

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 234.6 and 237.3, the Department of Human Services hereby gives Notice of Intended Action to rescind Chapter 150, “Purchase of Service”; to rescind Chapter 152, “Foster Group Care Contracting,” and to adopt a new Chapter 152, “Foster Care Contracting”; and to amend Chapter 156, “Payments for Foster Care,” Chapter 172, “Family-Centered Child Welfare Services,” and Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

These proposed amendments rescind and reserve Chapter 150 because the Department moved away from purchase of service contracts and is now contracting under performance-based contracts in accordance with the Accountable Government Act and the Department of Administrative Services’ service contracting rules. Chapter 150 is no longer relevant and is inconsistent with current performance-based contracting.

These amendments also rescind Chapter 152 and replace it with a new Chapter 152 pertaining to foster care contracting. New Chapter 152 will continue to set forth the contracting process used for foster group care but will also set forth the contracting processes used for the other child welfare services, specifically, of child welfare emergency services (CWES) and supervised apartment living.

These amendments update Chapter 156 to reflect current rate and payment practices. The previous methodology of determining rates that once considered remedial services is no longer used. Chapter 156 as revised will now include the rate methodology for CWES shelter care as well as payment information for foster group care (FGCS), foster family care, CWES shelter care, and supervised apartment living.

These amendments correct a cross reference to Chapter 156 in Chapter 172. The correction was made necessary by the amendments to Chapter 156 in this rule making.

Finally, these amendments replace cross references to Chapter 150 in Chapter 202 with references to the provider's contract and to the new Chapter 152.

Any interested person may make written comments on the proposed amendments on or before November 1, 2016. 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](mailto: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 sections 234.6 and 237.3.

The following amendments are proposed.

ITEM 1. Rescind and reserve **441—Chapter 150**.

ITEM 2. Rescind 441—Chapter 152 and adopt the following **new** chapter in lieu thereof:

## **CHAPTER 152**

### **FOSTER CARE CONTRACTING**

#### **PREAMBLE**

This chapter sets forth the contracting process used for providers of foster group care, child welfare emergency services shelter, and supervised apartment living, including

standards for rate-setting, payment mechanisms, and provider monitoring, audits, and sanctions. The terms of these contracts are limited to no more than six years pursuant to 11—Chapter 118. This chapter also establishes provider qualifications, service authorization procedures, documentation requirements, and service termination and appeal procedures associated with these foster care services. Refer to 441—Chapter 156 for additional program requirements.

**441—152.1(234) Definitions.**

<https://www.legis.iowa.gov/docs/iac/rule/441.152.1.pdf>

“*Affiliates*” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

“*Authorized representative,*” within the context of rule 441—152.3(234), means that person appointed to carry out audit procedures, including an assigned auditor, fiscal consultant, or agent contracted for a specific audit or audit procedure.

“*Bureau of service contract support*” means the division of fiscal management bureau that is responsible for administering performance-based contracts.

“*Child*” means a person under 18 years of age or a person 18 or 19 years of age who meets the criteria in Iowa Code section 234.1.

“*Claim*” means each record the department receives that tells the amount of requested payment and the service rendered by a provider to a child and family.

“*Client*” means a child who has been found to be eligible for foster care services through the department of human services.

“*Confidence level*” means the probability that an overpayment or underpayment rate determined from a random sample of charges is less than or equal to the rate that exists

in the universe from which the sample was drawn.

“*Contract*” means a formal written agreement between the department of human services and a provider of foster care services.

“*Contract monitor*” means a department employee who is assigned to assist in developing, monitoring, and evaluating a contract and to provide related technical assistance.

“*Department*” means the Iowa department of human services and includes the local offices of the department.

“*Extrapolation*” means using sample data meeting the confidence level requirement to estimate the total dollars of overpayment or underpayment.

“*Family,*” for purposes of child welfare service delivery, shall include the following:

1. The natural or adoptive parents, stepparents, domestic partner of the natural or adoptive parent, and children who reside in the same household.
2. A child who lives with an adult related to the child within the fourth degree of consanguinity and the adult relatives within the fourth degree of consanguinity in the child’s household who are responsible for the child’s supervision. Relatives within the fourth degree of consanguinity include: full or half siblings, aunts, uncles, great-aunts, great-uncles, nieces, great-nieces, nephews, great-nephews, grandparents, great-grandparents, great-great-grandparents, and first cousins.
3. A child who lives alone or who resides with a person or persons not legally responsible for the child’s support.

“*Fiscal record*” means a tangible and legible history that documents the criteria

established for financial and statistical records as set forth in subrule 152.2(5).

“*Grant*” means an award of funds to develop specific programs or achieve specific outcomes.

“*Juvenile court officer*” means a person appointed as a juvenile court officer or chief juvenile court officer under Iowa Code chapter 602.

“*Level of care*” means a type of foster group care service that is differentiated by the ratio of staff to children. There are three levels of foster group care services:

1. Community-level group care (service code D1), which requires a minimum staff-to-client ratio of 1 to 8 during prime programming time.

2. Comprehensive-level group care (service code D2), which requires a minimum staff-to-client ratio of 1 to 5 during prime programming time.

3. Enhanced comprehensive-level group care (service code D3), which requires a minimum staff-to-client ratio during prime programming time as follows:

- 1 staff person for facilities serving up to 4 children.
- 2 staff persons for facilities serving 5 to 7 children.
- 3 staff persons for facilities serving 8 to 10 children.
- 4 staff persons for facilities serving 11 to 13 children.
- 5 staff persons for facilities serving 14 to 16 children.
- 6 staff persons for facilities serving 17 to 19 children.
- 1 staff person for every 3 children for facilities serving 20 or more children.

“*Non-prime programming time*” means any period of the day other than prime programming time and sleeping time.

“*Overpayment*” means any payment or portion of a payment made to a provider

that is incorrect according to the laws and rules applicable to foster care services and results in a payment greater than that to which the provider is entitled.

*“Prime programming time”* means any period of the day when special attention, supervision, or treatment is necessary (for example, upon awakening of the clients in the morning until their departure for school, during meals, after school, during transition between activities, evenings and bedtime, and on nonschool days such as weekends, holidays, and school vacations).

*“Probation”* means a specified period of conditional participation in the provision of foster care services.

*“Provider”* means the entity that has executed a contract with the department to provide services.

*“Random sample”* means a systematic (or every “nth” unit) sample for which each item in the universe has an equal probability of being selected.

*“Referral worker”* means the department worker or juvenile court officer who refers the case to a provider and who is responsible for carrying out the follow-up activities of determining client eligibility and ensuring that the service authorization is completed.

*“Service authorization”* means the process of determining service necessity and the level of care and number of units of service to be provided to a child.

*“Service record”* means an individual, tangible, and legible file that records service-related activities set forth in subrule 152.2(4).

*“Site”* means each licensed location of the foster care provider.

*“Sleeping time”* means any period of the day during which clients are normally sleeping.

“*Suspension of payments*” means the withholding of all payments due a provider until resolution of the matter in dispute between the provider and the department.

“*Underpayment*” means any payment or portion of a payment not made to a provider for services delivered to eligible recipients according to the laws and rules applicable to the foster care services program and to which the provider is entitled.

“*Unit of service*” means one day for group care and child welfare emergency services shelter and one hour or any portion thereof for supervised apartment living as set forth in 441—paragraph 202.9(4)“*b.*”

“*Universe*” means all items (claims) submitted by a specific provider for payment during a specific period, from which a random sample will be drawn.

“*Withholding of payments*” means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted claims for purposes of offsetting overpayments previously made to the provider.

**441—152.2(234) Conditions of participation.**

<https://www.legis.iowa.gov/docs/iac/rule/441.152.2.pdf>

**152.2(1) Provider licensure.** A provider facility shall obtain licensure prior to accepting placements from the department.

**152.2(2) Provider staffing.** At a minimum, all providers shall meet all licensure requirements for staff qualifications, training, and number of staff pursuant to 441—Chapter 105, Chapter 108, or Chapter 114.

**152.2(3) Provider charges.** A provider shall not charge departmental clients more than it receives for the same foster care services provided to nondepartmental clients. The provider shall agree not to require any fee from departmental clients unless a fee is required

by the department and is consistent with federal regulation and state policy.

**152.2(4) Maintenance of service records.** A provider shall maintain complete and legible records as required in this subrule.

*a.* For foster group care and shelter care, the provider shall establish and maintain confidential, individual service records for each client receiving foster care services. The service records must adequately support the provision of child welfare services and group care maintenance as defined in rule 441—156.1(234). The service record shall include, at a minimum, those items identified in rule 441—114.11(237) and 441—Chapter 105 and shall also include all of the following:

- (1) Additional reports, if requested by the referral worker.
- (2) Form 470-3055, Referral and Authorization for Child Welfare Services.
- (3) Daily documentation of billed per diem services. The documentation shall

include:

1. The child's first and last name;
2. The month, day, and year service was provided;
3. The first and last names of the persons who provided the service;
4. A clear description of the specific service rendered, including interventions, actions, and activities performed which support the provision of child welfare services.

(4) Notes, which shall be entered no less than every seven calendar days, indicating the child's general progress in regard to the child's care plan.

- (5) Any problem areas or unusual behavior for the child.

*b.* For supervised apartment living, the provider shall establish and maintain confidential, individual service records for each client receiving supervised apartment

living services. The service records must adequately support the provision of services consistent with rules 441—108.10(238) and 441—202.9(234).

c. Failure to maintain records or failure to make records available to the department or to its authorized representatives upon request may result in a notice of violation and recoupment of payments pursuant to rules 441—152.3(234) and 441—152.4(234).

**152.2(5) Maintenance of financial and statistical records.** The provider shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department. The records shall be available for review at any time during normal business hours by department personnel, the department's fiscal consultant, and state or federal audit personnel.

a. At a minimum, financial and statistical records shall include all revenue and expenses supported by a provider's general ledger and documentation on file in the provider's office. These records include, but are not limited to:

- (1) Payroll information.
- (2) Capital asset schedules.
- (3) All canceled checks, deposit slips, and invoices (paid and unpaid).
- (4) Audit reports (if any).
- (5) The board of directors' minutes (if applicable).
- (6) Loan agreements and other contracts.

(7) Reviewable, legible census reports and documentation of units of service provided to departmental clients that identify the individual client and are kept on a daily basis and summarized in a monthly report.

(8) For nondepartmental clients, sufficient documentation of utilization to establish a complete unit of service count.

*b.* The provider shall maintain a list of all staff and supervisors providing foster care services and their qualifications for each program.

*c.* Independent audits. When a provider has an audit conducted, a firm not related to the provider shall conduct the audit. The provider shall submit a copy of the independent audit report to the department within 30 days of receipt of the report. The bureau of service contract support shall maintain the report.

**152.2(6) Cost report.** Providers shall complete Form 470-5421, Combined Cost Report, as required by contract. The instructions for the cost report are found in Comm. 502 (7/16), Instructions for the Combined Cost Report.

*a. Due date.* The cost report shall be submitted to the department no later than three months after the close of the provider's established fiscal year. The provider may request a one-month extension from the chief of the bureau of service contract support.

*b. Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate noncompliance with reporting instructions.

*c. County reimbursement for child welfare services shelter costs.* If a shelter care provider's actual and allowable costs as set forth in 441—Chapter 156 for a child's shelter care placement exceed the amount the department is authorized to pay and the provider is reimbursed by the child's county of legal settlement for the difference between actual and allowable costs and the amount reimbursed by the department, the amount paid by the county shall not be included by the department in its reimbursement rate determination, as

long as the amount paid is not greater than the provider's actual and allowable costs or the statewide average of actual and allowable costs as identified in annual appropriations, whichever is less.

**441—152.3(234) Provider reviews.** The department may, at its discretion, review any provider at any time. Records generated and maintained by the department or its fiscal agent may be used by reviewers and in all proceedings of the department.

<https://www.legis.iowa.gov/docs/iac/rule/441.152.3.pdf>

**152.3(1) Review of provider records.** The department shall have the authority to conduct a scheduled or unannounced visit to evaluate the adequacy of service records in compliance with the policies and procedures for foster care services.

**152.3(2) Purpose.** Upon proper identification, authorized representatives of the department shall have the right to review the service and fiscal records of the provider to determine whether:

- a. The department has accurately paid claims for services.
- b. The provider has furnished the services.
- c. The provider has retained service records and fiscal records that substantiate claims submitted for payment during the review period.
- d. Expenses reported to the department have been handled as required under subrule 152.2(6).

**152.3(3) Method.** The department shall select the appropriate method of conducting a review and shall protect the confidential nature of the records being reviewed. The provider may be required to furnish records to the department. The provider may select the method of delivering any requested records to the department. Review procedures may

include, but are not limited to, the following:

- a. Comparing service and fiscal records with each claim.
- b. Interviewing clients and employees of providers.

**152.3(4) Sampling.** The department's procedures for reviewing a provider's service records may include the use of random sampling and extrapolation. When these procedures are used, all sampling will be performed within acceptable statistical methods, yielding not less than a 95 percent confidence level.

a. *Findings.* The review findings generated through the review procedure shall constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

b. *Extrapolation.* Findings of the sample will be extrapolated to the universe for the review period. The total of the payments determined to be in error in the review sample shall be divided by the total payments in the reviewed sample to calculate the percentage of dollars paid in error. This percentage shall then be multiplied by the total payments in the review universe to determine the extrapolated overpayment.

c. *Disagreement with findings.* When the provider disagrees with the department's review findings and the findings have been generated through sampling and extrapolation, the provider may present evidence to show that the sample was invalid. The burden of proof of compliance rests with the provider. The evidence may include a 100 percent review of the universe of provider records used by the department in the drawing of the department's sample. This review shall:

- (1) Be arranged and paid for by the provider.
- (2) Be conducted by a certified public accountant.

(3) Demonstrate that bills and records not reviewed in the department's sample complied with program regulations and requirements.

(4) Be submitted to the department with all supporting documentation.

**152.3(5) Actions based on review findings.**

a. The department shall report the results of a review of provider records to concerned parties consistent with the provisions of 441—Chapter 9.

b. When an overpayment is found, the department may do one or more of the following:

(1) Request repayment in writing.

(2) Impose sanctions provided for in rule 441—152.4(234).

(3) Investigate and refer the matter to an agency empowered to prosecute.

**441—152.4(234) Sanctions against providers.** Failure to meet the requirements relevant to provider contracting, financial record keeping, billing and payment, and client record keeping may subject providers to sanctions.

<https://www.legis.iowa.gov/docs/iac/rule/441.152.4.pdf>

**152.4(1) Grounds for sanction.** The department may impose sanctions against a provider for committing one or more of the following actions:

a. Failing to provide and maintain the quality of the services to children and families within established standards, including:

(1) Failing to meet standards required by state or federal law for licensure.

(2) Failing to correct deficiencies in provider operations after receiving notice of these deficiencies from the department.

(3) Engaging in a course of conduct or performing an act that is in violation of state

or federal regulations or continuing that conduct following notification that it should cease.

(4) Violating any laws, regulations, or code of ethics governing the conduct of occupations or professions subject to this chapter.

(5) Receiving a formal reprimand or censure by an association of the provider's peers for unethical practices.

(6) Being suspended or terminated from participation in another governmental program.

(7) Committing a negligent practice resulting in client death or injury.

*b.* Failing to disclose or make available to the department or its authorized agent records of services provided to a child and family and records of payments made for those services.

*c.* Failing to provide accurate and auditable cost report information or engaging in deceptive billing practices, such as, but not limited to:

(1) Presenting or causing to be presented for payment any false or deceptive claim for services.

(2) Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

*d.* Submitting or causing to be submitted false information to meet service authorization requirements.

*e.* Inducing, furnishing or otherwise causing the child or family to receive foster care services that are not authorized (overutilization of services).

*f.* Rebating or accepting a fee or portion of a fee or a charge for referrals of a child or family.

g. Failing to repay or arrange for the repayment of identified overpayments or other erroneous payments.

h. Failing to submit the cost report on time or failing to submit complete responses to follow-up questions from the department or its fiscal consultant within 14 days of request without written approval from the chief of the bureau of service contract support.

**152.4(2) *Notice of violation.*** Should the department have information that indicates that a provider may have submitted bills or been practicing in a manner inconsistent with the program requirements, or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepancies noted.

a. Notification shall set forth:

- (1) The nature of the discrepancies or violations.
- (2) The known dollar value of the discrepancies or violations.
- (3) The method of computing the dollar value.
- (4) Further actions to be taken or sanctions to be imposed by the department.
- (5) Any actions required of the provider.

b. The provider shall have 15 days after the date of the notice to appeal to the contract owner.

**152.4(3) *Sanctions.*** The following sanctions may be imposed on providers based on the grounds specified in subrule 152.4(1):

- a. A term of probation for provision of foster care services.
- b. Termination from participation in the provision of foster care services.
- c. Suspension from provision of foster care services.
- d. Suspension or withholding of payments to the provider.

- e. Review of 100 percent of the provider's claims before payment.
- f. Referral to the appropriate state licensing board for investigation.
- g. Referral of the matter to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.
- h. Suspension of foster care services licensure.
- i. Termination of foster care services licensure.
- j. Reduction of payment to 75 percent of the current rate for failure to submit the cost report or cost report clarifications timely.
- k. Termination of the provider's contract for failure to submit the report within six months of the end of the fiscal year.

**152.4(4) *Imposition and extent of sanction.*** The department shall determine the sanction to impose. The following factors shall be considered in determining the sanction or sanctions to be imposed:

- a. Seriousness of the offense.
- b. Extent of violations.
- c. History of prior violations.
- d. Prior imposition of sanctions.
- e. Prior provision of technical assistance.
- f. Pattern of failure to follow program rules.
- g. Whether a lesser sanction will be sufficient to remedy the problem.
- h. Actions taken or recommended by peer review groups or licensing bodies.

**152.4(5) *Scope of sanction.***

- a. The sanction may be applied to all known affiliates of a provider. Each decision

to include an affiliate shall be made on a case-by-case basis after giving due regard to all relevant factors and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated when the conduct was committed in the course of official duty or was effectuated with the knowledge or approval of that person.

b. When there are grounds for sanction pursuant to subrule 152.4(1) against a provider facility, campus, or site, the department may suspend or terminate the provision of foster care services by:

- (1) The provider; or
- (2) The specific facility, campus, or site; or
- (3) Any individual within the provider's organization who is responsible for the violation.

c. No provider shall submit claims for payments to the department for any services provided by any facility, campus, site, or person within the organization that has been suspended or terminated from provision of foster care services, except for those services provided before the suspension or termination.

d. Suspension or termination from provision of foster care services shall preclude the submission of claims to the department for payment for any services provided after suspension or termination, whether submitted personally or through the provider.

**152.4(6) *Suspension or withholding of payments pending a final determination.***  
When the department has notified a provider of a violation pursuant to paragraph 152.3(5)“b” or subrule 152.4(2) and has demanded repayment of an identified overpayment, the department may withhold payments on pending and subsequently

received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payments pending a final determination. When the department intends to withhold or suspend payments, it shall notify the provider in writing.

**152.4(7) Notice of sanction.** When a provider has been sanctioned, the department shall notify, as appropriate, the applicable professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

**441—152.5(234) Adverse actions.** Notice of adverse actions and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7.

<https://www.legis.iowa.gov/docs/iac/rule/441.152.5.pdf>

These rules are intended to implement Iowa Code section 234.6.

ITEM 3. Amend rule **441—156.1(234)**, definitions of “Department,” “Director,” “Escrow account,” “Mental retardation professional,” “Physician,” “Service area manager,” “Special needs child,” and “Unearned income,” as follows:

“*Department*” means the Iowa department of human services and includes the local offices of the department.

“*Director*” means the director of the ~~child support recovery unit of the~~ department of human services or the director’s designee.

“*Escrow account*” means an interest bearing account in a bank or savings and loan association ~~which~~ that is maintained by the department in the name of a particular child.

“~~Mental retardation~~ *Intellectual disability professional*” means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession,

as required in the state of Iowa, and has at least one year of experience working with persons with ~~mental retardation~~ an intellectual disability.

“*Physician*” means a licensed medical or osteopathic doctor as defined in ~~rule 441—77.1(249A)~~ Iowa Code section 135.1(4).

“*Service area manager*” means the department employee or designee responsible for managing department offices and personnel within ~~a department~~ the service area and for implementing policies and procedures of the department.

“*Special needs child*” means a child with needs for emotional care, behavioral care, or physical and personal care ~~which~~ that require additional skill, knowledge, or responsibility on the part of the foster parents, as measured by Form 470-4401, Foster Child Behavioral Assessment. See subrule 156.6(4).

“*Unearned income*” means any income ~~which~~ that is not earned income and includes supplemental security income (SSI) and other funds available to a child residing in a foster care placement.

ITEM 4. Adopt the following new definitions of “Inflation factor,” “Prevailing rate,” and “Provider” in rule ~~441—156.1(234)~~:

“*Inflation factor*” means the amount by which the consumer price index for all urban consumers increased during the calendar year ending December 31 that preceded the contractor’s fiscal year end.

“*Prevailing rate*” means the maximum combined service and maintenance reimbursement rate the department pays to contracted shelter care providers as authorized by the legislature.

“*Provider*” means the entity that has executed a contract with the department to

provide services.

ITEM 5. Amend subrule 156.6(3) as follows:

**156.6(3) *Mother and child in foster care.*** When the child in foster care is a mother whose young child is in placement with her, the rate paid to the foster family shall be based on the daily rate for the mother according to the rate schedule in subrules 156.6(1) and 156.6(4) and for the child according to the rate schedule in ~~subrule~~ subrules 156.6(1) and 156.6(4). The foster parents shall provide a portion of the young child's rate to the mother to meet the partial maintenance needs of the young child as defined in the case permanency plan.

ITEM 6. Amend paragraph **156.6(4)“e”** as follows:

*e.* Effective January 1, 2007, when a service area manager determines that as of October 31, 2006, a foster family was providing care for a child comparable to behavioral management services for children in therapeutic foster care, except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or ~~mental retardation~~ intellectual disability professional, the foster family shall be paid the basic maintenance rate plus \$15 per day for that child. This rate shall continue for the duration of the placement.

ITEM 7. Amend paragraph **156.8(6)“b”** as follows:

*b.* Fees related to enrolling a child in preschool when a mental health professional or ~~a mental retardation~~ an intellectual disability professional has recommended school attendance.

ITEM 8. Amend subrule 156.9(1) as follows:

**156.9(1) *In-state reimbursement.*** Effective November 1, 2006, ~~public and private~~

July 1, 2014, contracted foster group care facilities licensed or approved in the state of Iowa shall be paid for group care maintenance and child welfare services in accordance with ~~the rate setting methodology in this subrule~~ contracted terms.

~~a. A provider of group care services shall maintain at least the minimum staff to child ratio during prime programming time as established in the contract. Staff shall meet minimum qualifications as established in 441 Chapters 114 and 115. The actual number and qualifications of the staff will vary depending on the needs of the children.~~

~~b. a.~~ Additional payment for group care maintenance may be authorized if a facility provides care for a mother and her young child according to subrule 156.9(4).

~~c. Reimbursement rates shall be adjusted based on the provider's rate in effect on October 31, 2006, to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services. Subject to paragraph 156.9(1) "e," the reimbursement rate shall be calculated as follows:~~

~~(1) Step 1. Annualize the provider's combined daily reimbursement rate for maintenance and service in effect on October 31, 2006, by multiplying that combined rate by 365 days.~~

~~(2) Step 2. Annualize the provider's remedial services reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions—group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.~~

~~(3) Step 3. Annualize the provider's remedial services reimbursement rate for one~~

~~hour per week of remedial services code 96152 (health and behavioral interventions—individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.~~

~~(4) Step 4. Add the amounts determined in Steps 2 and 3.~~

~~(5) Step 5. Subtract the amount determined in Step 4 from the amount determined in Step 1.~~

~~(6) Step 6. Divide the amount determined in Step 5 by 365 to compute the new combined maintenance and child welfare service per diem rate.~~

~~(7) Step 7. Determine the maintenance portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 85.62 percent.~~

~~(8) Step 8. Determine the child welfare service portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 14.38 percent.~~

~~EXAMPLE: Provider A has the following rates as of October 31, 2006:~~

- ~~● A combined daily maintenance and service rate of \$121.45;~~
- ~~● A Medicaid rate for service code 96153 of \$5.10 per 15 minutes, or \$20.40 per hour;~~
- ~~● A Medicaid rate for service code 96152 of \$19.92 per 15 minutes, or \$79.68 per hour.~~

~~Step 1.  $\$121.45 \times 365 \text{ days} = \$44,329.25$~~

~~Step 2.  $\$20.40 \times 365 \text{ days} = \$7,446.00$~~

~~Step 3.  $\$79.68 \times 52 \text{ weeks} = \$4,143.36$~~

~~Step 4.  $\$7,446.00 + \$4,143.36 = \$11,589.36$~~

~~Step 5.  $\$44,329.25 - \$11,589.36 = \$32,739.89$~~

~~Step 6.  $\$32,739.89 \div 365 \text{ days} = \$89.70$~~

~~Step 7.  $\$89.70 \times 0.8562 = \$76.80$  maintenance rate~~

~~Step 8.  $\$89.70 \times 0.1438 = \$12.90$  child welfare service rate~~

~~Subject to paragraph 156.9(1) "c," provider A's rates are \$76.80 for maintenance and \$12.90 for child welfare services.~~

~~b.~~ b. No less than annually, the department shall redetermine the allocation of the combined child welfare service per diem rate between the maintenance and service portions plus the inflation factor based on review of the verified remedial services cost reports for foster group care services providers Form 470-5421, Combined Cost Report. If the new allocation differs from the current allocation, the department shall:

(1) Reallocate the combined child welfare service per diem for foster group care between the maintenance and service portions plus the inflation factor of the combined rate; and

(2) Notify all providers of any change in the allocation between maintenance and service rates ~~and the effective date~~.

~~e.~~ Effective July 1, 2014, the combined service and maintenance reimbursement rate for a service level under the department's reimbursement methodology shall be at least the amount below. If a group foster care provider's reimbursement rate for a service level as of June 30, 2014, is more than the amount below, the provider's reimbursement shall remain at the higher rate.

~~(1) For service level, community – D1, the daily rate shall be at least \$87.60.~~

~~(2) For service level, comprehensive – D2, the daily rate shall be at least \$119.09.~~

~~(3) For service level, enhanced – D3, the daily rate shall be at least \$131.09.~~

ITEM 9. Amend subrule 156.9(2) as follows:

**156.9(2) *Out-of-state group care payment rate.*** ~~The payment rate for maintenance and child welfare services provided by public or private agency group care licensed or approved in another state shall be established using the same rate setting methodology as that in subrule 156.9(1), unless the director~~ When the department determines that appropriate care is not available ~~within the state pursuant to the following criteria and procedures~~ in Iowa and a licensed or approved contractor outside Iowa is used, the payment rate for contracted foster group care services shall be the Iowa rate unless the director grants an exception. The rate shall not exceed the rate paid for clients from that state.

~~*a. Criteria.* When determining whether appropriate care is available within the state, the director shall consider each of the following:~~

~~(1) Whether the child's treatment needs are exceptional.~~

~~(2) Whether appropriate in-state alternatives are available.~~

~~(3) Whether an appropriate in-state alternative could be developed by using juvenile court-ordered service fund or wrap-around funds.~~

~~(4) Whether the placement and additional payment are expected to be time limited with anticipated outcomes identified.~~

~~(5) If the placement has been approved by the service area manager or chief juvenile court officer.~~

~~*b. Procedure.* The service area manager or chief juvenile court officer shall submit the request for director's exception to the Appeals Section, Department of Human Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114. This~~

~~request shall be made in advance of placing the child and should allow a minimum of two weeks for a response. The request shall contain documentation addressing the criteria for director's approval listed in 156.9(2) "a."~~

~~*e. Appeals.* The decision of the director regarding approval of an exception to the rate determination in rule 441—152.3(234) is not appealable.~~

ITEM 10. Adopt the following **new** subrule 156.9(3):

**156.9(3) *Out-of-state placement determination.***

*a. Placement.* When determining whether appropriate care is available within the state, the director shall consider each of the following:

- (1) Whether the child's treatment needs are exceptional.
- (2) Whether appropriate in-state alternatives are available.
- (3) Whether an appropriate in-state alternative could be developed by using juvenile court-ordered service funds or wrap-around funds.
- (4) Whether the placement and additional payment are expected to be time-limited with anticipated outcomes identified.
- (5) If the placement has been approved by the service area manager or chief juvenile court officer.

*b. Procedure.* The service area manager or chief juvenile court officer shall submit the request for director's exception to the Appeals Section, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114. This request shall be made in advance of placing the child and should allow a minimum of two weeks for a response. The request shall contain documentation addressing the criteria for director's approval listed in paragraph 156.9(3) "a."

*c. Appeals.* The decision of the director regarding approval of an exception to the rate determination in rule 441—156.9(234) is not appealable.

ITEM 11. Amend subrule 156.9(4) as follows:

**156.9(4) Mother-young child rate.** When a group foster care facility provides foster care for a mother and her young child, ~~the~~ an additional maintenance rate ~~for the mother~~ shall ~~include an additional amount to~~ cover the ~~actual and allowable~~ maintenance needs of the young child. No additional amount shall be allowed for service needs of the child.

*a.* The rate shall be ~~determined according to~~ the policies in rule 441—152.3(234) ~~and added to the maintenance rate for the mother~~ set in the provider contract. The young child ~~portion of the~~ maintenance rate shall be limited to the costs associated with food, clothing, shelter, personal incidentals, and supervision for each young child and shall not exceed the maintenance rate for the mother. Costs for day care shall not be included in the maintenance rate.

~~*b.* The additional amount included in the maintenance rate for the mother by this subrule to cover the maintenance needs of the young child shall be in addition to the minimum rate provided by paragraph 156.9(1)“e.”~~

~~*e.*~~ *b.* Unless the court has transferred custody from the mother, the mother shall have primary responsibility for providing supervision and parenting for the young child. The facility shall provide services to the mother to assist her to meet her parenting responsibilities and shall monitor her care of the young child.

~~*d.*~~ *c.* The ~~facility~~ provider shall provide services to the mother to assist her to:

(1) Obtain a high school diploma or ~~general education equivalent (GED)~~ high school equivalency.

(2) to (4) No change.

~~e-~~ d. The ~~agency~~ provider shall maintain information in the mother's file on:

(1) to (3) No change.

(4) Plan for the minor's completion of high school or a ~~GED~~ high school equivalency program.

(5) to (8) No change.

~~f-~~ e. The ~~agency~~ provider shall designate \$35 of the young child rate as an allowance to the mother to meet the maintenance needs of her young child, as defined in her case permanency plan.

ITEM 12. Amend subrule 156.10(1), introductory paragraph, as follows:

**156.10(1)** *Group care facilities.* The department shall provide payment for group care maintenance and child welfare services according to the following ~~policies~~ requirements.

ITEM 13. Rescind rule 441—156.11(234) and adopt the following new rule in lieu thereof:

**441—156.11(234) Emergency juvenile shelter care payment.** Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the following rate-setting methodology.

<https://www.legis.iowa.gov/docs/iac/rule/441.156.11.pdf>

**156.11(1)** The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the verified Form 470-5421, Combined Cost Report, submitted to the department, but shall not exceed the prevailing rate. The department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost, plus

the inflation factor and the \$3.99 allowance originated under the tobacco settlement fund, or to the prevailing rate, whichever is less, effective the first day of the month following the department's receipt from the fiscal consultant of the provider's verified cost for the most recently reviewed fiscal year.

**156.11(2)** Net allowable expenditures are limited to those costs that are considered reasonable, necessary, and related to the service provided to the client as set forth in Comm. 502 (7/16), Instructions for the Combined Cost Report.

**156.11(3)** The effective utilization level shall be 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.

ITEM 14. Amend rule 441—156.15(234) as follows:

**441—156.15(234) Child's earnings.** Earned income of a child who is ~~not in a supervised apartment living arrangement and who is a full-time student or engaged in an educational or training program~~ in foster care shall be reported to the department, and ~~its~~ the earned income's use shall be a part of a the child's plan for service, but the income shall not be used towards the cost of the child's care as established by the department. ~~When the earned income of children in supervised apartment living arrangements or of other children exceeds the foster care standard, the income in excess of the standard shall be applied to meet the cost of the child's care. When the income of the child exceeds twice the cost of maintenance, the child shall be discontinued from foster care.~~

<https://www.legis.iowa.gov/docs/iac/rule/441.156.15.pdf>

ITEM 15. Rescind and reserve rule **441—156.19(237)**.

ITEM 16. Amend paragraph **156.20(1)“a”** as follows:

a. Youth under the age of 18 shall be eligible based on legal status, subject to

certain limitations.

(1) Legal status. The youth's placement shall be based on one of the following legal statuses:

1. The court has ordered foster care placement pursuant to Iowa Code section ~~232.52, subsection 2, paragraph "d," Iowa Code section 232.102, subsection 1, Iowa Code section 232.117, or Iowa Code section 232.182, subsection 5~~ 232.52(2) "d," 232.102(1), 232.117, or 232.182(5).

2. The child is placed in shelter care pursuant to Iowa Code section ~~232.20, subsection 1,~~ 232.20(1) or ~~Iowa Code section~~ 232.21.

3. The department has agreed to provide foster care under a voluntary placement agreement pursuant to rule 441—202.3(234).

(2) Limitations. Department payment for group care shall be limited to placements ~~which~~ that have been authorized by the department and ~~which~~ that conform to the service area group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement shall be limited to placements approved pursuant to 441—subrule 202.8(2).

ITEM 17. Amend subparagraph **156.20(1) "b" (3)** as follows:

(3) Exceptions. An exception to subparagraphs (1) and (2) shall be granted for all unaccompanied refugee minors. The child's eligibility for the exception shall be documented in the case record. The service area manager or designee shall grant an exception for other children when the child meets all of the following criteria. ~~The child's eligibility for the exception shall be documented in the case record.~~

1. The child does not have ~~mental retardation~~ an intellectual disability. Funding

for services for persons with ~~mental retardation~~ an intellectual disability is the responsibility of the county or state pursuant to Iowa Code section 222.60.

2. and 3. No change.

4. Funds are available in the service area's allocation. When the service area manager has approved payment for foster care pursuant to this subparagraph, funds ~~which~~ that may be necessary to provide payment for the time period of the exception, not to exceed the current fiscal year, shall be considered encumbered and no longer available. Each service area's funding allocation shall be based on the service area's portion of the total number of children in foster care on March 31 preceding the beginning of the fiscal year, who would no longer be eligible for foster care during the fiscal year due to age, excluding unaccompanied refugee minors.

ITEM 18. Amend paragraph **156.20(1)**"c," introductory paragraph, as follows:

c. A young mother shall be eligible for the extra payment for her young child living with her in care as set forth in ~~subrule 156.6(4)~~, paragraph "~~a~~," 156.6(4) "a" and subrule 156.9(4) if all of the following apply:

ITEM 19. Rescind subrule 156.20(2) and adopt the following **new** subrule in lieu thereof:

**156.20(2)** *Provider eligibility for payment.* Providers of foster care services shall have a foster care services contract under 441—Chapter 152 in force.

ITEM 20. Amend paragraph **172.13(3)**"e" as follows:

e. Shelter care payment as provided in ~~441—subrule 156.11(3)~~ rule 441—156.11(234) if the child is placed in shelter care.

ITEM 21. Amend paragraph **202.9(3)**"g" as follows:

g. If services are purchased, compliance by the provider with all reporting requirements in ~~441—paragraph 150.3(3)“j,”~~ as required by the provider’s contract with the department, including requirements for the individual service plan, quarterly reports, and a termination summary.

ITEM 22. Amend paragraph **202.9(4)“d”** as follows:

d. Expenses of transporting the child, service management activities, and other administrative functions shall be allowable indirect costs subject to the restrictions set forth in ~~rule 441—150.3(234)~~ 441—subrule 152.2(6) and are not billable units of service.



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Jana Dunt	Telephone Number 281-8369	Email Address jdunt@dhs.state.ia.us
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1. Give a brief summary of the rule changes:

The Department moved away from purchase of service contracts and is now contracting under performance-based contracts in accordance with the Accountable Government Act and the Department of Administrative Services service contracting rules. Chapter 150, Purchase of Service, is no longer relevant and is inconsistent with current performance-based contracting.

The current Chapter 152, Foster Group Care Contracting, will be replaced with the proposed new Chapter 152, Foster Care Contracting. It will continue to set forth the contracting process used for foster group care and add the contracting processes for the other child welfare services of child welfare emergency services (CWES) and supervised apartment living.

The proposed amended Chapter 156, Payments for Foster Care, is amended to reflect current rate and payment practices. The previous methodology of determining rates that once considered remedial services is no longer used. This chapter now includes rate methodology for CWES shelter care as well as payment information for foster group care (FGCS), foster family care, CWES shelter care, and supervised apartment living.

In Chapter 202, Foster Care Placement and Services, references to Chapter 150 are replaced with references to the provider's contract and to Chapter 152.

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

Iowa Code section 217.6

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

Chapter 150:

- The Department moved to performance-based contracts to comply with the Accountable Government Act and the Department of Administrative Services service contracting rules. Chapter 150 Purchase of Service is no longer relevant.

Chapter 152:

- The current Chapter 152 included only foster group care contracting. The new Chapter 152 includes requirements for performance-based contracting for foster group care, CWES juvenile shelter care, and supervised apartment living services.
- All foster group care providers receive the same daily rate according to the level of care provided. Language describing the past rate negotiation process is no longer relevant.

- Contractors are selected based upon a competitive request for proposal process. Language regarding the right to request a contract is no longer relevant.
- Sanction language is now consistent among all three types of service providers.

Chapter 156:

- Chapter 156 is amended to eliminate reimbursement rate language for foster group care. Remedial services payments once made through the Medicaid program are no longer considered to determine the foster group care per diem.
- An annual inflation factor is added for foster group care costs in the same way it is already added for child welfare emergency services shelter care costs bringing consistency to the cost allocation process for the two services.
- Chapter 156 is amended to include language stating the rate DHS will pay for youth placed in out-of-state foster group care shall not exceed the rate paid for clients from that state.
- Language regarding the payment for a young child of a mother who is in foster care is clarified to state it is a separate, additional rate for the maintenance needs of the young child.
- Rate information for CWES shelter providers was moved from Chapter 150 that is being rescinded and it was updated and added to Chapter 156. This language states the reimbursement rate paid to a shelter care provider shall be based on the verified Form 470-5421, Combined Cost Report submitted to the department, but shall not exceed the prevailing rate.
- Language regarding the use of a child's earnings is amended in Chapter 156 to no longer require earned income in excess of the standard be applied to meet the cost of the child's care in supervised apartment living.
- Language regarding payment for youth in a residential care facility is removed from Chapter 156. It does not reflect current practice nor is payment to a health care facility part of the foster care services.
- Amended language states foster care providers will have a services contract under Chapter 152 in force rather than an obsolete purchase of service contract.

Chapter 202:

- References to rescinded Chapter 150 are removed and updated as needed.

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

The new or amended rules reflect current processes in Department contracting and payment. The payment-reduction language for failing to submit the cost report from Chapter 150 is added to the sanction language in rewritten Chapter 152. Uniform sanction language will now be applicable to foster group care, shelter, and supervised apartment living providers. The amendment brings consistency to the sanction language. The department has not used the payment-reduction language in several years but the importance of cost reports in determining shelter rates and federal IV-E reimbursement necessitates a strong sanction option.

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

No.

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?

Foster group care providers will once again be covered under the same sanction language in regards to cost reporting as CWES shelter and supervised living providers. They had previously been covered under similar sanction language in since rescinded Chapter 185 and then under Chapter 79 until the delinking of Medicaid from the foster group care per diem. The same sanctions will now be applicable to all these child welfare service providers under 152.4(3) regarding completing the cost report and responding to the department's fiscal consultants' questions regarding provider's cost report. These rule changes overall are intended to bring consistency across these child welfare services regarding contracting and payment processes and to reflect current practice. This will benefit the Department and its private partners.

7. What are the potential benefits of this rule?

Outdated language has been removed. Foster group care, CWES shelter care, and supervised apartment living services are now all covered under the same rules regarding contracting and payments.

The addition of the inflation factor to foster group care provider's costs may slightly increase the state's IV-E reimbursement. Because most providers' costs already meet the maximum maintenance rate, the effect is expected to be minimal.

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

There should be no significant program costs to contracted providers or to the state based on these rule changes overall. Foster group care, CWES shelter, and supervised apartment living providers have faced sanctions under Chapter 150 Purchase of Service, now-rescinded Chapter 185 Rehabilitative Treatment Services, or Chapter 79 Other Policies Relating to Providers of Medical and Remedial Care that included suspension or withholding of payments to providers for failing to meet the requirements for cost reporting. Chapter 150 covered CWES shelter care and supervised apartment living providers. Cost reporting for foster group care providers was covered under Chapter 185 that was obsoleted July 1, 2009, after the rehabilitative treatment and supportive services (RTSS) were delinked from foster group care. At that time it was not necessary to move the financial sanctions for foster group care providers failing to meet the requirements for cost reporting to Chapter 152 because foster group care providers then completed the Remedial Services Program (RSP) cost report and were covered under Medicaid rule Chapter 79. FGCS providers, along with CWES shelter and supervised apartment living providers, now complete the Combined Cost Report. Because Chapter 150 is being rescinded and FGCS providers' cost reporting is no longer covered under the Chapter 185 or Chapter 79, the cost report sanction language from the proposed rescinded Chapter 150 is being added to new Chapter 152.

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

N/A

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

New Chapter 152 and amended Chapter 156 are replacing or updating existing rules. Some of the service requirements have been moved to the providers' performance-based contracts. No other alternatives have been identified.

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

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).

12. What are the likely areas of public comment?

Though financial cost report sanctions have been in place in Chapter 150, Chapter 185, and Chapter 79 in the past, it is possible that providers will comment when seeing them moved from Chapter 150 to new Chapter 152.

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)

N/A.



## Administrative Rule Fiscal Impact Statement

Date: August 17, 2016

**Agency:** Human Services

**IAC citation:** 441 IAC

**Agency contact:** Jana Dunt

**Summary of the rule:** Chapter 150 "Purchase of Service" is being rescinded as the department has moved from purchase of service contracts to performance-based contracting. Chapter 152 now covers CWES shelter and supervised apartment living contracting in addition to foster group care contracting. Chapter 156 includes payment detail for these services.

*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 new or amended rules reflect current processes in Department contracting and payment. The payment-reduction language for failing to submit the cost report from Chapter 150 was added to the sanction language in rewritten Chapter 152. This is the only language change that could potentially have a fiscal impact. However, there has not been a situation in the last 5 years in which a provider failed to submit required cost reports so there is no fiscal impact expected as a result of this change.

*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**

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

\_\_\_\_\_ This rule is required by state law or federal mandate.  
*Please identify the state or federal law:*  
 Identify provided change fiscal persons:

\_\_\_\_\_ 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:***

The only potential fiscal impact to providers of foster care services would be as a result of the inclusion of foster group care providers in the sanction language in regards to cost reporting. They had previously been covered under similar sanction language until the delinking of Medicaid from the foster group care per diem. The same sanctions will now be applicable to all foster care services providers. The Department has not used the payment-reduction language in several years so there is no fiscal impact anticipated.

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

None anticipated

Agency representative preparing estimate: Victoria Wiedemeier

Telephone number:515-281-6856