independent contractor, but the employer. This allows court processes to be more equitable as the workers would not have to start their claims or pay for their legal endeavors to prove their classification as an employee. It is difficult to gauge the quantitative data of the effectiveness of the switch to ABC tests in multiple states, largely due to what is estimated to be the employment crisis caused by COVID-19 happening less than two years after the first implementation of the ABC tests in California. It is important to note, however, that it is “rare” for employers, at least in the state of California, to win cases of worker misclassification, which may be linked to the efficacy of the ABC tests in place (Perkins Coie Consulting).

Strengthen Enforcement: +

Strengthening enforcement has proved effective across the country. In Minnesota, they have a special department of the Department of Labor and Industry dedicated to fighting worker misclassification and wage theft, and the Attorney General’s office also assists in making cases in the name of employees (Minnesota Department of Labor and Industry). Iowa also had success in the past with its task force when it was previously well-funded and adequately staffed, as mentioned in the section entitled “Strengthen Enforcement.” During a period of eight months, 2,000 misclassified workers were identified, and over 2.4 million dollars were returned to the state.

Extending Rights: +

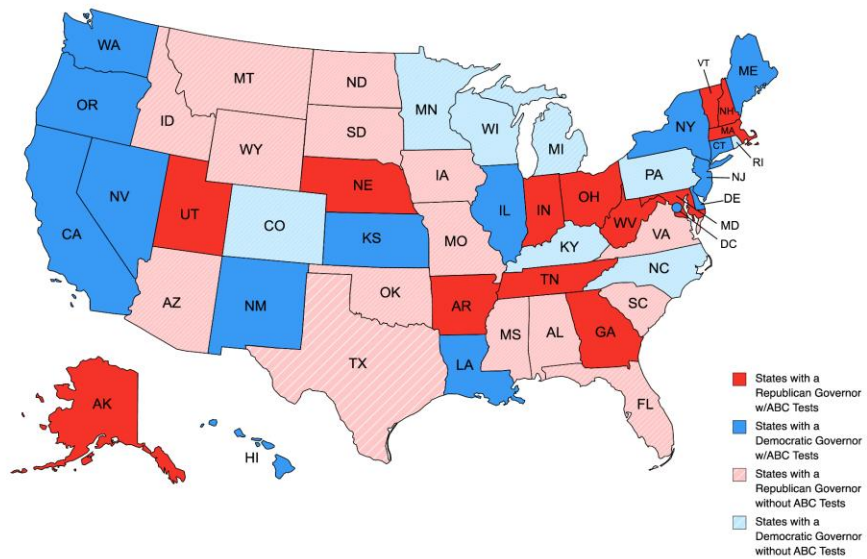
Extending the rights of independent contractors would give workers protections and benefits, but it would lessen the incentive for employers to misclassify their workers, as workers would receive benefits regardless of classification. Therefore, extending the rights and benefits of independent contractors would help ensure that they are not taken advantage of by big employers and have a way to stay socioeconomically “afloat.” However, it is important to note that these benefits would be paid for, at least in part, by the state instead of the employer. Additionally, the status of data regarding extended benefits for independent

contractors is similar to ABC Tests, as there is limited data on its effectiveness because it is such a new concept.

Political Feasibility

Political barriers and compromising challenges exist when implementing any policy alternatives, especially when considering the variety of constituency interests involving government funding and the economy. This criterion measures the feasibility of that majority agreement based on the policy alternative itself and how difficult it will be to implement these policies. If an alternative scores positively, it is very feasible in terms of the current political climate in Iowa, meaning there is a significant possibility for bipartisan or majority agreement on the proposed alternative, and implementation is estimated, in turn, to go relatively efficiently. A negative score in this category would indicate that it is unlikely that the majority would agree upon the alternative, and the implementation may cause difficulties at the bureaucratic level of the government. The status quo scores “0” in this area, as it is already implemented and

Figure 4 (made with data from IWP)



Created with mapchart.net

does not need political action to maintain the current norm.

ABC Tests: +

ABC Tests are implemented widely across the US, in more than half of the states, in both red and blue-dominated states. Below, this is demonstrated by Figure 4, which cross-references states that have implemented ABC tests in some regard (according to IWP, a worker's compensation pharmacy) to the political parties of the most recently elected governors of each state (CNN). States shaded with dark, solid blue have democratic governors and have implemented ABC tests in legislation. States shaded with dark, solid red have republican governors and have implemented ABC tests in legislation. States shaded with light and diagonal colors corresponding to the former political parties have not yet implemented ABC Tests and use Common Law tests or a hybrid. This gives little reason to believe that this policy alternative would enquire much polarized political disagreement. Even in terms of implementation, this policy would be acceptable with widespread funding and employment allocation to carry out a successful implementation.

Strengthening Enforcement: -

Strengthening Enforcement can be challenging regarding passage, but the widespread implementation of task forces in other states shows that it is possible. However, most issues may arise when implementation is needed. The state government would have to recruit new or reorganize existing employees to reconstruct a task force that would both investigate and aid in the prosecution regarding worker misclassification. Reallocating the funds to pay these employees and fund investigations is also necessary to ensure the task force is as effective as possible, therefore bringing the most return. Reallocating funds may be the

most challenging aspect of this policy to reach a political agreement due to a possibly polarizing discussion of where state funds would be most effective. This aspect will be discussed further in the criteria titled "State Cost."

Extending Rights: -

The policy alternative of extending rights and benefits to independent contractors sees a negative score for a similar reason as the alternative of Strengthening Enforcement. The issue of whether these benefits would have to be state-funded or not may cause a political divide and a considerable distaste for further reallocating money to essentially what is another social "safety net." However, various states with different political backgrounds have proposed bills to establish portable benefits programs, including California, Connecticut, Georgia, Massachusetts, New Jersey, New York, Washington, Vermont, and Utah. It also may be challenging to set up an expansive enough system in the bureaucracy to see a successful implementation and smooth running of these benefits. This becomes increasingly difficult when only one other state has a similar type of system in place.

State Cost

This alternative expands on Political Feasibility; however, they are not mutually exclusive as it is possible legislation may pass but still cost the state a large sum of money to implement or maintain. To gauge how likely something is to be implemented effectively, one must also examine the cost the state would likely have to support with its allocation of funds. In this category, if an alternative scores positively, it will cost the state very little or, inversely, bring back more money than it has spent (i.e., a state investment). If it scores negatively, it will be costly to the state and, most likely, bring back

little funds in return. A “0” would indicate no change in cost.

ABC Tests: +

Implementing the ABC Test policy would cost the state little to nothing financially, which would account for a zero in this category; however, changing the structure of how to classify a worker as an employee will decrease the number of misclassified employees in Iowa. This would increase the tax revenue for the state from these businesses, showing an increase in funds from this alternative. In California, current repercussions for proven worker misclassification include fines of between \$5,000 and \$25,000 per infraction (meaning per misclassified employee), which is to be paid directly to the state government. The employer is also then liable to repay wage amounts due to the employees themselves in addition to the state fees (Shouse California Law Group).

Strengthening Enforcement: +

There is a similar sentiment regarding strengthening the enforcement of worker misclassification. Although this policy alternative may cost the state more money in terms of employment and funding, it inevitably will be an investment for the state. In 2012, the last time Iowa’s Misclassification and Wage Theft task force was well-staffed and funded, it recovered \$2.4 million, proving the cost to be a positive investment. \$500,000 from the General Funds was appropriated by the General Assembly from the General Fund in FY 2010, and \$250,000 was appropriated by the Special Employment Security Contingency Fund. This budget was reduced from a general slashing to funding from the General Fund. Additionally, the Unemployment Insurance Base Administration Grant from the IWD from the U.S. DOL helps fund the

Employee Misclassification Program (Fiscal).

Extending Rights: -

In terms of state cost when it comes to extending the rights and benefits of independent contractors, if the policy passes as being at least partially state-funded, there will be an enormous state cost when it comes to implementing and maintaining a brand-new form of social safety net, or, at least, a significant addition to those that already exist. At a current glance, it is difficult to see where monetary return may be possible due to the considerable lack of data as of the paper’s written date. With more states opting into this policy option, it will become more apparent if financial benefits arise.

Business Impact

Business impact is aimed at evaluating the impact that the presented policy alternatives may have on both the businesses currently participating in worker misclassification within their own company and those who may be abiding by current classification regulations in full. It is important to note that business will inevitably affect Iowa’s economy. Therefore, this criterion will also include the possible threat to the state’s economy based on the actions taken by the companies mentioned above. To score positively in this area, companies would either benefit in terms of profit from the policy alternative or there will be incentives created by the alternative that will make operation in Iowa’s economy seem more desirable as opposed to what a company may gain by reeling back their presence in the state. A negative score would indicate that the alternative may potentially harm businesses’ revenue or make staying involved in Iowa’s economy less desirable than remaining active. A score of “0” would indicate a lack of change in either direction. Multiple alternatives evaluated in this section

received multiple scores to account for the difference in effects on currently law-abiding employers versus those who may be actively participating in worker misclassification.

ABC Test: -/0

The ABC test's impact on businesses only applies to companies currently misclassifying workers. While most firms that hire independent contractors would be able to justify their classification, only those who are misclassifying would feel the economic impact. By classifying workers as employees, companies need to "add employees to your payroll, withhold and contribute payroll taxes, obtain workers' compensation and unemployment insurance, offer benefits to employees, and retain accurate employee records" (Forbes). This gives the ABC test a 0 or -, depending on further data analysis to see how businesses have reacted to the ABC test in their state.

Strengthening Enforcement: -/+

Strengthening enforcement will benefit law-abiding businesses but harm businesses that do not abide by the law due to increased cases the state can bring against companies. Law-abiding businesses are at a disadvantage compared to businesses that do not abide by the law, as businesses not abiding by the law escape taxes and employment insurance required for employees. With a more robust task force, misclassified workers will have a better chance of their cases being identified. A 2017 EPI report found that in 2015 and 2016 combined, only \$2 billion in unpaid wages were recovered by the U.S. Department of Labor (DOL), state departments of labor and attorneys general, and through class action litigation (Economic Policy Institute). This is out of the estimated \$15 billion in one type of wage theft alone.

Extending Rights: 0

Portable Benefits, offered through a majority of state funding, would be difficult to tell what effect they would have on businesses. The current proposition of this paper details a plan to implement a subscription-based portable benefits service offered by the state to participating businesses that hire independent contractors. While subscription costs would be a percentage of revenue, the benefits offered would likely attract more independent workers to that business, thereby increasing potential profits. However, smaller businesses that cannot subscribe to the portable benefits plan would suffer because benefits are supplied elsewhere. Further examples are required to understand how businesses will react to this formula, thus earning it a currently neutral score.

Recommendation

After careful analysis of the three policy alternatives highlighted in the previous group, the paper recommends that the best approach for targeting worker misclassification in the state of Iowa, especially in the face of the rapidly growing gig economy, that the state legislature enacts the new statute of using ABC Tests to define a worker's status as either an employee or independent contractor, while also investing and expanding a worker misclassification and wage theft task force that would be able to properly investigate and move to prosecute instances of worker misclassification and subsequent wage theft among workers in the state. By creating a system with ABC Tests that emphasizes the importance of the employee, businesses will, in turn, have to meet the base-level requirement that they must fairly compensate their employees by avoiding their misclassification. In the case of company and employer failure, they will be held responsible by the ideally well-funded and adequately staffed task force that

will aim to investigate and prosecute instances of misclassification. This will then bring revenue back to the state in retributions and bring additional money gained from penalties. This paper also concludes that Iowa should wait to implement state-funded portable benefits until the previously mentioned alternatives are effectively implemented. This way, the State can gauge the use of portable benefits that other states are currently implementing to ensure Iowa's implementation can be as effective as possible when the appropriate time arises. Overall, implementing these policy recommendations will benefit not only workers but also businesses already adhering to worker classification guidelines and the State itself.

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Digital Divide: Iowa's K-12 Broadband Access

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Executive Summary

In education, the first two decades of the 21st century have seen unprecedented shifts to digitally based platforms for teaching and student work submission. As lessons, activities, and assignments make the migration from students' desks to their screens, it is imperative to their success that they are well-equipped to work online. The first step of this process is access to an institutionally provided device, such as a laptop or tablet. As of 2019, approximately 89% of K-12 students are sent home with a laptop or tablet across the United States, (NCES). However, there is a gap in the second step – connecting students. Research shows that some of the most promising solutions include providing eligible families with state subsidies for broadband subscriptions, installing school buses with broadband access, and providing mobile hotspots for students without secure broadband access at home.

Below are three direct policy alternatives to increase student connection at home after school hours, they are as follows:

1. Low-income grants for families,
2. Wi-Fi-equipped school buses, and
3. Mobile hotspots for at-home usage.

These alternatives were assessed on three criteria:

1. Effectiveness,
2. Equity, and
3. Economic Feasibility.

Each alternative is scored on a scale of -2 to +2 within each criterion, with -2 representing a robust negative impact compared to the existing policy and +2 representing a robust

positive impact compared to the existing policy. A score of 0 indicates that an alternative would have no impact on that specific criterion compared to existing policies.

Given that these policies are not mutually exclusive, the largest impact could be made by a combination of multiple, if not all, of the proposed alternatives.

Introduction

“The digital divide” describes the problem that many K-12 Iowan students are familiar with – how can students stay connected after the school day ends when they lose access to reliable broadband? Currently, Iowa has invested in eight complete rounds of broadband expansion. However, these investments have been targeted toward more populated areas of the state, shying away from the educational focus of the K-12 population that has become increasingly more reliant on internet access. Due to lack of accessibility at home in both rural and urban areas, state legislators should turn their heads towards promising policy alternatives.

Background

Broadband is defined as high-speed internet. Connectivity formats include, but are not limited to, Wi-Fi, satellite, fiber optics, digital subscriber lines, and LTE, (*Getting Broadband Q&A*). Each of these formats resembles a different method of achieving the same result – reliable connection to the internet and the World Wide Web. This connection provides users with all-encompassing access to the online

world: web surfing, streaming services, online news outlets, etc.

Access to digital devices is increasingly becoming the new normal within Iowa K-12 education; the issue arises when students leave school to an environment without adequate internet access. With up to 70% of K-12 teachers assigning homework that requires internet use, an environment without internet access fosters an inability to complete homework and, thus, widens the Homework Gap, (McLaughlin). A study supported by the Federal Board of Governors shows that when correlating between students with an at-home device and high school graduation rates, a student with access to an at-home device has an 8.1% higher probability of graduating from high school, (Beltran, et al., 13). Further, the Federal Board of Governors supports a higher graduation rate, given both internet access at home and devices located within a student's home, (Beltran, et al., 13).

A Pew Research study estimates that nearly one-third, 35%, of households in the United States with children aged 6-17 go without access to high-speed internet, (Auxier). Based on national data on students with free or reduced-priced lunch, 9.7 million children are estimated to lack reliable internet access at home nationally, (Digital Bridge K-12). An estimated 15 to 16 million students nationally lack an internet connection or a device adequate for distance learning, (Digital Bridge K-12).

A United States non-profit organization, Education Superhighway, directs research and provides data to aid in closing the digital divide for K-12 students. Education Superhighway's Digital Bridge K-12 initiative pulls data from National Center for Education Statistics (NCES) student enrollment levels, free or reduced-priced lunches from Universal Service Administrative Company (USAC), and local district classification through NCES, (Digital

Bridge K-12). This determination, in case studies discussed later, provides a model for determining the number of students to target when viewing on a need-base status.

On a state-level, access to high-speed internet at home is increasingly becoming an issue among Iowa K-12 students. A more significant portion of Iowa students are unconnected at home compared to other midwestern states. Iowa (16%) leads surrounding states in K-12 unconnected students, including North Dakota (11%), South Dakota (13%), Minnesota (13%), Wisconsin (15%), Wyoming (13%), Montana (15%), Idaho (15%), Utah (12%), and Colorado (15%), (Digital Bridge K-12). In **Figure 1**, Iowa is visually compared in a depiction of the United States' map of K-12 broadband access from Digital Bridge K-12, an Education Superhighway initiative, (see APPENDIX I). Out of the 78,120 Iowa K-12 students that are unconnected, 26% are from rural towns, and 23% are Black/Latino students, (Digital Bridge K-12). When comparing geographically, 47% of students who are unconnected at home are from urban/suburban areas and 53% of students are from town/rural areas, (Digital Bridge K-12).

Largely, Iowa's current funding for educational broadband is derived from the Universal Service Administration Company's E-Rate. This program is funded by the Federal Communication Commission (FCC), (*E-rate: Universal Service Program for Schools and libraries*). In 2014, the FCC's "The Second E-Rate Order" increased the maximum funding for the program to \$3.9 billion in 2015, adjusted for inflation. Recently, the funding maximum for 2021 was \$4.276 billion. On an application basis by the school district, the program provides eligible schools and libraries discounts on telecommunications, telecommunications services, and Internet access, including internal connections, managed internal broadband services, and essential

maintenance of internal connections. Reduced prices range from 20 to 90 percent, and the school district's poverty levels determine eligibility. Additional eligibility factors like rural district locations, may also result in higher discounts, (*E-rate: Universal Service Program for Schools and libraries.*)

The FCC's E-Rate Program application process begins with eligibility requirements and moves on with an application. Eligible districts must identify goods or services needed and submit a request for competitive bids to the Universal Service Administrative Company (USAC). USAC channels applications toward an online posting, allowing vendors to bid on submissions. The district will review the vendor bids and select the most cost-effective offer. An application to USAC is subject to approval, and then USAC issues funding commitments. The process must adhere to FCC, state, and local guidelines, (*E-rate: Universal Service Program for Schools and libraries.*)

In addition to the FCC's E-Rate Program, Iowa is currently in the process of rolling out a 148-million-dollar investment in rural broadband expansion, which includes a small amount of broadband development for schools. This represents the state's current efforts, or the status quo, of current policy for Iowa. The bulk of this funding is coming from the Empower Rural Iowa Broadband Grant Program, which has the majority of its funding provided by his US Treasury (*Governor Reynolds Announces... Broadband Opportunity*). How proposed policy alternatives interact with this status quo will play a role in how they are evaluated for economic feasibility alongside the other criterion.

Despite these efforts, broadband connectivity remains an issue after students leave their school building for the day, as shown in the statistics above. Current policy stops at the school door and does not take into

consideration the broadband access students have (or do not have) in their homes or other places of residence. Students may have to travel to public locations to access the internet they need to complete homework assignments and projects on time. This brings safety concerns into the picture, as allowing K-12 students to travel around alone is, in many places, unsafe. State policy would be better suited to helping families secure reliable and affordable broadband access within their own homes, so that students can perform well academically, and do so without jeopardizing their safety. We have created some policy alternatives that we believe could circumvent the current problems the State of Iowa is facing on this issue and will describe them in further detail below.

Policy Alternative Evaluation Criteria

Each policy alternative will be evaluated on the following criteria, with a score of -2 to +2 assigned for each score.

- **Economic Feasibility:** this criterion concerns whether the proposed alternative is economically reasonable and is graded in relativity toward current Iowa economic efforts regarding broadband access.
- **Equity:** this criterion concerns how the proposed alternative would impact minority and marginalized communities across the state, as well as how much attention is given to individual needs and circumstances when distributing the product of the alternative.
- **Effectiveness:** this criterion concerns how much the current status quo will be changed by the implementation of the proposed alternative. A positive movement away from the status quo will result in a better score, and vice versa.

Policy Alternative: Low-Income Family Grants for Broadband Access

Through various grants and private investments, most schools across the country have been outfitted with the resources to

supply their students with access to reliable broadband while at school. However, after school ends, broadband access lessens for students and the communities they reside in. DigitalBridge – a company that works to close the rural broadband gap – estimates that in Iowa alone, approximately 80,000 students are unconnected or not reliably connected once they leave school, (DigitalBridge). Pew Research Center also published a study that claimed 1 in 5 students across the country regularly cannot finish their homework because of the digital divide, (Anderson et al).

There is a sizeable gap between at-home broadband access in both urban and rural areas. Looking at the rural student population, the state's Western sector is almost entirely rural, and most broadband access in this region is by satellite. Even the state website itself recognizes that reliable broadband access in these areas currently lacks accessible connection, (Broadband Availability Map). In **Figure 2**, a map from the Iowa Department of Management website, displays (in blue) where residents are eligible for reliable, non-satellite broadband access, indicating the need for reliable access to affordable, quality broadband service in those areas, (see APPENDIX I). Conversely, areas not shaded in blue are considered relatively unconnected state zones where reliable broadband access is not attainable for most of the population. On a federal level, President Biden addressed Iowa's issue directly during a White House speech, citing a woman from rural Iowa who only had access to spotty satellite broadband, (Biden).

A proposed alternative that targets the K-12 population of Iowa is low-income grants for families. A federal program called the Affordable Connectivity Program acts as a subsidization entity for the Federal Communications Commission, (FCC, n.d). This program provides families who fall below 200% of the federal poverty guidelines with a \$30/month subsidy towards their

broadband subscription. 200% of the federal poverty guidelines equates to \$27,180 for a one-person household. An additional \$9,940 should be added for each additional person in the home, (Jett). This is helpful but does not cover most of the average broadband bill nationally. Pew Trusts places the median household broadband bill between \$50 and \$70 a month in 2022, which means that more assistance is needed for families who are already below the poverty line, (Read and Wert, 2022).

As a state addition to the ACP, it is recommended that Iowans who are at or below 100% of the federal poverty line be eligible for an additional \$30/month discount offered by the federal government.

Low-Income Family Grants for Broadband Access: Equity

Adding to accessibility, the 200% income-based threshold is only one of many qualifying marks. Families can also qualify if they participate in other government assistance programs such as SNAP (Supplemental Nutrition Assistance Program), Pell Grants, Medicaid, any type of federal housing assistance – or if they live on recognized Indigenous tribal lands.

The FCC estimates that approximately 20 million households across the country are enrolled in the Affordable Connectivity Program. That includes about 60,000 Iowan households. Pew Research also conducted a study which concluded that about 35% of households making under \$30,000 a year (well below the poverty line) do not have reliable broadband access at home, (Auxier). This empirically shows the need for financial assistance to correct this problem. An alternative policy proposal is for the state of Iowa to offer an expansion to this program that Iowan residents specifically can benefit from. Such proposed additions are as follows:

Make Iowa CenturyLink a compatible company with the existing federal program.

Currently, only the company MediaCom offers the \$30/month discounted plan outlined in the ACP. CenturyLink is the state's other large broadband provider in rural areas, and so it is logical to legislate a requirement for them to participate in and comply with the federal ACP program so that Iowans who use CenturyLink are not left behind.

The financial and geographic criteria for this alternative will allow for a highly equitable distribution of resources among Iowans that need stronger broadband. Compared to the status quo, which only invests in broadband on a general, state-wide level, this alternative will focus Iowa's efforts on the families and areas that need help the most.

Low-Income Family Grants for Broadband Access: Effectiveness

This program would further subsidize between 150,000 and 200,000 Iowan households and bridge the broadband gap financially; families would no longer be unable to access broadband due to cost. Further investments may be needed to increase the strength or speed of the broadband received, but supplying households with the funding to get broadband in the first place will take them out of the "unconnected" cohort, which is the primary measure of determining broadband access.

This policy recommendation is what will help bring the ACP to a more local level and will provide Iowans with discounted – and most importantly, reliable – broadband, in both urban and historically underserved rural areas. Broadband is an absolute necessity in the 21st century, and Iowa should be helping lead that transition. Given that the average household broadband bill in Iowa is currently about \$58 a month, this would make broadband for a large chunk of Iowan families essentially free, (InMyArea). This implementation would ease the financial burden for families who may be in the

position of deciding between allocating income toward internet access for their children's educational needs or other essential needs.

Low-Income Family Grants for Broadband Access: Economic Feasibility

Currently, the state does not have any expenditures in the affordable connectivity program since it only exists at the federal level. However, by taking the existing number of Iowa households eligible in the ACP – approximately 152,000 – and multiply that by the \$30 additional stipend that each family would receive from the state's government, a total investment of \$4,560,000 is outputted, (Jett, 2022).

This policy alternative is the most expensive of the three outlined in this report, but it is still extremely cost-effective. This policy alternative potentially replaces the spending of multi-hundred-million-dollar investments every few years. Collectively, this alternative involves an increase in funds, but it is a feasible investment. There is also the possibility of altering the number of eligible households by setting different state eligibility requirements than those set forth in this proposal.

Policy Alternative: School Bus Route Connectivity

As of 2023, under normal circumstances, an Iowa public student's bus route may take up to a seventy-five-minute one-way route for high school students and a maximum of sixty minutes for an elementary student, as state-mandated, (Iowa Code). High school students could legally be on the bus for twelve and a half hours a week, equating to four hundred and fifty hours an average school year. Yearly, an Iowa high school student could legally commute to school in the time it would take to complete fifty-six school days. Utilizing this extensive travel time for students to provide internet

access for online homework is a vital step toward bridging the digital divide amongst Iowa K-12 students.

Nationally, many states are transitioning toward policies that take broadband access one step further. The implementation of Wi-Fi within public school buses is swiftly gaining traction within the sector of K-12 broadband policies. Kajeet, a mobile network operator, is the chosen partner for many school districts implementing bus Wi-Fi and provides a model of what a partnership with a mobile network operator may look like. Bus Wi-Fi infrastructure largely delivers connection from cellular networks through a secure cloud application or school IT backend, which provides connection to a 4G LTE or 5G router installed within the bus infrastructure, (Kajeet). In **Figure 3**, this connectivity process is visually displayed from cellular network to a student's device, (see APPENDIX I). With one installment, up to 65 students can then access high-speed internet on their student devices at once, (Kajeet).

Successful pilot programs implementing bus Wi-Fi have occurred in various school districts nationally, including, New York, Michigan, Wisconsin, Texas, and South Carolina, (Walentowicz; Gray; Schumacher; Rauf; Blad).

Additionally in South Carolina, Charleston County school district piloted a program with a Mobile Network Operator Company, beginning with installing Wi-Fi on ten district buses. Equipped with CIPA compliant management tools including website-level monitoring, time of day access, and built in filtering, (Digital Bridge K-12). Criteria for the initial chosen bus routes was done through an equity lens, the district targeting households with students who received free or reduced priced lunches, (Digital Bridge K-12).

School Bus Route Connectivity: Equity

As mentioned previously, Iowa leads surrounding states in K-12 lack of connectivity, including North Dakota, South Dakota, Minnesota, Wisconsin, Wyoming, Montana, Idaho, Utah, and Colorado, (Digital Bridge K-12). As of 2023, 16% of Iowa students do not have access to high-speed internet, (Digital Bridge K-12). Out of the total 78,120 Iowa K-12 students that are unconnected, 26% are from rural towns and 23% are Black/Latino students, (Digital Bridge K-12). When comparing geographically, 47% of students who are unconnected at home are from urban/suburban areas and 53% of students are from town/rural areas, (Digital Bridge K-12).

Equitable application levels are high for school bus route connectivity, as these alternative benefits not only higher percentages of racial demographics, but it also greatly benefits both rural and urban populations. Previously holding the nation's largest statewide rural school system in 1901 with 12,623 rural schools, Iowa school districts have been shrinking since, due to the consolidation of many previous rural schoolhouses that have merged into 327 larger school districts that span Iowa's 56,272 square miles, (Clayworth). Located strategically within the 99 counties, students' commutes to school previously rarely spanned longer than two miles, rather than the current potential for an Iowa student to be on the bus for up to 75 minutes, (Clayworth; Iowa Code). Despite the diminishing number of districts, the number of students transported to Iowa public schools averaged 223,566 in the 2021-2022 school year, (Iowa Department of Education). With unconnected students from both urban and suburban populations, bridging the Homework Gap through bus route internet accessibility positively impacts disproportionate racial inequities, and benefits both urban and rural communities.

School Bus Route Connectivity: Effectiveness

A study conducted in 2018 by the National Center for Education Statistics for the U.S. Department of Education found that students on buses installed with Wi-Fi were more likely to, complete their homework, study for exams, and do research outside of the classroom, (NCES). The study also found the installment provided more than internet connection, the internet access increased morale amongst students regarding school attendance and increased connection with students, teachers, and with their peers, (Kajeet). In conjunction with these moral improvements, school bus drivers saw reduced behavioral issues when operating vehicles with installed internet access, (Kajeet).

A pilot program installing high speed internet access in forty-two of Beekman Town Central School District school buses with a Mobile Network Operator Company, Kajeet SmartBus, found positive results in behavior on buses enroute, reporting a significant fall in disciplinary reports on buses installed with Wi-Fi compared to those without the installation. Beekman Town Central School District, among other districts who have adopted SmartBus connections, experienced improvement in student behavior, in turn, also saw improvement with driver retention, (Kajeet). The improved behavior limiting the distractions to the driver, (Kajeet).

Not only does this policy alternative bring an opportunity for success in bridging the digital divide for students by providing access for up to twelve and a half hours a week, implementing school bus Wi-Fi positively correlates with increased studying, improved behavior, and safer driving, (Iowa Code, Kajeet). As previously mentioned, these factors contribute to the 8.1% higher probability of a student graduating from high

school with a home device and internet access, significantly improving student's overall success, (Beltran, et al., 13).

School Bus Route Connectivity: Economic Feasibility

Kajeet's SmartBus school bus Wi-Fi bus installation program's past successful pilot programs show a potential price tag for state and local partnership with Kajeet or a similar Mobile Network Operating Company. Charleston County School District in Charleston, South Carolina partnered with Kajeet SmartBus to implement a pilot program, equipping buses with Wi-Fi access for around \$20 a month, per bus, (Digital Bridge K-12). Lower cost per student compared to at-home connectivity or individual hotspots, installing Wi-Fi in school buses is an economically feasible option for Iowa, and offers flexibility, (Kajeet).

According to Iowa Department of Education Consultant, Max Christensen, there are over 4,500 school buses en-route on an average school day, (Christensen). Charleston County School District in South Carolina partnered with Kajeet to equip school buses with WiFi for approximately \$20 a month, (Digital Bridge K-12). If Iowa partnered with a Mobile Network Operating Company similar to Kajeet, economic implications for supplying every school bus in Iowa may cost up to \$90,000 a month, or \$810,000 per nine-month school year. However, many of these partnerships have chosen to start on a significantly smaller scale. A pilot program may consist of a smaller number of buses per district, targeting areas with the highest number of students receiving free or reduced-priced lunches. While this cost may vary based on partnership, or lack thereof, supplying each of Iowa's 327 school districts with 5 installations, instead, at 1,635 Wi-Fi installed school buses would cost Iowa \$32,700 a

month, or \$294,300 for a nine-month school year, (Clayworth.)

A school district in Jackson, Michigan implemented school bus Wi-Fi installation successfully in 2020, equipping 50 school buses with Wi-Fi antennas, (Gray). About one in five of Jackson's 5,000 students access the internet through the bus, (Gray). Overall cost for the Wi-Fi installation was \$65,000, (Gray). At \$1,300 a bus, the use of the Wi-Fi buses extends from just students. With antennas reaching up to 100 yards, Jackson took this initiative one step further, the internet-equipped buses are locked and parked throughout the city from 8:00am to 4:00pm, (Gray). Day to day locations outside of school district routes include parks, outside apartment complexes, and near homeless shelters and recreational community centers, (Gray).

State partnership with local communities could be a beneficial avenue for reducing cost. As mentioned previously, SETDA emphasizes leveraging community partnerships to improve effectiveness and equity within K-12 broadband access. In Georgia, Forsyth County Schools partnered with the Cumming-Forsyth County Chamber of Commerce to create a list of organizations and businesses in the community that offered free Wi-Fi hotspots, (NCES).

Potential funding for this alternative can be found through the Federal Communications Commission's E-Rate Federal Funding. As discussed previously, the E-Rate funding is on an application basis by the school district, the program provides eligible schools and libraries discounts on telecommunications, telecommunications services, and Internet access, including internal connections, managed internal broadband services, and essential maintenance of internal connections. Reduced prices range from 20 to 90 percent, and the school district's poverty levels determine eligibility. Additional eligibility

factors like rural district locations, may also result in higher discounts, (*E-rate: Universal Service Program for Schools and libraries.*) As of May 11th, 2023, the FCC includes the use of federal E-rate funding for Wi-Fi in school buses. The proposal would clarify that the use of Wi-Fi, or similar access-point technologies, on school buses would qualify as serving an "educational purpose" and is therefore eligible for E-Rate funding, (Rosenworcel).

Policy Alternative: Hotspot Distribution to K-12 Schools

Beyond school bus Wi-Fi installments, there exists a need for student connection at home. One of the many options that school administrators are utilizing to bridge the digital divide in K-12 students is using mobile hotspots to bring internet connection to students while they are at home. Hotspots offer an affordable and flexible avenue with the potential to save costs, improve student's access to the internet, and provide a long-term bridge to the K-12 population in Iowa. Hotspots have low economic implications and are not restricted by geography, aiding areas in the state of Iowa that have historically received little internet connection due to their remote location. Mobile data is weaker in connectivity strength than alternative forms of providing Wi-Fi, but by using it in a fashion that helps individual students focused specifically on schoolwork, the hotspots could provide enough internet to improve school performance. While this is a short-term solution which doesn't solve the issue of families lacking ownership of internet subscriptions at home, it is a reliable strategy to bridge the gap, anticipating future broadband development.

Hotspot Distribution to K-12 Schools: Equity

The presence of online homework for K-12 students has rapidly increased since 2020, with 6 out of 10 students completing homework while at home (Auxier). As mentioned previously, there are 78,120 Iowa K-12 students that are unconnected. Demographically, 26% are from rural towns and 23% are Black/Latino students, (Digital Bridge K-12). When comparing geographically, 47% of students who are unconnected at home are from urban/suburban areas and 53% of students are from town/rural areas, (Digital Bridge K-12).

It's clear that there is a lack of broadband access to kids in K-12 education that disproportionately affects populations, however, there are considerations regarding what extent the lack of internet impacts school performance. The state of Iowa also provides useful metrics that identify students who cannot afford lunch at school which therefore serves as a guide to identifying students who may not possess the money to run a reliable internet connection. As mentioned previously, in 2023, a survey carried out by the Iowa Department of Education identified the number of students in each school district eligible for a free or reduced lunch program, (Iowa Department of Education). A total of 203,607 students or 42% of the K-12 students in Iowa are eligible for the program using this metric as a guide for which students provide hotspots based on location and socioeconomic status. This ensures the gap between students with access and without is bridged, (*Iowa Department of Education*).

Hotspot Distribution to K-12 Schools: Effectiveness

Hotspots in school districts allow staff to provide students service to complete online work at home, however, there are potential negatives associated with this policy

alternative. Hotspots are a temporary solution, providing solid but not particularly strong internet speeds to households. Excluding economic factors, fiber optics and routers are almost always a better option as the speeds are unmatched by alternatives, allowing each household to maintain control over their internet access. With decreasing COVID funding, broadband investment is seeing a noticeable drop in attention.

In 2013, a survey questioned 12–18-year-olds regarding how internet access impacted their life, it was found that academic performance was positively correlated with longer internet use and, “negatively correlated with longer internet use for general purposes,” (Kim et al.). This poses the possibility that providing students with internet access could lead to adverse effects stemming from the misuse of the internet services provided. However, internet access provided with boundaries, such as server blockers and allotted time, leads to increased academic performance.

By placing hotspots in the hands of school districts and allowing them to be checked out by students in need when assignments are due, the hotspots can be used by multiple students and specifically target urgent deadlines. The hotspots also can be programmed to limit the types of websites a student can visit while connected. This will direct their focus to schoolwork while plugged in, increasing the performance gained for the money invested.

Mobile hotspots perfectly fit the previously mentioned results. Because locations serve disproportionate broadband access in areas that are costly to upgrade the lines to, hotspots provide a cheap alternative that by design help every population of students equally, regardless of their individual home lives.

Hotspot Distribution to K-12 Schools: Economic Feasibility

In contrast, a hotspot has two costs: the cost of the physical hotspot and the ongoing cost of service. A single hotspot ranges from \$30 to \$300 per unit and roughly \$25 to \$80 per month for 5G service, or 300 to 1000 Mbps, the speed necessary for homework to be done (*Best 5G Home Internet Providers*). At maximum, this amounts to \$1,260 for a year, and this only considers the higher prices and ignores the various discounts from bulk prices and educational programs that could be used. The cost doesn't capture the flexibility that comes with hotspots either. Upgrading existing rural lines is a fixed asset. Further, if a student receives an upgraded line for a high price, goes through their K-12 education, and graduates, the students following them will not have access to the service that helped them succeed. This policy alternative allows room for flexibility, as various partnership models combine to make a concrete estimate for how much providing hotspots to students would cost.

The ideal level of service speed is 5G for schoolwork, which allows for videos to be watched. Several providers serve most of Iowa, looking at AT&T's offer for hotspot service as an example, the service provides 20GB of 5G data per month for \$300 a year, (AT&T). This level of speed is plenty of service for students, as the Green Bay Public School District limits students to 500 Mbps per day, which amounts to 15GB per month given that the hotspot is used and maxed out every day of the week, (Barret). It provides students with a conformably strong signal with adequate wiggle room for total data, which allows them to do all their work at a reasonably cheap service price.

For a hotspot price, it is difficult to get an exact value because the main provider doesn't post prices on their website. Kajeet is the Mobile Operating Company leading

partnerships for bus Wi-Fi implementation and hot spots, as it has seen successful use in Wisconsin, California, and Texas while specifically targeting K-12 students, (*Kajeet Choice*). It does this by limiting server access while students are connected to the hotspot, directing their work towards school assignments and limiting the total data used, (*Kajeet Choice*). In 2015, the Kajeet Smartspot and protective case cost \$139.99 per device, (*Kajeet Choice*). However, group discounts for multiple school districts should push the price down as negotiating against other providers incentivizes potential partnerships.

Further looking toward quantity, insight can be gained from Wisconsin's experience with the hotspots. Wisconsin purchased hotspots at a ratio of 13 disconnected students to one hotspot (Barret). With this number of hotspots, a survey showed that 60% of the hotspots were being used by students (Barret). This is a high usage rate which could serve Iowa school districts well. In Iowa, 78,000 students or 16% of total students are unconnected at home (*Digital Bridge K-12*). Using the 13-1 student to hotspot ratio, this equates to 6,000 hotspots. These would be distributed equally across the state depending on the school district's need.

The total sum of these costs paired with the hotspots would be a flat purchase of \$840,000 for hotspots and an annual fee of \$1.8 million for service costs for a total year 1 cost of \$2.44 million. This is calculated using base rates offered to consumers, which could easily be negotiated down at such large quantities. As offered in previous policy alternatives, the E-Rate program could provide funding assistance. The E-Rate program is a federal program run by the FCC which covers 20-90% of the cost to expand broadband to students at a budget of roughly \$5 billion and increasing with inflation, (FCC). In this case, a 20% discount would save \$488,000 and a 90% discount would

save \$2.2 million. Undoubtedly some discount on this estimate could be used to decrease the total price tag. The economic burden of this alternative is far less than current estimates to upgrade all rural lines.

without secure broadband access at home offers an individualistic and portable option.

Given that these policies are not mutually exclusive, the largest impact could be made by a combination of multiple, if not

Access: Policy Alternatives	Economic Feasibility:	Effectiveness:	Equity:
Low Income Grants for Families	+1	+2	+2
Bus Wi-Fi	+1	+2	+2
Mobile Hotspots	+2	+1	-1
Criteria Scale: -2 (Worst), -1, 0, +1, +2 (Best)			

Conclusion

Existing data shows that broadband access for students after school is a legitimate concern for approximately 78,120 students in the state of Iowa – 16% of the total K-12 population, (Digital Bridge K-12). These policy alternatives outline economically reasonable, equitable, and effective ways to increase the amount of online access that students, and their communities, have after school hours.

State subsidies for broadband subscriptions introduce an avenue to aid students and their families at home, offering a solution to families choosing between educational needs and other necessities. Equipping school buses with broadband access provides opportunities for students to spend their commute to school bridging the homework gap. Additionally, this solution offers community-oriented best practices with the ability to park equipped buses and provide internet connection to populations in need beyond the student body. Finally, providing mobile hotspots for students

all, of these alternatives. However, differing levels of budgetary concern spark the possibility of selectively adopting from the proposed policies.

With the recent expansion of E-Rate Funding for more innovative solutions, such as school bus Wi-Fi installation and personal hotspots, the possibility of funneling the FCC’s federal funding toward these policy proposals assists in offsetting the cost for two of the three proposals. As discussed previously, the E-Rate program covers 20-90% of the costs to expand broadband to students. This percentage range is large but is crafted with equity in mind. Offering higher discounts for districts with higher poverty rates, this offers flexibility at both state levels and local partnerships when exploring this potential cost solution, (FCC). This is done with a budget of roughly \$5 billion, which increases with inflation, (FCC). This provides the bus Wi-Fi and hotspot policies with a potential cost solution.

Low-income grant expansion for families provides households with low-cost broadband subscriptions for those that are

subscribed at the average rate of \$58 a month, (InMyArea). This would undoubtedly close the gap for many students without reliable access at home, however, it is a costly proposal when targeting families in need across the state and would have E-Rate funding offsets. As mentioned previously, a total investment of \$4,560,000 would be needed, (Jett).

A combination of several of these alternatives would provide Iowa K-12 students with effective avenues for broadband access after school. Considering the cost implications of enacting all three, even one policy adoption would help bridge student internet access after school. With the recent expansion of E-Rate Funding for more innovative solutions, such as school bus Wi-Fi installation, these policy alternatives provide the state with options to partner with local communities and funnel funding effectively toward K-12 students in need.

Each of these proposed policy alternatives suggests a viable potential for helping bridge the gap between students' broadband access at school and at home, and the state legislature of Iowa should consider each of them as a possible implementation. When after school connectivity is high, as mentioned above, data shows that students have an 8.1% higher chance of graduating on time, (Beltran, et al., 13). This statistic should not be overlooked, and it is in the best interests of our state to prioritize the educational needs of students, who represent our state's future.

Appendix 1

<p>Figure 1:</p> <p>Digital Bridge K-12 Interactive Map: America's Unconnected Students</p>	<p style="text-align: center;">Unconnected Students by State <i>Assuming 35% of FRL Students lack home access...</i></p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> <p>9,664,714</p> <p>Unconnected Students Estimate</p> </div> <div style="text-align: center;"> <p>5,094,264</p> <p>Black/Latinx Unconnected Students Estimate</p> </div> <div style="text-align: center;"> <p>1,391,911</p> <p>Rural Unconnected Students Estimate</p> </div> <div style="text-align: center;"> <p>Percent of Students Unconnected</p> <p>10% █ 28%</p> </div> </div>
<p>Figure 2:</p> <p>Visual depiction of where non-satellite broadband access in the state of Iowa is most reliable (geographically).</p>	
<p>Figure 3:</p> <p>Kajeet Bus WiFi Connection Overview</p>	

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Protection Nationwide: Comparing Iowa's Protective Order

Abby Garringer⁵, Katie Meredith, Ijeoma Ogonna, Keaton Zeimet⁵

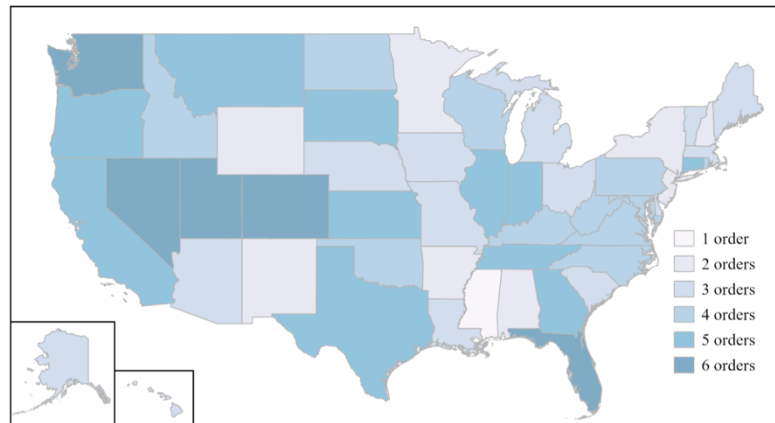
Executive Summary

This paper aims to address the effectiveness of Iowa's code regarding restraining orders, also referred to as protection orders. It first examines domestic, sexual, harassment, and stalking violence including definitions, prevalence nationally, and prevalence in Iowa. This violence could be avoided by implementing protective orders. Therefore, in the following discussion, the paper covers different types of protective orders seen in other U.S. States and sees how Iowa compares. Based on these analyses, we affirm that based on the prevalence of violence and the examples of the other states there could be accessibility updates both for definitions of Iowa's existing protective orders and adding several other types of orders adapted from other states. The alternative policy recommendations specifically are to update the definition of domestic and sexual violence, increase the length of protective orders, and add protective orders that encompass incapacitated adults, stalking victims, potential perpetrators of gun violence, workplace harassment victims, and harassment victims.

Introduction

One of the key issues Iowa is facing is the reformation of the criminal justice system. This is true for the United States

Number of Protective Orders per U.S. State



(National Network to End Domestic Violence)

generally, but there are elements of the law that are decided by state-by-state legislative decisions. One of the specific laws left up to state discretion is protective orders, also commonly known as restraining orders. Protection orders are, “Legal interventions designed to reduce the risk of future threat or harm by a person who is determined to pose a threat to another (Benitez, et. al 376).” Left to the state's own devices, there are aspects of the laws surrounding restraining orders in Iowa that do not encompass all victims of crime that would warrant these types of orders to be issued. This research suggests that Iowa's civil protective orders are less comprehensive than other U.S. states. Iowa's

⁵ Abby and Keaton were contributing authors of earlier versions of this report.

legal code is not broad enough to adequately protect Iowans. Specifically, regarding types of qualifying relationships to obtain protective orders, the length of protective orders, definitions of violence, and protective orders for some previously overlooked crimes.

This research aims to examine the existing Iowa legal code on civil protective orders and their effectiveness in protecting victims of violence. It will examine the current code, analyze data on various acts of violence both statewide and nationally, and compare the strength of Iowa's protective orders to other states. Currently, Iowa only has protective orders available for victims of domestic violence, sexual violence, and vulnerable adults. This paper will both evaluate the effectiveness of the existing civil protective orders available and consider the alternative civil protective orders other states have that Iowa does not. Based on the prevalence of certain crimes in Iowa, our paper focuses on domestic violence, sexual violence, stalking, harassment, workplace harassment, and firearm/high risk. Finally, this paper will describe potential policy alternatives to improve safety for Iowa citizens based on Iowa's code.

What is Violence

A significant barrier to all research on the criminal justice system is the well-known criminology phenomenon labeled the 'dark figures' of crime (Sanchez, Shanell). The dark figure of crime refers to the crimes that go unreported to law enforcement. This impacts research analyses because it makes it extremely difficult to determine the actual prevalence of crime. For protective orders, there is not only missing data about the number of crimes committed but also the number of protective orders given, the number of protective orders that are dismissed, the specific crime for which a protective order is issued, the number of

protective order violations, etc. This can be for a variety of reasons including but not limited to the victim being unaware the act committed against them is a crime, the victim not wanting to report their abuser, the victim fears something bad happening to them because of reporting, the victim is unaware of their legal options, or the victim does not want to contact law enforcement (Sanchez, Shanell) The data used in this analysis is the best available, but it is important to remember that it still likely underestimates the extent of the problems being will be discussing. These problems are the prevalence of abuse remedied by civil protection orders and their legal definitions, as defined by various states. This is not an exhaustive list, but the types of violence are most important for our later analyses. This is to create a baseline to compare state-by-state definitions of violence and abuse.

Domestic Violence

The most common type of protective order is for domestic violence. This is likely due to the fact domestic violence accounts for 20% of all violent crime in the U.S. (National Coalition Against Domestic Violence). All 50 states and Washington D.C. offer domestic violence protective orders. Domestic violence as defined by the U.S. Department of Justice Office on Violence Against Women is, "a *pattern* of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner (Domestic Violence)." Domestic violence, though often described and defined as only physical, can also take many forms. There are also sexual, emotional, economic, psychological, or technological actions or threats of actions (Domestic Violence). This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. The frequency

and severity of the violence may vary across relationships (National Coalition Against Domestic Violence).

Outcomes for victims in rural areas, such as Iowa, are generally more severe than urban or suburban areas. This comes from the lack of availability, quality, and accessibility of housing, employment, and services for victims of intimate partner violence in rural neighborhoods (Edwards, 2014; Logan, et al. 176). In Iowa, there are also a higher proportion of both men and women who experience domestic violence compared to national averages. In the U.S. 33.3% of women will experience domestic violence in their lifetime compared to 35.5% of Iowa women. For men, 25% nationally will experience domestic violence compared to 29.3% in Iowa.

Through research on domestic violence relationships, we also better understand what types of violence occur and how violence is initiated in a pattern and is more than just physical acts (National Coalition Against Domestic Violence; Domestic Violence). Iowa's legal code on domestic violence does not necessarily reflect everything that could be observed, while other state legislatures have adjusted their codes to encompass the evolving knowledge of how intimate partner violence manifests. Additionally, domestic violence is also referred to as intimate partner violence and will be used interchangeably.

Sexual Violence

Sexual abuse is defined as a sex act where the victim does not provide consent (or the victim is incapable of providing consent due to mental incapacity, etc.) (Iowa Code Chapter 709). Notably, Iowa law (as well as most states) only require one act of sexual abuse to qualify for a sexual abuse protection order.

Harassment

In the Iowa Code Assault 708.7, a person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following.

- Communicates with another by telephone, telegraph, writing, or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.
- Places a simulated explosive or simulated incendiary device in or near a building, vehicle, airplane, railroad engine or railroad car, or boat occupied by another person.
- Orders merchandise or services in the name of another, or to be delivered to another, without the other person's knowledge or consent.
- Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the act did not occur.
- Disseminates, publishes, distributes, posts, or causes to be disseminated, published, distributed, or posted a photograph or film showing another person in a state of full or partial nudity or engaged in a sex act, knowing that the other person has not consented to the dissemination, publication, distribution, or posting.

Workplace Harassment

Workplace harassment is considered to be employment discrimination or unwanted behavior where enduring such harassment becomes a condition of employment, or contributes to an intimidating or hostile work environment. Approximately 90% of individuals who experience workplace harassment do not file a charge or report

against the harassment (Equal Employment Opportunity Commission). From fiscal year 2018-2022, the EEOC received a total of 98,411 charges alleging harassment under any basis. 27,291 charges alleged sexual harassment (27.7% of charges). Charges collected during these periods are attributed to the #MeToo movement going viral in October 2017. In fiscal year 2018, the EEOC received 7,609 sexual harassment charges compared to 6,696 in FY 2017 – an increase of 13.6%. Between FY 2018 and FY 2021, harassment charges made up 35.4% of the total charges (277,872) received by the EEOC.

Stalking

Stalking is typically defined as repeatedly following or harassing an individual (Smith, et al.). In some states, the individual must demonstrate the infliction of threat, harm, or safety concerns (National Network to End Domestic Violence).

Nearly 1 in 3 women or about 38.9 million women (Smith, et al.) in the US reported stalking victimization at some point in her lifetime, during which she felt fearful, threatened, or concerned for the safety of herself or others. About 1 in 6 men report the same – 16.1% of the population which totals about 19 million men (Smith, et al.) Of reported cases of stalking towards women, 38.5% are perpetrated by a family member or intimate partner which would be covered under Iowa’s current domestic violence legal code. Accordingly, 71% of stalking done towards women does not fall under Iowa’s domestic violence legal code because a qualifying relationship is not met (Smith, et al.). This would include perpetrators like friends, roommates, co-workers, strangers, supervisors, caregivers, and other acquaintances. Similarly, 38.5% of stalking instances against men are perpetrated by a

family member or intimate partner, while 76.9% are not (Smith, et al.). Iowa’s lack of coverage leaves many Iowans unprotected and therefore unable to seek legal remedy to the abuse they may be facing. Thus, it is important to expand definitions of domestic violence relationships and provide protective orders specifically for victims of stalking.

Protective Orders Nationwide

Definitions and Functions

Protection orders, “are legal interventions designed to reduce the risk of future threat or harm by a person who is determined to pose a threat to another” (Benitez, et al. 376). Across the nation, protective orders and their definitions vary, sometimes to great degrees. Nevertheless, the general structure and intention behind protection orders remain consistent. Criminal protection orders, sometimes referred to as no-contact orders, are issued as part of a criminal case to protect witnesses or victims from the perpetrator. Civil protective orders are issued in civil court, outside of criminal proceedings. For the purposes of this paper, civil protective orders will remain the primary focus. Unlike criminal protection orders, civil protective orders can be obtained on an individual basis, without legal counsel, making them much more accessible to the average Iowan. These protection orders can protect victims from a variety of kinds of abuse. In the United States, civil protective orders can protect against harassment as well as stalking, financial⁶, workplace, and sexual abuse. In addition, some orders like the high-risk civil protection orders, exist to limit gun access to an individual deemed high risk of harm to themselves or others. In sum, they are all intended to prohibit an individual, the respondent, from abusing or committing acts

⁶ Commonly referred to as vulnerable adult or elder protective orders.

of violence against a victim, often referred to as the petitioner.

This protection can be legislated in a variety of ways, which varies by state. Typically, protective orders will prohibit an abuser, or respondent, from contacting the individual petitioning for a protective order. In addition, some civil protection orders can expel a respondent from their own residence, workplace, school, etc., provided that the respondent's presence would endanger the petitioner. Judges can also mandate the respondent to seek treatment or attend classes, such as Iowa's batterers education program (Iowa Department of Human Rights).

In the event that a protective order is violated, police are typically⁷ permitted to arrest the respondent without probable cause or an arrest warrant. Penalties for violating a protection order oftentimes elevate the existing criminal charge. Because civil protective orders are regarded as a preventative measure, there is a lower burden of proof required to obtain one. It varies by state, but most civil protection orders require the petitioner to demonstrate a *preponderance of evidence* – a greater than 50% chance that the claim is true – against the respondent. This is distinct from the burden of proof required to convict someone of a crime, the *by proof beyond a reasonable doubt* standard – that the defendant is *almost certainly* guilty. Moreover, it provides victims the ability to ensure their own safety without imposing the immediate and long-lasting consequences that come with criminal charges. Particularly in the case of domestic assault, a victim might be discouraged from pursuing criminal charges against someone they have a close relationship with. Thus, civil protection orders provide these individuals with an alternative means of seeking safety.

In most cases, a petitioner will begin by filing with the court for a temporary or emergency protective order. The timeline for these protective orders varies widely by state but typically ranges between hours and weeks. Although both emergency and temporary protective orders are meant to provide short-term relief while a petitioner obtains a permanent protective order, there are some differences. Emergency protective orders are immediate and are usually filed by a law enforcement officer. Additionally, some jurisdictions require a judge to always be on call in the event an emergency protective order needs to be filed immediately. Temporary protection orders are filed by the petitioner themselves, and may, as is the case in Iowa, remain in effect until a later hearing where a judge will determine if a permanent protective order is necessary. Both of these protective orders are usually granted without the presence of the other party (respondent) in the courtroom. However, to obtain a permanent protective order, the presence of the respondent is required to protect their right to due process and fair legal proceedings (Logan et al. 179).

Effectiveness

Many studies have attempted to evaluate the effectiveness of protective orders, but the subject remains complicated. As previously demonstrated, many Iowans experience abuse and would benefit from obtaining a civil protection order. Evidence has shown that protection orders do protect petitioners – like in the case of *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, which evaluated the police/court filing data of 2,691 women with an incidence of male intimate partner violence in Seattle over a 16-month period. In the study, protection order violation rates were evaluated against two groups, one of the women who had protective orders, and another group who did not. The study found

⁷ Varies based on state law.

that “having a permanent protection order in effect was associated with a statistically significant 80% reduction in police-reported physical violence in the 12 months after an IPV incident” (Holt, et al. 593). In a 1996 study concerning domestic violence civil protection orders, 57% of women who filed protective orders reported no physical abuse, verbal abuse, or menacing behavior for at least the following two years (Carlson). With a clear reduction in intimate partner violence, it is clear that civil protection orders provide benefit to those who seek it.

Notably, protective orders are associated with lower costs for taxpayers. In *The Economic Costs of Partner Violence and the Cost-Benefit of Civil Protection Orders* (Logan, et al.), they weighed the economic costs associated with obtaining a protective order against the costs of not obtaining a protective order. On average the state burden in Kentucky for a protective order was \$354.37. However, once weighed against the average cost to the justice system, health services, police costs, costs from property loss, and the increased quality of life, “protective orders saved the state \$85 million in a single year” (Logan et al. 33) The authors found that, compared to the negative economic impact of abuse, the cost of a civil protective order is small. Compared to other forms of justice intervention, which tend to be costly with small benefit to society, protective orders are shown to have a small cost and large benefit to society. Considering that civil protective orders are shown to increase the health and wellbeing of Americans, we can extrapolate that protective orders are widely beneficial and should be utilized as much as reasonably necessary.

The study *Protective Orders: Questions and Conundrums* (Logan, et al.) examined the barriers women encounter when attempting to obtain a civil protective order, which were divided by the authors into

two categories. The first, accessibility barriers, refer to systemic and de jure obstacles individuals may face while attempting to obtain a protective order. According to Logan, et. al, these include “narrow eligibility requirements, the sometimes time-consuming and costly bureaucratic process involved, and the less-than-adequate response on the part of the criminal justice system in the issuance and enforcement of others” (Logan, et al. 176). In the study *Women in Danger: intimate partner violence experienced by women who qualify and do not qualify for a protective order*, the authors found “that 28% of women applying for a protective order did not qualify primarily because of cohabitation requirements or childbearing status (Gist, et al.)” Given this, there are likely countless other individuals who have been told by the police, legal counsel, or other sources that they should not file for a civil protection order because of said cohabitation requirements. The second barrier, acceptability, concerns the social and de facto elements of obtaining a protective order. According to Logan et. al, these can, “Involve women’s perceptions of the process or potential consequences of protective orders, including fear of retaliation by perpetrators; the perceived lack of efficacy on orders; lack of resources such as housing and employment, particularly in rural communities; embarrassment; and negative perceptions of the justice system” (Logan, et al. 176). The fact remains that a large portion of Americans – and Iowans – that would benefit from civil protective orders but are not able to obtain them due to these barriers.

Policy Alternatives

Domestic Violence Protective Orders: Definitions

Iowa

There are two major components to consider: the qualifying *behavior* of the respondent upon the petitioner, and the qualifying *relationship* between the petitioner and respondent. For a protection order to be granted, the petitioner must allege that the respondent has engaged in domestic abuse – which is defined as committing the act of assault described in section 708.1 of the Iowa Code. The Iowa code utilizes civil protective orders, designed to protect a petitioner from the respondent and their harmful behavior. In Chapter 236 of Iowa’s Code *Domestic Abuse*, the qualifications and restrictions associated with a civil protective order are described. In Iowa, you can only qualify for a domestic abuse civil protection order if you are a family or household member⁸ or are separated spouses, as well as those who have a minor child. Additionally, a petitioner can file against someone they were in an intimate relationship with *on the condition* they have been in contact within the year of the assault. However, whether or not an individual qualifies for a domestic abuse civil protection order is up to the discretion of the court and the details provided about the nature of the intimate relationship.

This issue is of particular importance to the state, as intimate partner violence is considered to disproportionately affect rural populations. In the article *Intimate Partner Violence and the Rural-Urban-Suburban Divide* (Edwards, 2014), they noted some key differences between the alternative locales. Across 64 studies, the authors found that the prevalence of intimate partner violence and homicide was higher in rural areas. Moreover, instances of intimate partner violence in rural locations tend to be more severe. The aforementioned accessibility

component plays a large role here, as “victims in rural locales may have worse psychological and physical health outcomes due to the lack of availability, accessibility, and quality of [intimate partner violence] services” (Edwards).

Colorado State

The Colorado Domestic Violence Protective Order is designed to protect individuals from domestic abuse. Qualifying acts of domestic abuse include acts or threatened acts of violence, stalking, harassment, coercion against the victim, or act or threat of violence to a victim’s child or pet. Whereas Iowa does not include coercion in its definition of domestic abuse, limiting access to civil protective orders.

Utah State

Utah’s Dating Violence Protective Order allows for an individual to file for a protective order if the petitioner demonstrates a likelihood they will be subjected to abuse or dating violence by their dating partner. Utah defines a dating partner as a social, romantic, or intimate relationship between two adults. Notably, a sexual relationship is not required to qualify for a Dating Violence Protective Order in Utah. A judge may grant a Dating Violence Protective Order regardless of whether the individual has taken other action to end the relationship.

Utah’s Cohabitant Protection Order allows for any cohabitants who have been subjected to or have a substantial likelihood of being subjected to abuse or domestic violence to file for a protective order (Utah State Code, Chapters 6, 7). Cohabitants are defined as household members, family members, or individuals in a sexual relationship. A judge may grant this protective order regardless of whether the

⁸ Who resided together at the time of the assault or were family or household members within the past year.

petitioner has attempted to leave the residence or initiated divorce proceedings. Additionally, Utah's Child Protection Order allows an adult to file on behalf of a minor child who is in danger of being abused. This protection order is meant to protect vulnerable children who do not fall within the familial requirements of the Cohabitant Protection Order.

In comparison to Iowa's Protection Orders, Utah exhibits many strengths, particularly regarding its application to different settings where abuse can occur outside of domestic and familial settings and relationships.

Washington State

To petition for a civil protection order, the harmful behavior in question must be committed by a petitioner's family/household member or intimate partner. This, at face value, seems to be identical to Iowa's requirement for an act of abuse to be considered "domestic abuse", which is the only behavior eligible for a civil protection order. However, Washington's definition of an intimate partner is much wider than Iowa's, allowing for many more individuals to qualify for a civil protection order in Washington than in Iowa. Specifically, Washington allows for individuals who have had a dating relationship, as long as each party is at least 13 years of age. This is distinct from Iowa's definition, which only includes dating relationships where the individuals have had contact within the year of said domestic abuse occurring.

Unlike Iowa, Washington's definition of domestic violence extends beyond assault or imminent fear thereof, as discussed above. Washington includes, in addition to assault, "coercive control; unlawful harassment; or stalking" (Chapter 7.105 RCW). Overall, Washington's definition of abuse is broader and includes behavior that is severely

harmful to its victims – yet some of these behaviors, under the current Iowa code, do not warrant a protection order. Notably, Washington defines coercive control as manipulative tactics that harm a person's emotional or psychological well-being. According to the code, this includes intimidating or compelling a victim to act in a certain way by threatening to destroy property, humiliate, and/or harass the other party, as well as many others. These harmful behaviors are a major component of abusive relationships, and there are undoubtedly Iowans facing these circumstances who would benefit from a civil protection order but cannot receive one due to Iowa law.

In Iowa, the court could qualify or disqualify individuals for a domestic abuse civil protection order based on a judge's own conclusions, by considering factors about the intimate relationship. Overall, the narrowness of Iowa's qualifying relationships requirement means that there are many Iowans who would benefit from a civil protection order but are not able to receive one. It is difficult to assess exactly how many Iowans are denied a protection order but considering the aforementioned 28% of women who are denied a protection order due to cohabitation requirements, the real number is likely significant.

In fact, Washington added this definition of coercive control in February of 2022. This bill passed with a vote of 70-26, across bipartisan lines. Representative Roger Goodman, who sponsored the bill, said, "Domestic abuse is not just physical, but also emotional and psychological. With this important change in the law, survivors will have greater protection from abusers whose pattern of coercive control can cause even more trauma than physical harm. It is well past time that our laws accounts for this completely unacceptable and dangerous behavior" (Washington State House Democrats).

Length of Civil Protection Orders

One of the ways Iowa's Protection Orders fall short concerns the length of enactment. Notably, each civil protection order granted by the court shall expire after one year, with the possibility to renew each year. Petitioners are not reminded to refile ahead of their expiry date⁹, and the court must find that the extension of the protection order is necessary. However, these restrictions and stringent requirements are not the standard nationwide. In Colorado, permanent protection orders for adults have no expiration date and can last forever. (State of Colorado). Whereas permanent restraining orders filed on behalf of minors last a maximum of 120 days. Additionally, Colorado's temporary protection orders can last for up to one year, providing petitioners additional time to obtain a permanent protection order. Whereas Utah civil protection orders remain in effect for up to 3 years. In order to obtain an extension, the petitioner must attest that the respondent violated provisions of the protection order, or that the petitioner has a current and reasonable fear of harm from the respondent. Washington, however, does not have a literal maximum for their protection orders¹⁰. In fact, the Washington Code profits permanent protection orders lasting under one year¹¹. This is distinct from Iowa's code, which has the maximum amount of time at one year – the same as Washington's minimum.

Elder/At-Risk Adult Protection Orders

Iowa is among twelve other states that have some form of elder abuse or at-risk adult protection order. Anyone over the age of sixty who cannot take care of themselves due to physical or mental incapability can qualify for Iowa's elder abuse protection order

("Protecting Elderly Iowans from Abuse"). The definition of elder abuse is generally consistent across the board, especially in Colorado and Washington. Common qualifying actions to qualify as elder abuse are physical harm, neglect, abandonment, and exploitation ("Colorado Restraining Orders"; "Washington Restraining Orders"). The qualifying actions may vary depending on the state but are usually similar.

A significant difference between Iowa's elder abuse protection order and Washington's or Colorado's is the lack of protections for non-elder vulnerable adults. A vulnerable adult in both Colorado and Washington is defined as someone who cannot take care of their health or well-being, usually due to an inability to make rational decisions ("Colorado Restraining Orders"; "Washington Restraining Orders"). The lack of coverage leaves a large segment of Iowan citizens unable to qualify for an elder abuse protection order because they do not meet the over sixty-year requirement.

The importance of elder abuse and vulnerable adult protection orders is important because these are populations that cannot take care of themselves and are generally overlooked when it comes to society (Walsh et al.). As of 2022, Iowa had an estimated 553,575 residents over 65 ("Older Iowans: 2022"). About five million older adults are the victims of abuse each year, and the financial cost to these populations is around \$36.5 billion annually. Not only does elder abuse take away the safety and dignity of those affected, but it increases the chance of dying by 300% ("Get the Facts on Elder Abuse"). Public researchers conducted a multi-site assessment report of elder abuse initiatives to gauge the benefit of five elder abuse resources and protection order resources. The

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https://publications.iowa.gov/20129/1/Domestic_Violence_Report.pdf

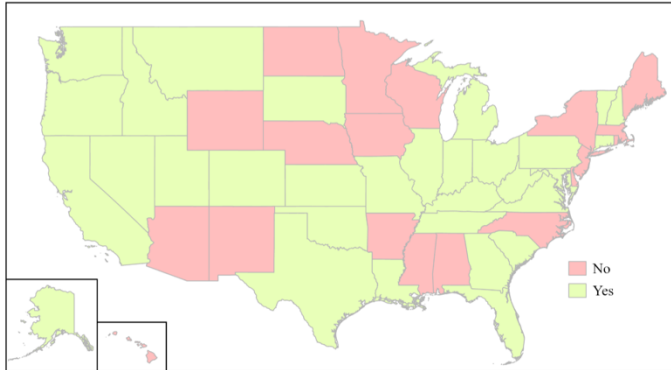
¹⁰ Technical maximum is ninety-nine years.

¹¹ With the exception of anti-harassment orders or by the petitioner's request for a shorter length of time

authors found that the initiatives increased states' access to victims of elder abuse, increased safety for elders, and mitigated the harmful effects elders experienced from elder abuse (Stiegel and Teaster).

Stalking Protection Orders

U.S. States with Stalking Protections



Iowa is one of only nineteen states without a stalking protection order, compared to the thirty-one states that do. Washington and Colorado both have orders stalking protection orders, which is intended to protect the petitioner from a respondent who has demonstrated stalking behavior. Although definitions vary by state, actions like repeated unwanted interaction (physically and digitally), surveillance, or the infliction of fear and emotional distress.

Iowa's lack of stalking protection orders creates a gap in protection and security for many Iowans who are the victims of stalking. It is estimated that annually 13.5 million Americans are the victims of stalking. Many of these victims experience repeated messaging, unwanted tracking, and monitoring. As it stands, an Iowan experiencing stalking behavior would likely not qualify for any protection order in Iowa. Iowa's lack of coverage leaves

¹² In Washington, there is no set maximum. Judges determine the order's length of time, but respondents

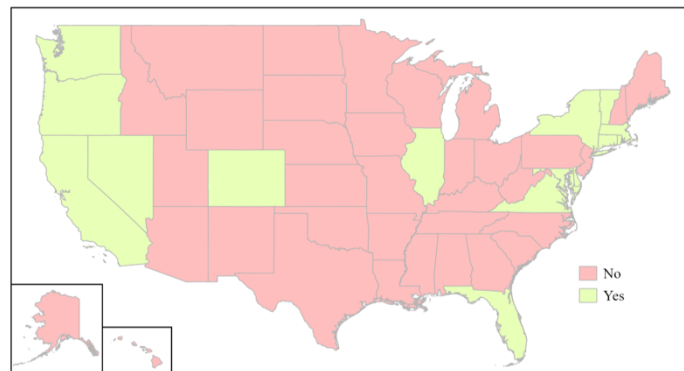
thousands of Iowans at a disadvantage and without proper tools when dealing with a potential stalker.

High-Risk Protection Orders

In 2024, seventeen states have a form of high-risk or extreme protection orders, like Washington and Colorado. These orders are created to prevent the access or acquisition of firearms from a person believed to be about to hurt themselves or others in the immediate future. Generally, family members, cohabitants, or law enforcement agencies are able file a petition in pursuit of an order. After being granted by a judge, the respondent is ordered to surrender all firearms in their possession and is barred from purchasing any other guns. The protection order can only be implemented for one year at a maximum in Colorado¹².

Many states have started

U.S. States with High-Risk Protections



implementing high-risk¹³ protective orders (Colorado implemented theirs in 2019) to protect against gun violence or self-harm. These protection orders have proven to be effective, as states that have implemented these orders saw a decrease in suicide rates and mass shootings. Researchers studying extreme risk orders in Indiana from 2006 to

are allowed to appeal the ruling after 12 months (Washington State RCW 7.105.505).

¹³ Also referred to as extreme risk, emergency

2013 found that 70% of gun removals were due to suicidal idealization (Kivisto and Phalen). Additionally, people who qualified for the orders were thirty-one times more likely to commit suicide. The study found that for every ten firearm removal orders issued, at least one suicide was prevented (Frattaroli, et. al). After examining 238 emergency risk protection orders in Washington between 2016 and 2019, it was determined the laws were correctly enforced as written by the legislator to prevent self-harm and harm to others. The benefits of high-risk protection orders are not just in self-prevention but mass shooting prevention as well. In 2022, 6,800 cases were studied from across six states, and 10% of extreme risk protection orders filed were for the threat of killing three or fewer people (Zeoli et al.). Thus, in addition to high-risk protection orders being utilized to stop self-harm, they are also given to stop mass harm and mass shootings. At the time of writing, the Supreme Court has not issued a ruling on *United States v. Rahimi*. This case examines if 18 U.S.C. § 922(g)(8), which prohibits persons subject to a domestic violence protection order from obtaining a firearm. Although the Supreme Court seemed skeptical of overturning this law (and others like it), their ruling could limit or end protection orders like these.

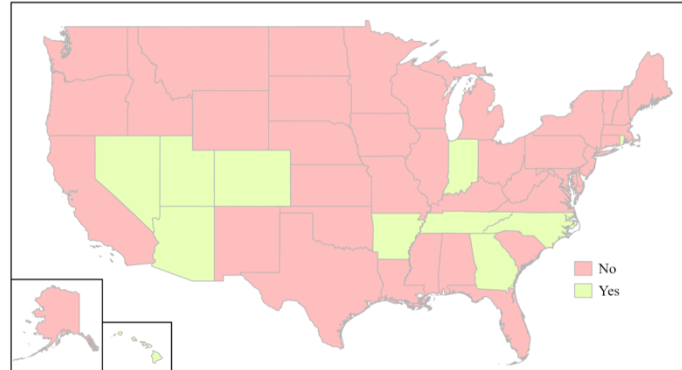
Workplace Harassment Protections

Workplace harassment is a subset of harassment that continues to be a challenge outside of domestic spaces. Especially as the determinants of what constitutes a workplace evolve following the pandemic, more states have added protection orders for the workplace. Eleven states in total have at least one form of protection order for the workplace—Iowa does not have one.

Colorado and Utah are two states with sufficient models for these protection orders.

Utah’s protection order, passed in 2023, defines workplace violence as “knowingly

U.S. States with Workplace Harassment Protections



causing or threatening to cause bodily injury to, or significant damage to the property of, a person ... if the action would cause a reasonable person to feel terrorized, frightened, intimidated, or harassed or the threat would cause a reasonable person to fear that the threat would be carried out and if carried out, would cause a reasonable person to feel terrorized, frightened, intimidated, or harassed” (Utah State Legislature). Colorado utilizes a similar definition. Generally, these protection orders are allowed to be filed by an employer on behalf of the employee or the employer themselves if they have been subjected to harassment by an employee. In Colorado, these protections are also extended to customers who have been subjected to workplace harassment by an employer or employee. Colorado does not possess a separate workplace harassment protection order. Instead, employers are allowed to file a domestic violence protection order on behalf of the business. Additionally, Colorado recently loosened their legal standard for workplace harassment so that people will no longer have to prove that the behavior has been severe or pervasive. This is an especially essential component to allowing accessible actions for victims in an

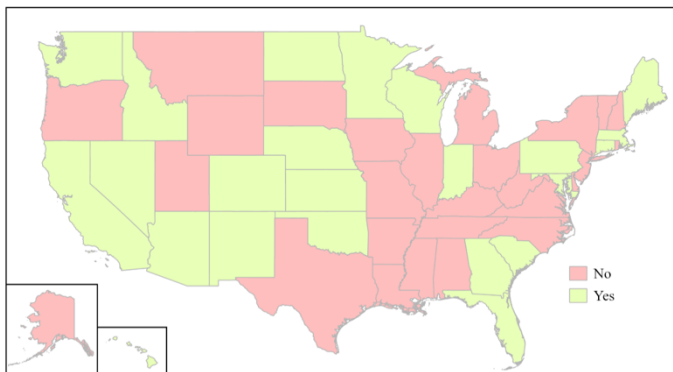
environment that could already be high stress and strenuous.

Iowa’s lack of a protection order for workplace harassment creates a gap in addressing a growing subset of harassment in a crucial environment. According to a 2017 Des Moines Register/Mediacom poll, approximately 41% of women who have ever worked outside the home had experienced workplace harassment at some point of their career. That number is 9% for men, including 2% saying it had occurred in the last 3 years (Des Moines Register). Providing workplace harassment protection provides a more accessible avenue for victims to protect themselves from harassment in a space that they frequent just as much, if not more than, their domestic spaces.

Harassment Protections

Iowa belongs to one of the 27 states that do not possess an explicit protection order for harassment. Washington State’s antiharassment protection order was adopted in 1987. According to Washington code, a petition for an antiharassment protection order must “allege the existence of unlawful harassment committed against the petitioner...by the respondent” (Washington Restraining Orders). Unlawful harassment includes a single act or threat of violence that causes reasonable and substantial emotional

U.S. States with Harassment Protections



distress. Moreover, the court shall consider

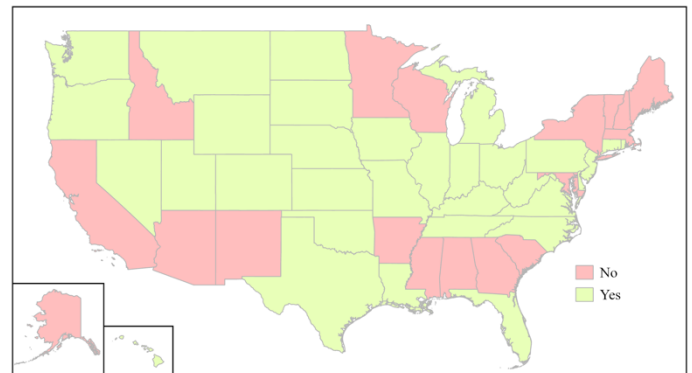
whether the behavior actually causes distress to the petitioner.

Harassment protection orders are meant to protect victims against further subsection to single or repeated acts that cause distress for them. This is an entirely different category of violence and intimidation which usually acts as a precursor to higher levels of violence such as rape and sexual assault. The current parameters of the Iowa code do not accommodate instances of harassment. This protection order has the potential to cover a wide range of harassment ranging from school harassment to sexual harassment.

Sexual Violence Protections

In addition to the domestic violence civil protection order, Iowa has a sexual assault protection order. While Iowa has their domestic violence protection order, a sexual assault protection order can provide additional protections for sexual assault that doesn’t fit within the familial or relationship requirements for assault situations. There are 33 states that have instituted a sexual assault

U.S. States with Sexual Assault Protections



protection order.

Generally, this protective order allows for any individual to file for a protective order if they have been subjected to sexual violence and are not a cohabitant or partner of the perpetrator. An individual in most cases may also be allowed to file on

behalf of another person. In Washington, these individuals are specifically defined and includes a minor child under the care/guardianship of the petitioner, a vulnerable adult or any adult wherein the petitioner demonstrates an interest for said individual and demonstrates an inability for said individual to petition themselves. This is largely similar to Iowa's definition of sexual assault.

all Iowans who would undoubtedly benefit from one.

Conclusion

As demonstrated, many Iowans face abuse that could be mitigated by civil protection orders. However, as it stands, Iowa's code does not cover every situation Iowans may face. Because of this, there are many Iowans who would benefit from a civil protection order who are not able to obtain one due to gaps in the state code. This paper recommends that the Iowa Legislature updates the definitions of existing protection orders and expands the type of protection orders. Increasing the length of time of permanent protection orders is associated with better outcomes for petitioners. Moreover, the legislature should broaden the qualification requirements for domestic abuse and elder abuse protection orders to close coverage gaps. In addition, expanding the types of civil protection orders to include behavior like unlawful harassment, stalking, etc., will offer Iowans a form of protection already available in other states.

Even after these updates to Iowa's civil protection orders, accessibility and acceptability barriers remain. It is the duty of the state to protect its citizens, and a lot of changes need to be made for Iowans to access the protection they deserve. This paper is only a surface-level evaluation of Iowa's laws and how they relate to other states. A full comprehensive analysis of protection orders in Iowa by the state legislature would likely confirm this paper's findings: Iowa's protection orders are not sufficient to protect

Appendix

Table A: Domestic Violence Protection Orders – State Comparison

Domestic Violence	Petitioner-respondent relationship	Behavior	Length of Time
Colorado	Family, household, intimate partner	Act of domestic abuse ¹⁴ (includes coercive control)	0-99+ years
Iowa	Family, household, intimate partner ¹⁵	Nonconsensual sexual conduct or nonconsensual sexual penetration	0-1 years
Illinois	Family, household, dating partner, caregiver	Physical abuse including sexual abuse, harassment, interference with personal liberty, willful deprivation	0-2 years
Utah	Family, household, dating partner ¹⁶	Abuse or dating violence	0-3 years
Washington	Family, household, intimate partner ¹⁷	Act of domestic assault (includes coercive control)	1-99 years

¹⁴ Includes assault, stalking, harassment, or the threat thereof.

¹⁵ Individuals must be in contact within the year of the assault; intimate partner status determined by court.

¹⁶ In the case of Utah's Dating Violence Protection Order: a dating partner is defined as any social/romantic/intimate relationship beyond a casual acquaintance.

¹⁷ Defined as a dating relationship where both participants are over thirteen years old.

Table B: Stalking Protection Orders – State Comparison

Stalking	Petitioner-respondent relationship	Behavior	0-1 year
Colorado	No restrictions	Stalking	0-99 years
Iowa	NONE		
Illinois	No restrictions	Two or more acts of contact ¹⁸ that causes a person fear and/or emotional distress	0-2 years
Utah	NONE		
Washington	No restrictions	Stalking (includes cyber harassment)	0-1 year

Table C: Sexual Assault Protection Orders – State Comparison

Sexual Assault	Behavior	Length of Time
Colorado	Unlawful sexual behavior	0-99+ years
Iowa	Sexual abuse (includes incest, sexual exploitation of a minor)	0-1 year
Illinois	Nonconsensual sexual conduct/penetration	0-2 years
Utah	NONE¹⁹	
Washington	Nonconsensual sexual conduct/penetration	0-99 years

¹⁸ Including electronic contact.

¹⁹ Petitioners would be encouraged to apply for the Dating Violence or Cohabitant Protection Order

Table D: Workplace Harassment Protection Orders – State Comparison

Workplace Harassment	Behavior	Harassment Protection order?
Colorado	Employers may file on behalf of an employee or customer if they believe they are in immediate danger of abuse or assault	No
Iowa	NONE	
Utah	Respondent causes bodily injury or property damage. Must cause fear/emotional distress.	0-2 years
Illinois	NONE²⁰	
Washington	NONE	Yes

Table E: Harassment Protection Orders – State Comparison

Harassment	Behavior	Length of Time
Colorado	NONE	
Iowa	NONE	
Illinois	NONE	
Utah	NONE	
Washington	Unlawful harassment ²¹ including a single act or threat of violence that causes reasonable and substantial emotional distress	0-99 years

²⁰ Petitioners would be encouraged to apply for the Dating Violence or Cohabitant Protection Order

²¹ Behavior that seriously alarms, annoys, harasses another person and causes substantial emotional distress

Table F: High-Risk/Extreme-Risk Protection Orders – State Comparison

High-Risk	Petitioner-respondent relationship	Behavior	Length of Time
Colorado	No restrictions	Respondent must pose significant risk of causing injury to self or others by having a firearm in the respondent's custody	0-1 year
Iowa	NONE		
Illinois ²²	Family, household	Respondent must pose significant risk of causing injury to self or others by having a firearm in the respondent's custody	6 months
Utah	NONE		
Washington ²³	Family member, law enforcement agency	Respondent must pose significant risk of causing injury to self or others by having a firearm in the respondent's custody	Temporary – judge's discretion

²² Firearm Restraining Order (FRO)

²³ Enacted via public ballot measure.

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Thank you for reading the 2023/2024 Hawkeye Policy Report

Please forward any questions to Prof. Nicholas Martini (Nicholas-martini@uiowa.edu)

Any students interested in joining the Iowa Policy Research Organization (IPRO) should contact Prof. Martini for permission to join our Fall course (POLI:3127 - Legislative Policy Seminar)

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