ARC 1705C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments streamline the current record check process for employees of child care centers and child development homes by aligning the process with the centralized process used for other areas within the Department. These amendments also align the process with Chapter 119 in regard to involvement by the requesting entities. A new definition of "requesting entity" is also proposed in these amendments.

Any interested person may make written comments on the proposed amendments on or before November 18, 2014. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail 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 234.6.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of "Requesting entity" in rule

441—109.1(237A):

"Requesting entity" means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can have involvement with child care. The requesting entity must be a child care facility as defined in Iowa Code chapter 237A.

ITEM 2. Amend paragraph **109.6(6)"b"** as follows:

b. Authorization. A requesting entity shall request a record check evaluation prior to the employment of a person subject to record checks. The person subject to record checks shall complete ~~Form 595-1396,~~ the DHS Criminal History Record Check Form ~~B,~~ and any other forms required by the department of public safety to authorize the release of records.

ITEM 3. Amend paragraph **109.6(6)"g"** as follows:

g. Evaluation required. For all other transgressions, and as requested under subparagraph 109.6(6)"f"(2), the department shall notify the ~~affected person and the licensee~~ requesting entity that an evaluation shall be conducted to determine whether prohibition of the person's involvement with child care is warranted.

(1) The person with the transgression shall complete ~~and return Form 470-2310,~~ the Record Check Evaluation~~, within ten calendar days of the date on the~~ form. The requesting entity shall provide the form and any other documents to the department within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and the requesting entity to return this form by the specified date shall result in denial or revocation of the license or denial of

employment. The department shall not process evaluations that are not signed by the person subject to an evaluation.

(2) No change.

~~(3) In an evaluation, the department shall consider all of the following factors:~~

~~1. The nature and seriousness of the transgression in relation to the position sought or held.~~

~~2. The time elapsed since the commission of the transgression.~~

~~3. The circumstances under which the transgression was committed.~~

~~4. The degree of rehabilitation.~~

~~5. The likelihood that the person will commit the transgression again.~~

~~6. The number of transgressions committed by the person.~~

(3) The requesting entity may provide, or the department may request from the person subject to an evaluation or from the requesting entity, information to assist in performance of the evaluation that includes, but is not limited to, the following:

1. Documentation of criminal justice proceedings.

2. Documentation of rehabilitation.

3. Written employment references or applications.

4. Documentation of substance abuse education or treatment.

5. Criminal history records, child abuse information, and dependent adult abuse information from other states.

6. Documentation of the person's prior residences.

~~(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement~~

~~with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:~~

~~1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.~~

~~2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.~~

~~3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.~~

~~4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.~~

(4) Any person or agency that might have pertinent information regarding criminal or abuse history and rehabilitation of the prospective employee may be contacted.

(5) In an evaluation, the department shall consider all of the following factors:

1. The nature and seriousness of the transgression in relation to the position sought or held.

2. The time elapsed since the commission of the transgression.

3. The circumstances under which the transgression was committed.

4. The degree of rehabilitation.

5. The likelihood that the person will commit the transgression again.

6. The number of transgressions committed by the person.

(6) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:

1. The person's position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.

3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.

4. The subsequent employer may request a reevaluation of the record check and may employ the person while the reevaluation is being performed.

ITEM 4. Amend paragraph **109.6(6)"h"** as follows:

h. Evaluation decision. Within 30 days of receipt of a completed ~~Form 470-2310,~~ Record Check Evaluation, the department shall make a decision on the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) The department shall mail to the ~~individual~~ requesting entity and the person on whom the evaluation was completed ~~Form 470-2386,~~ the Record Check Decision~~,~~ that explains the decision reached regarding the evaluation of the transgression ~~and Form 470-0602, Notice of Decision~~.

(2) to (4) No change.

ITEM 5. Amend paragraph **110.7(3)"b"** as follows:

b. Authorization. The person subject to record checks shall complete ~~Form 470-5143,~~ the Iowa Department of Human Services Record Check Authorization Form; Form DCI-45, Waiver Agreement; Form FD-258, Federal Fingerprint Card; and any other forms required by the department of public safety to authorize the release of records.

ITEM 6. Amend subparagraph **110.7(3)"g"(1)** as follows:

(1) The person with the transgression shall complete and return ~~Form 470-2310,~~ the Record Check Evaluation~~,~~ form within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete and return this form within ten calendar days of the date on the form shall result in denial or revocation of the registration certificate.

ITEM 7. Amend paragraph **110.7(3)"h"** as follows:

h. Evaluation decision. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements or corrective action plan.

(1) Within 30 calendar days of receipt of a completed ~~Form 470-2310,~~ Record Check Evaluation, the department shall make a decision on the person's involvement with child care.

(2) Within 30 calendar days of receipt of a completed ~~Form 470-2310,~~ Record Check Evaluation, the department shall mail to the person subject to an evaluation ~~Form 470-2386,~~ a Record Check Decision~~,~~ that explains the decision reached regarding the evaluation of the transgression and ~~Form 470-4558,~~ a Notice of Decision: Child Care.

(3) The department shall issue ~~Form 470-4558,~~ a Notice of Decision: Child Care~~,~~ prohibiting involvement with child care~~,~~ when the person subject to an evaluation fails to complete the Record Check Evaluation~~, Form 470-2310,~~ within the ten-calendar-day time frame.

(4) and (5) No change.

Information on Proposed Rules

Name of Program Specialist	Telephone Number	E-mail Address
Ryan Page	515-281-7714	rpage@dhs.state.ia.us

1. Give a brief summary of the rule changes: The rules change those involved in the record check process for child care centers and those involved in the record check process. The rules align with 441 IAC 119 in regards to requesting entity involvement.
2. What is the reason for the Department to request these changes? The Department wishes to streamline the record check evaluation process and modifications are required within the rule for the use of a revised form.
3. What will be the effect of the rule adoption? (who, what, when, how)? Through adoption of this rule, the record check evaluation process will be consistent with the process being used in other areas of the Department.
4. Is the change mandated by State or Federal Law? (Cite the authorizing state and federal statutes and federal regulations) No.
5. Will anyone be affected by this rule change? If yes who will be affected and will it be to the person(s) benefit or detriment? Those customers requiring a record check will fill out the same basic paperwork but will go through the evaluation process quicker.
6. What are the potential benefits of this rule? The record check evaluation process will have more consistency through all DHS programs and will be conducted more efficiently.
7. What are the potential costs, to the regulated community or the State of Iowa as a whole, of this rule? No additional costs are identified. This is a transfer of workload.
8. Do any other agencies regulate in this area? If so, what agencies and what Administrative Code Sections apply? No
9. What alternatives to direct regulation in this area are available to the agency? Why were other alternatives not used? DHS is responsible for ensuring child safety in child care settings. No other alternatives have been identified to assure efficient and consistent record check process throughout the Department.
10. Does this rule contain a waiver provision? If not, why? These rules do not contain waiver provisions. Individuals may request an exception pursuant to the Department General Rule 441 IAC 1.8 on Exception to Policy.

11.	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) There is no change to the opportunities with the current rules in place.

ADMINISTRATIVE RULE FISCAL IMPACT STATEMENT

Date:

Agency: Human Services

IAC citation: 441 IAC

Agency contact: Ryan Page

Summary of the rule: Revises the forms used for the child care record check process to standardize the process to that used by other program areas in the department.

Fill in this box if the impact meets these criteria:

X 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:

This rule makes changes to the forms and standardizes the process for the child care record checks. There is no change in the number of record checks completed or any other factors that would have a fiscal impact as a result of this rule change, therefore there is no fiscal impact.

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		
TOTAL REVENUE		
Expenditures:		
General fund		
Federal funds		
TOTAL EXPENDITURES		
NET IMPACT		

____ This rule is required by state law or federal mandate.

Please identify the state or federal law:

____ 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 anticipated**.**

Agency representative preparing estimate: Kathy Blume

Telephone number: (515) 281-4196