

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Pursuant to the authority of Iowa code section 217.6 and 2016 Iowa Acts, Senate File 2258, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 105, “Juvenile Detention and Shelter Care Homes,” Chapter 113, “Licensing and Regulation of Foster Family Homes,” Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” and Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

These amendments implement the federal law, Preventing Sex Trafficking and Strengthening Families Act. These amendments update the description of reasonable supervision of foster children. These amendments also update language regarding liability of foster parents and add new requirements regarding annual fire inspections and building codes. Finally, these amendments change the requirement for provision of transition plan documents to any child leaving foster care at the age of 18 or older.

These amendments will provide better transition services for youth ages 14 or older in foster care, who are expected to age out of care when the youth reach age 18.

Any interested person may make written comments on the proposed amendments on or before August 23, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5th Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by email to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A, 217).

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

These amendments are intended to implement Iowa code section 217.6 and SFY 2016 Iowa Acts, Senate File 2258.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule **105.8(9)**:

105.8(9) Liability. Juvenile shelter care homes that apply the reasonable and prudent parent standard reasonably and in good faith in regard to a child in foster care shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This section shall not remove or limit any existing liability protection afforded under any other law.

ITEM 2. Amend subrule **105.17(5)** as follows:

105.17(5) Other information. The following information shall be requested when the child remains in the facility more than four days and, when available, placed in the child's record.

a. – c. No change.

d. Medical.

(1) A record of all illnesses, immunizations, communicable diseases and follow-up treatment.

(2) Medical and surgical releases or authorizations signed by the parent, guardian, custodian or court including releases or authorizations for anesthesia and emergency medical and surgical treatment.

(3) A record of all medical and dental examinations including findings.

(4) Date of last physical examination prior to placement.

f. Placement agreement, court order, other releases and authorizations.

(1) ~~An Agreement shall authorize~~ agreement authorizing the facility to accept the child.

(2) ~~The An agreement shall set~~ setting forth the terms of payment for care.

~~(3) Medical release authorizing emergency medical and surgical treatment, including the administration of anesthesia.~~

~~(3) (4) All Other releases and authorizations applicable to the placement shall be signed by the parent or legal guardian.~~

~~(4) (5) All court orders affecting the custody or guardianship of the child.~~

ITEM 3. Adopt the following **new** definitions of “Age- or developmentally appropriate activities,” and “Reasonable and prudent parent standard,” in rule **441—113.2(237)**:

“Age- or developmentally appropriate activities” means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

“Reasonable and prudent parent standard” means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encourage the emotional and developmental growth of the child, that a caregiver

shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. For the purposes of this definition, “caregiver” means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution (including group homes, residential treatment, shelters, or other congregate care settings) in which a child in foster care has been placed.

ITEM 4. Amend subrule 113.7(7) as follows:

113.7(7) Supervision. The foster parents shall provide reasonable supervision of foster children to ensure their safety.

a. Foster parents shall ~~monitor~~ reasonably supervise foster children while the children are using any hazardous items, all or dangerous objects or equipment, including but not limited to trampolines, motorized vehicles, and power tools, shall be inaccessible to a child unless:— For foster children to participate in age or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

~~(1) There is reasonable supervision by the foster parent, and~~

~~(2) Permission has been obtained from the parent or guardian for the foster child to use the equipment or vehicle.~~

b. No change.

ITEM 5. Adopt the following **new** subrule 113.7(9):

113.7(9) Liability. Foster parents who apply the reasonable and prudent parent standard reasonably and in good faith in regards to a foster child placed in their home shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This section shall not remove or limit any existing liability protection afforded under any other law.

ITEM 6. Adopt the following **new** subrule 114.5(3):

114.5(3) Fire inspection. Each facility shall procure an annual fire inspection approved by the state fire marshal and shall meet the recommendations thereof.

ITEM 7. Adopt the following **new** subrule 114.5(4):

114.5(4) Local codes. Each facility shall meet local building, zoning, sanitation and fire safety ordinances. Where no local standards exist, state standards shall be met.

ITEM 8. Adopt the following **new** subrule 114.10(12):

114.10(12) Liability. Licensed group living foster care facilities that apply the reasonable and prudent parent standard reasonably and in good faith in regard to a child in foster care shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This section shall not remove or limit any existing liability protection afforded under any other law.

ITEM 9. Amend subparagraph 202.11(7)“c”(4) as follows:

(4) The transition plan shall document that any child leaving foster care at the age of 18 or older was provided with the following documents and information unless the child has been in foster care for less than ~~six months~~ thirty days or is not eligible to receive such document:

1. – 5. No change.



Iowa Department of Human Services
Information on Proposed Rules

Name of Program Specialist Doug Wolfe, Heather Davidson, Jim Chesnik	Telephone Number 242-5452, 1-3012, 1-9368	Email Address dwolfe@dhs.state.ia.us
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1. Give a brief summary of the rule changes:

The changes have been drafted to fully implement the federal law, Preventing Sex Trafficking and Strengthening Families Act and the Iowa Code changes per the DHS bill to implement the federal law, SF2258.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

State law SF2258, 86th Iowa General Assembly (2016)

3. What is the reason for the Department requesting these changes?

The changes are necessary to implement state law. Most of the rule changes to implement the federal law were made in 2015, however, some adaptations were made when the federal requirements moved through the Iowa General Assembly. The amendments will not interfere with our compliance to federal law.

4. What will be the effect of this rule making (who, what, when, how)?

The changes will provide better transition services for age 14 and older youth in foster care, who are expected to age out of care when they reach age 18.

The changes will ensure foster care providers are permitted to apply the reasonable and prudent parent standard, as defined in Administrative Rule Chapter 441-202, and are afforded liability protection, as indicated in federal law and state law.

5. Is the change mandated by State or Federal Law?

The transition and the reasonable and prudent parent standard requirements are specifically in state law and are justified by federal law.

6. Will anyone be affected by this rule change? If yes, who will be affected and will it be to the person's (organization's) benefit or detriment?

Youth in foster care will benefit, because they will be better prepared for adulthood. Having documents when they need them will help youth get approved for employment, open a bank account, rent an apartment, or get a loan. Foster children will benefit from the foster parent being able to apply the Reasonable and Prudent Parent Standard when they make decisions for the foster children to participate in normal childhood activities.

7. What are the potential benefits of this rule?

The number of youth incarcerated, homeless, and jobless or otherwise struggling as adults may be reduced. Foster children will be able to participate in normal childhood activities.

8. What are the potential costs, to the regulated community or the state of Iowa as a whole, of this rule?

None.

9. Do any other agencies regulate in this area? If so, what agencies and what Administrative Code sections apply?

Department of Inspections and Appeals (DIA) uses 441-114 for Foster Group Licensing reviews and 441-105 for shelter reviews.

10. What alternatives to direct regulation in this area are available to the agency? Why were other alternatives not used?

None

11. Does this rule contain a waiver provision? If not, why?

No

12. What are the likely areas of public comment?

The public may support improved transition services. When this went through the legislature, there was no resistance to supporting by helping them get state IDs, birth certificates, and social security cards.

The public would likely support the reasonable and prudent parent standard; in fact, would likely have assumed caretakers were already able to make day to day decisions for children in their care.

13. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee)

No obvious impact.



Administrative Rule Fiscal Impact Statement

Date: 7/1/2016

Agency: Human Services
IAC citation: 441 IAC 113.7(7); 114 ; 202.11(7)
Agency contact:

Summary of the rule:

The changes have been drafted to fully implement the federal law, Preventing Sex Trafficking and Strengthening Families Act and the Iowa Code changes per SF2258 (DHS bill to implement the federal law)

Fill in this box if the impact meets these criteria:

- No fiscal impact to the state.
 Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
 Fiscal impact cannot be determined.

Brief explanation:

The changes will provide better transition services for age 14 and older youth in foster care, who are expected to age out of care when they reach age 18.

The changes will ensure foster care providers are permitted to apply the reasonable and prudent parent standard, as defined in Administrative Rule Chapter 441-202, and are afforded liability protection, as indicated in federal law and state law.

This does not impact the number of children placed in foster care or the cost of services provided.

Fill in the form below if the impact does not fit the criteria above:

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY)	Year 2 (FY)
Revenue by each source:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL REVENUE	_____	_____
Expenditures:		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
TOTAL EXPENDITURES	_____	_____
NET IMPACT	_____	_____

This rule is required by state law or federal mandate.
 Preventing Sex Trafficking and Strengthening Families Act
 Iowa Code 2016, Senate File 2258, effective July 1, 2016

Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:

Fiscal impact to persons affected by the rule:

None anticipated.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

None

Agency representative preparing estimate: Victoria Wiedemeier
 Telephone number: 515-681-6856