

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby adopts a **new** Chapter 120, “Child Care Homes,” Iowa Administrative Code.

The federal Child Care and Development Block Grant (CCDBG) was reauthorized in November 2014. As a result, there are new federal laws outlining health, safety, and fire standards for child care providers that receive child care assistance dollars. Proposed Chapter 120 has been created to outline the requirements for child care providers that receive subsidy dollars but are not required by state law to register to provide child care.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2552C** on May 25, 2016. The Department received comments from four respondents during the public comment period. The Department also updated the language in the administrative rule due to a Departmental review which in turn led to the requirement to incorporate a technical change in the rulemaking document. The comments and Department responses are as follows:

Comment 1. A respondent requested that language be included that allows changes to the 5 year requirement for health and safety training if information changes. Modifications will allow DHS to require the training more often or to be renewed if significant changes to the content occur.

Department Response 1. The Department agreed with the comment and will add language to allow for health and safety training to be taken more frequently if content areas change significantly.

Adopt **new** subrule **120.10(4)**

120.10(4) Minimum health and safety training may be required prior to the 5 year period if content has significant changes that warrant the training be renewed.

Comment 2. A respondent suggested additional modifications to these amendments to add standards regarding nutrition, physical activity, and screen time within child care homes and centers. The respondent recommended requiring nutrition standards based on Child and Adult Care Food Program (CACFP), physical activity standards consistent with YMCA’s Healthy Eating and Physical Activity (HEPA) as well as “Screen time standards” for Early Childhood Programs.

DHS Response 2. Chapter 120 is intended to regulate minimum health and safety standards for child care providers that are not required by State law, to register as a child development home, but do wish to receive CCDF funds. There is a current requirement at 120.8(7) to require regular meals and snacks that are well balanced and nourishing to be provided. Physical activity requirements and screen time standards, while encouraging of a high quality environment, is not required to meet the intent of federal legislation for minimum health and safety standards. For these reasons, the Department will not modify these amendments based on the respondent’s comments.

Comment 3. One respondent identified that the new Chapter 120 includes requirements that do not currently exist. The respondent also stated that it is unclear if these amendments only apply to child care homes who wish to receive child care assistance payments or to all child care homes in Iowa. Finally the respondent indicated that there is not an identified grace period for compliance. The respondent re asked the Department to establish a grace period. The

respondent also requested that the Department reach out to current child care home providers to inform them of proposed changes.

DHS Response 3. The preamble of Chapter 120 will be modified to clearly delineate the population in which it is intended. The federal legislation goes into effect October 1, 2016 and all requirements must be met by that time. The Department is permitted to allow child care providers to obtain health and safety training up until September 30, 2017, at which point all persons must have the training completed. The federal legislation goes into effect October 1, 2016 and all requirements must be met by that time. The Department has participated in significant outreach with child care providers across the state to advise the providers of new regulations and to gather input. A mass mailing via standard USPS mail was also sent to all regulated and non-regulated providers who receive child care assistance payments in March 2016. This mass mailing letter outlined the varied changes taking place as a result of the federal legislation. The Department agreed to change the preamble of the new chapter 441—120 to improve clarity.

PREAMBLE: This chapter establishes procedures for child care homes that have a Child Care Assistance Provider Agreement to receive Child Care Assistance funds. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigations.

Comment 4. A respondent requested that training in the use of an automated external defibrillator (AED) be included in the first aid and cardiopulmonary resuscitation (CPR) training requirements.

Department Response 4. At this time, it is not known if AED is always provided during CPR courses. Additionally, if the Department required AED training, it would reasonable to assume that the Department would need to require an AED on the child care premises, which

would have a fiscal impact to child care providers. The National Resource Center on Health and Safety of in Child Care and Early Education’s document, “Caring for Our Children” was also reviewed. The suggestion in that document is that child care facilities should consider having an AED on the premises for potential use with adults. It further indicates that the use of AED’s with children would be rare. For these reasons, the Department will not modify these amendments based on the comments at this time.

Comment 5. A respondent requested that clarifications be made regarding items that are not designed for sleeping in the section regarding safe sleep practices.

Department Response 5. The Department will modify language found in 120.8(5) “c” regarding items not designed for sleeping.

120.8(5)“c”

c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any items not designed for sleeping, but not limited to, an infant seat, car seat, swing, bouncy seat, ~~or any item not designed for sleeping~~

Comment 6. A respondent requested that these amendments should clarify that cribs are not allowed to have moving railings.

Department Response 6. Administrative rules require cribs to meet current federal Consumer Product Safety Commission (CPSC) or ASTM standards. Drop-side cribs are not allowed within current approved standards. However, there are some cribs that have partial “safe reach” options that do meet CPSC standards. There would be a fiscal impact to providers if the cribs with approved “safe reach” options are currently being used and then become prohibited as the result of these amendments. For these reasons, the Department will not modify these amendments based on the respondent’s comment.

Department Technical Change. The Department reviewed the proposed rulemaking and determined that a technical change regarding first aid and cardiopulmonary resuscitation (CPR) was necessary and modified the rulemaking to include the American Safety and Health Institute as an approved training organization.

120.10(3) “a”

a. Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, or American Safety and Health Institute or MEDIC First Aid Emergency Medical Planning (Medic First Aid) or by an equivalent trainer using curriculum approved by the department.

The Council on Human Services adopted these amendments on July 13, 2016.

This amendment does 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.

This amendment is intended to implement Iowa Code section 237A.12.

The following amendment will become effective October 1, 2016

The following amendment is adopted.

Adopt the following **new** 441—Chapter 120:

**CHAPTER 120
CHILD CARE HOMES**

PREAMBLE

This chapter establishes procedures for child care homes that have a Child Care Assistance Provider Agreement to receive Child Care Assistance funds. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint

investigations.

441—120.1(237A) Definitions.

“Adult” means a person 18 years of age or older.

“Child” means either of the following:

1. A person 12 years of age or younger.
2. A person 13 years of age or older but younger than 19 years of age who has a

developmental disability, as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law No. 106-402, codified in 42 U.S.C. 15002(8).

“Child care” means the care, supervision, or guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis. “Child care” shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

“Child care facility” or “facility” means a child care center, a preschool, or a registered child development home.

“Child care home” means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.

“Child development home” means a person or program registered under this chapter that may provide child care to six or more children at any one time.

“Department” means the department of human services.

“Involvement with child care” means licensed or registered as a child care facility, employed in a child care facility, residing in a child care facility, receiving public funding for

providing child care, providing child care as a child care home provider, or residing in a child care home.

“Parent” means parent or legal guardian.

“Person subject to an evaluation” means a person who has committed a transgression and who is described by any of the following:

1. The person is being considered for registration or is registered.
2. The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone, or the person is employed with such responsibilities.
3. The person will reside or resides in a child care facility.
4. The person has applied for or receives public funding for providing child care.
5. The person will reside or resides in a child care home that is not registered but that receives public funding for providing child care.

“Provider” means the person or program that applies to receive payment from the child care assistance program to provide child care and is approved as a child care home.

“School” means kindergarten or a higher grade level.

“Transgression” means the existence of any of the following in a person’s record:

1. Conviction of a crime.
2. A record of having committed founded child or dependent adult abuse.
3. Listing in the sex offender registry established under Iowa Code chapter 692A.
4. A record of having committed a public or civil offense.
5. Department revocation or denial of a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with

licensing and registration laws and rules.

441—120.2(237A) Application for payment. A provider shall apply for payment on Form 470-2890, Payment Application for Nonregistered Providers, provided by the department's local office or on the department's Web site. The provider shall also use Form 470-2890 to inform the department of any changes in circumstances that would affect the provider.

441—120.3(237A) Renewal of agreement. Renewal of the child care assistance provider agreement shall be completed every 24 months. To request renewal, a provider shall submit Form 470-2890, Payment Application for Nonregistered Providers, and copies of certificates of training, which shall be retained in the file. The agreement renewal process shall include completion of child abuse, sex offender, and criminal record checks.

441—120.4(237A) Compliance checks. An unannounced compliance visit shall be conducted not less than annually to check for compliance with health, safety, and fire standards. Completed evaluation checklists shall be placed in agency files.

441—120.5(237A) Parental access. Parents shall be afforded unlimited access to their children and to the people caring for their children during the normal hours of operation or whenever their children are in the care of the child care home, unless parental contact is prohibited by court order.

441—120.6(237A) Number of children. The number of children in a child care home shall conform to the following standards:

120.6(1) Limit. No more than five children shall receive care at any one time in the single-family residence.

120.6(2) Children counted. To determine the number of children cared for at any one time in a child care home, each child present in the child care home shall be considered to be receiving

care unless the child is described by one of the following exceptions:

a. The child's parent, guardian, or custodian established or operates the child care home and either the child is attending school or the child receives child care full-time on a regular basis from another person.

b. The child has been present in the child care home for more than 72 consecutive hours and meets the requirements of the exception listed above as though the person who established or operates the child care home is the child's parent, guardian, or custodian.

441—120.7(237A) Provider requirements.

120.7(1) Provider. The provider shall:

a. Give careful supervision at all times.

b. Exchange information with the parent of each child frequently to enhance the quality of care.

c. Give consistent, dependable care and be capable of handling emergencies.

d. Be present at all times except when emergencies occur or an absence is planned, at which time care shall be provided by a department-approved substitute. When an absence is planned, the provider shall give parents at least 24 hours' prior notice.

e. Be free of the use of illegal drugs and shall not be under the influence of alcohol or of any prescription or nonprescription drug that could impair the provider's ability to give careful supervision.

f. Be at least 18 years of age.

120.7(2) Substitutes. The provider shall assume responsibility for providing adequate and appropriate supervision at all times when children are in attendance. Any designated substitute shall have the same responsibility for providing adequate and appropriate supervision. Ultimate

responsibility for supervision shall be with the provider.

- a. All standards in this chapter regarding supervision and care of children shall apply to substitutes.
- b. Except in emergency situations, the provider shall inform parents in advance of the planned use of a substitute.
- c. The substitute must be 18 years of age or older.
- d. Use of a substitute shall be limited to:
 - (1) No more than 25 hours per month.
 - (2) An additional period of up to two weeks in a 12-month period.
- e. The provider shall maintain a written record of the number of hours care is provided by a substitute, including the date of the care and the name of the substitute.

441—120.8(237A) Standards. Conditions in the home shall be safe, sanitary, and free of hazards.

The provider shall certify that the child care home meets the following minimum standards.

120.8(1) Facility requirements.

- a. The home shall have a nonpay, working landline or mobile telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be written on paper and readily accessible by the telephone. The home must prominently display all emergency information, and all travel vehicles must have a paper copy of emergency parent contact information.
- b. Electrical wiring shall be maintained, and all accessible electrical outlets shall be tamper-resistant outlets or shall be safely capped. Electrical cords shall be properly used. Improper use includes the running of cords under rugs, over hooks, or through door openings or other use

that has been known to be hazardous.

c. Combustible materials shall be kept a minimum of three feet away from furnaces, stoves, water heaters, and gas dryers.

d. Approved safety gates at stairways and doors shall be provided and used as needed.

e. Annual laboratory analysis of a private water supply shall be conducted to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.

f. A safety barrier shall surround any heating stove or heating element, in order to prevent burns.

g. The home shall have at least one 2A 10BC-rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

h. The home shall have at least one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. The provider shall test each smoke detector monthly and keep a record of testing for inspection purposes.

i. Smoking and the use of tobacco products shall be prohibited at all times in the home and in every vehicle in which children receiving care in the home are transported. Smoking and the use of tobacco products shall be prohibited in the outdoor play area during the home's hours of operation. "No smoking" signs shall be posted at every entrance of the child care home and in every vehicle used to transport children. All signs shall include:

(1) The telephone number for reporting of complaints, and

(2) The Internet address of the department of public health (www.iowasmokefreeair.gov).

j. Homes served by private sewer systems shall be in compliance with discharge restrictions identified at 567—Chapter 69. Discharge of untreated waste water from private sewage disposal systems is prohibited. Compliance shall be verified by the local board of health at the time of renewal of the child care assistance provider agreement and new application.

k. A provider operating in a facility built before 1960 shall assess and control lead hazards before being issued an initial child care assistance provider agreement or a renewal of the provider agreement. To comply with this requirement, the provider shall:

(1) Conduct a visual assessment of the facility for lead hazards that exist in the form of chipping or peeling paint;

(2) Apply interim controls on any chipping or peeling paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and

(3) Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.

l. The child care home shall be located in a single-family residence that is owned, rented, or leased by the provider.

m. Any driver who transports children for any purpose shall have a valid driver's license and adequate motor vehicle insurance that authorizes the driver to operate the type of vehicle being driven. Child restraint devices shall be utilized in compliance with Iowa Code section 321.446.

n. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a

licensed veterinarian. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. This examination shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal shows no evidence of endoparasites (roundworms, hookworms, whipworms) and ectoparasites (fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that the bird is free of infectious diseases. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. Children shall not handle pet birds.

(3) Aquariums shall be well maintained and installed in a manner that prevents children from accessing the water or pulling over a tank.

(4) All animal waste shall be immediately removed from the children's areas and properly disposed of. Children shall not perform any feeding or care of pets or cleanup of pet waste.

(5) No animals shall be allowed in the food preparation, food storage, or serving areas during food preparation and serving times.

o. Using an injury report form, the provider shall document all injuries that require first aid or medical care. The form shall be completed on the date of occurrence, shared with the parent, and maintained in the child's file.

120.8(2) Use of outdoor space.

a. A safe outdoor play area shall be maintained in good condition throughout the year. The play area shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child and shall have both sunshine and shade areas. The play area shall be kept free from litter, rubbish, and flammable materials and shall be free from contamination by the drainage or ponding of sewage, household waste, or storm water.

b. When there is a swimming or wading pool on the premises:

(1) The wading pool shall be drained daily and shall be inaccessible to children when it is not in use.

(2) An aboveground or in-ground swimming pool that is not fenced shall be covered whenever the pool is not in use. The cover shall meet or exceed the ASTM International (formerly known as the American Society for Testing and Materials) specification intended to reduce the risk of drowning by inhibiting access to the water by children under five years of age.

(3) An uncovered aboveground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high.

(4) An uncovered in-ground swimming pool shall be enclosed with an approved fence that is nonclimbable and is at least four feet high and flush with the ground.

c. If children are allowed to use an aboveground or in-ground swimming pool:

(1) Written permission from parents shall be available for review.

(2) Equipment needed to rescue a child or adult shall be readily accessible.

(3) The child care provider shall accompany the children and provide constant supervision while the children use the pool.

(4) The child care provider shall complete training in cardiopulmonary resuscitation for infants, toddlers, and children, according to the criteria of the American Red Cross or the American Heart Association.

120.8(3) Medications and hazardous materials.

a. All medicines and poisonous, toxic, or otherwise unsafe materials shall be secured from access by a child.

b. A first-aid kit shall be available and easily accessible whenever children are in the child

care home, in the outdoor play area, in vehicles used to transport children, and on field trips. The kit shall be sufficient to address first aid related to minor injury or trauma and shall be stored in an area inaccessible to children. The kit shall, at a minimum, include adhesive bandages, bottled water, disposable tweezers, and disposable plastic gloves.

c. Medications shall be given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children. Any medication administered to a child shall be recorded, and the record shall indicate the name of the medication, the date and time of administration, and the amount administered.

d. Medications shall not be provided to a child if the provider has not completed preservice/orientation training that includes medication administration.

120.8(4) Emergency plans. Emergency plans in case of man-made or natural disaster shall be written and posted by the primary and secondary exits. The plans shall clearly map building evacuation routes and tornado and flood shelter areas.

a. Fire and tornado drills shall be practiced monthly, and the provider shall keep documentation evidencing compliance with monthly practice on file.

b. The provider must have procedures in place for the following:

(1) Evacuation to safely leave the facility.

(2) Relocation to a common, safe location after evacuation.

(3) Shelter-in-place to take immediate shelter where the child is when it is unsafe to leave that location due to the emergent issue.

(4) Lockdown to protect children and providers from an external situation.

(5) Communication and plans for reunification with families.

(6) Continuity of operations.

(7) To address the needs of individual children, including those with functional or access needs.

120.8(5) Safe sleep. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Infant sleep shall conform to the following standards:

a. Infants shall always be placed on their backs for sleep.

b. Infants shall be placed on a firm mattress with a tight fitted sheet that meets U.S. Consumer Product Safety Commission federal standards.

c. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No child shall be allowed to sleep in any items not designed for sleeping, but not limited to, an infant seat, car seat, swing, bouncy seat.

d. No toys, soft objects, stuffed animals, pillows, bumper pads, blankets, or loose bedding shall be allowed in the sleeping area with the infant.

e. No co-sleeping shall be allowed.

f. Sleeping infants shall be actively observed by sight and sound.

g. If an alternate sleeping position is needed, a signed physician authorization with statement of medical reason is required.

120.8(6) Discipline. Discipline shall conform to the following standards:

- a. Corporal punishment, including spanking, shaking and slapping, shall not be used.
- b. Punishment that is humiliating or frightening or that causes pain or discomfort to the child shall not be used.
- c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.
- d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.
- e. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

120.8(7) Meals and snacks.

- a. Regular meals and snacks that are well-balanced and nourishing shall be provided.
- b. Children may bring food to the child care home for their own consumption but shall not be required to provide their own food.
- c. Clean, sanitary drinking water shall be readily available to children in indoor and outdoor areas, throughout the day.

441—120.9(237A) Children's files.

120.9(1) An individual file for each child shall be maintained and updated annually or when the provider becomes aware of changes.

120.9(2) The file shall contain:

- a. Identifying information including, at a minimum, the child's name and birth date; the parent's name, address and telephone number; the special needs of the child; and the parent's work address and telephone number.

b. Emergency contact information including, at a minimum, where the parent can be reached, the name, street address, city and telephone number of the child's regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.

c. A signed medical consent from the parent authorizing emergency medical and dental treatment.

d. An admission physical examination report signed by a licensed physician or the designee in a clinic supervised by a licensed physician.

e. A statement of health condition signed by a physician or designee submitted annually from the date of the admission physical examination. For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.

f. A list that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

g. A signed and dated immunization certificate provided by the Iowa department of public health. For the school-age child, a copy of the most recent immunization record shall be acceptable.

h. Written permission from the parent for the child to attend activities away from the child care home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

i. If the child meets the definition of homelessness as defined by Section 725(2) of the

McKinney Vento Homeless Education Assistance Act, the family shall receive a 60-day grace period to obtain medical documentation.

441—120.10(237A) Professional development.

120.10(1) Prior to the issuance of a provider agreement and every five years thereafter, the provider shall complete minimum health and safety trainings, approved by the department, in all of the following content areas:

- a. Prevention and control of infectious disease, including immunizations.
- b. Prevention of sudden infant death syndrome and use of safe sleep practices.
- c. Administration of medication, consistent with standards for parental consent.
- d. Prevention of and response to emergencies due to food and allergic reactions.
- e. Building and physical-premises safety, including identification of and protection from hazards that can cause bodily injury, such as electrical hazards, bodies of water, and vehicular traffic.
- f. Prevention of shaken baby syndrome and abusive head trauma.
- g. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.
- h. Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- i. Precautions in transporting children.

120.10(2) Prior to issuance of a provider agreement and every five years thereafter, the provider shall complete two hours of Iowa’s training for mandatory reporting of child abuse.

120.10(3) Prior to issuance of a provider agreement, the provider shall complete first-aid and cardiopulmonary resuscitation (CPR) training that meets the following requirements:

a. Training shall be provided by a nationally recognized training organization, such as the American Red Cross, American Heart Association, National Safety Council, or American Safety and Health Institute or MEDIC First Aid or by an equivalent trainer using curriculum approved by the department.

b. First-aid training shall include certification in infant and child first aid.

c. The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.

d. The provider shall maintain a valid certificate indicating the date of CPR training and the expiration date.

120.10(4) Minimum health and safety training may be required prior to the 5 year period if content has significant changes that warrant the training be renewed.

441—120.11(237A) Child care assistance provider agreement decision. The department shall issue Form 470-3871, Child Care Assistance Provider Agreement, when an applicant meets all requirements for a child care home. The department shall maintain a current list of child care homes as a referral service to the community.

120.11(1) A provider agreement shall be denied or canceled if the department finds a hazard to the safety and well-being of a child and the provider cannot correct or refuses to correct the hazard, even though the hazard may not have been specifically listed under these rules. The provider agreement may also be denied or canceled if the department determines that the provider has failed to comply with standards imposed by law and rules found in this chapter or at 441—Chapter 170.

120.11(2) Record of all denials or cancellations of provider agreements and the documentation of reasons for denying or canceling the agreement shall be kept in an open file.

120.11(3) Record checks.

a. **Applicability.** The department shall conduct Iowa criminal history record and child abuse record checks for each provider, substitute or staff member, anyone living in the home who is 14 years of age or older, and anyone having access to a child when the child is alone. The department shall conduct national criminal history record checks, based on fingerprints, for each provider, substitute or staff member, anyone living in the home who is 18 years of age or older, and anyone 18 years of age or older having access to a child when the child is alone. In accordance with Iowa Code section 726.23, minors under the age of 18 will not be subject to the fingerprint requirement.

(1) The purpose of these record checks is to determine whether the person has committed a transgression that prohibits or limits the person's involvement with child care.

(2) The department may also conduct criminal history record and child abuse record checks in other states and may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in Iowa or other states.

(3) Child care assistance provider agreements shall not be issued until the results of all state and national record checks have been received and, when necessary, evaluated.

b. **Authorization.** The person subject to record checks shall complete 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.

c. **Iowa records checks.** Checks and evaluations of Iowa child abuse and criminal history records shall be completed before the person's involvement with child care. Iowa records checks shall be repeated at a minimum of every two years and when the department or the provider

becomes aware of any possible transgressions. The department is responsible for the cost of conducting the Iowa records checks.

d. National criminal history record checks. Fingerprint-based checks of national criminal history records shall also be completed before a person's involvement with child care. This requirement shall be required for an initial application or a renewal application. The national criminal history record check shall be repeated for each person subject to the check every four years and when the department or provider becomes aware of any new transgressions committed by that person in another state. The department is responsible for the cost of conducting the national criminal history record check.

(1) The provider is responsible for any costs associated with the taking (rolling) of fingerprints of all persons subject to record checks and for submitting the fingerprints to the department so the national criminal history record check can be completed. Fingerprints may be taken (rolled) by law enforcement agencies or by agencies or companies that specialize in taking (rolling) fingerprints.

(2) The department shall provide fingerprints to the department of public safety no later than ten business days after receipt of the fingerprint cards. The department shall submit the fingerprints on forms or in a manner allowed by the department of public safety.

(3) The department may rely on the results of previously conducted national criminal history record checks when a person subject to a record check in one child development home or child care home submits a request for involvement with child care in another child development home or child care home, so long as the person's national criminal history record check is within the allowable four-year time frame. All initial or new applications shall require a new national criminal history record check.

e. Mandatory prohibition. A person with any of the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) Founded child or dependent adult abuse that was determined to be sexual abuse.

(2) Placement on the sex offender registry.

(3) Felony child endangerment or neglect or abandonment of a dependent person.

(4) Felony domestic abuse.

(5) Felony crime against a child including, but not limited to, sexual exploitation of a minor.

(6) Forcible felony.

f. Mandatory time-limited prohibition.

(1) A person with the following conviction or founded abuse report is prohibited from involvement with child care for five years from the date of the conviction or the founded abuse report:

1. Conviction of a controlled substance offense under Iowa Code chapter 124.

2. Founded abuse that was determined to be physical abuse.

(2) After the five-year prohibition period (from the date of the conviction or the founded abuse report) as defined in subparagraph 120.11(3)“f”(1), the person may request the department to perform an evaluation under paragraph 120.11(3)“g” to determine whether prohibition of the person’s involvement with child care continues to be warranted.

g. Evaluation required. For all other transgressions, and as requested under subparagraph 120.11(3)“f”(2), the department shall evaluate the transgression and make a decision about the person’s involvement with child care.

(1) The person with the transgression shall complete and return 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 child care assistance provider agreement.

(2) The department may use information from the department's case records in performing the evaluation.

(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.

(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 the person 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.

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 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 record check evaluation, the department shall mail to the person subject to an evaluation a record check decision that explains the decision reached regarding the evaluation of the transgression and a notice of decision: child care.

(3) The department shall issue 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 within the ten-calendar-day time frame.

(4) If the department determines, through the record check evaluation process, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited

from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed.

(5) The department may permit a person who is evaluated to maintain involvement with child care if the person complies with the department's conditions relating to the person's involvement with child care, which may include completion of additional training or an individually designed corrective action plan, or both. For an employee of a provider, these conditional requirements shall be developed with the provider. All conditions placed on a person's involvement with child care shall be communicated, in writing, to both the person subject to the evaluation and the provider.

i. Notice to parents of abuse in care. If there has been founded child abuse committed by an owner, director, or staff member of the child care facility or child care home, the department's administrator shall notify the parents, guardians, and legal custodians of each child for whom the facility or child care home provides care.

(1) The child care facility or child care home shall cooperate with the department in providing the names and addresses of the parent, guardian, or custodian of each child for whom the facility provides child care.

(2) This information shall be provided to the department within ten calendar days from the date of the initial request.

(3) Failure or refusal to provide the requested information may result in cancellation of the provider agreement.

120.11(4) Required notifications to the department.

a. The provider shall, within ten days, notify the department of any of the following:

(1) Changes in substitutes;

- (2) Changes in household membership;
- (3) Address changes; and
- (4) Criminal convictions.

b. No substitute shall be utilized in the care of children and no person shall be permitted to reside in the household until approved by the department.

c. If the provider does not notify the department of changes within ten days, the provider may be subject to revocation of the provider's child care assistance provider agreement or to recoupment of child care assistance provided, or both.

441—120.12(237A) Complaints. The department shall conduct an on-site visit when a complaint is received.

120.12(1) After each complaint visit, the department shall document whether the child care home was in compliance with requirements.

120.12(2) The written documentation of the department's conclusion as to whether the child care home was in compliance with requirements shall be available to the public. However, the identity of all complainants shall be confidential, unless expressly waived by the complainant.

441—120.13(237A) Prohibition from involvement with child care. If the department has prohibited a person or program from involvement with child care, that person or program shall not provide child care as a nonregistered child care home provider.

These rules are intended to implement Iowa Code section 237A.12.

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 Child Care and Development Block Grant was reauthorized in November 2014. As a result, there are new federal laws outlining health, safety, and fire standards for child care providers that receive child care assistance dollars. A new rule chapter has been created, 441 IAC 120, to outline the requirements for child care providers that receive subsidy dollars but are not required to register by State law.

2. What is the reason for the Department to request these changes?

As a result of the CCDBG reauthorization, child care providers must meet minimum health, safety, and fire standards. To assure accurate review of these programs for compliance, this rule chapter was created.

3. What will be the effect of the rule adoption? (who, what, when, how)?

Federal legislation will affect a number of child care providers through increase regulation and pre-service training that will also be required. These regulations will be in place for any person wishing to receive Child Care Assistance (CCDF funds) after September 30, 2016 and will be required upon renewal for existing child care providers. Parents will be assured that the health and safety of children in care is a priority by outlining expectations for all license, registered, and non-registered child care providers receiving CCDH funds. Parents will also be assured that child care providers are receiving training that is relevant to the care being provided to children.

4. Is the change mandated by State or Federal Law? (Cite the authorizing state and federal statutes and federal regulations)

Changes being made as a result of federal legislation are a direct result of the Child Care and Development Block Grant Act of 2014. Federal rules are currently being completed but draft rules went out in December 2015 for public comment.

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?

Child Care providers will be affected by these rules changes. While some of the minor changes will likely have little effect, providers will have a number of training requirements and inspection requirements that they have not currently had. Despite this, all of the rules that have been identified are a direct improvement to the quality of care that is provided to children.

6. What are the potential benefits of this rule?

Benefits to the rule modifications are increased quality of care and increase in health and safety

expectations. When parents enroll their children in a non-registered home, they will know that the provider has received specific training and that the home will be inspected annually

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

The Department of Human Services does not intend to ask for additional funding to meet compliance check requirements. This will be completed by existing staff.

Non-registered child care providers are not familiar with having regulatory requirements and annual inspections. They may find associated costs with coming into compliance with rules.

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?

No other alternatives have been identified

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 known impact.

ADMINISTRATIVE RULE FISCAL IMPACT STATEMENT

Date: 4/4/16

Agency: Human Services

IAC citation: 441 IAC 120

Agency contact: Ryan Page

Summary of the rule: Various rule changes are necessary to comply with new federal requirements under the Child Care and Development Block Grant (CCDBG) Act of 2014. The rules in Chapter 120 are for non-registered Child Care Homes that receive payments from the state's child care assistance program and relate to health and safety standards that the providers must meet, compliance checks to be conducted by the department, record check requirements, and training required of the providers.

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: There is no fiscal impact to the state regarding the requirements that must be met by child care providers. The required compliance checks that must be completed by the department will be conducted by existing staff, so no additional cost is anticipated. The current record check requirements remain in effect, therefore there is no additional cost for those.

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.
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:

Non-registered child care providers that participate in the state's child care assistance program will have new regulatory requirements and annual inspections. They may incur additional costs to comply with the rules because they have not been subject to these requirements before. The cost to the providers is unknown.

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