

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 109, "Child Care Centers," and Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments revise rules regarding child care providers who are currently allowed to operate child care facilities considered exempt from licensing by the Department of Human Services because the facilities are administered under contract with the Department of Education.

These amendments also modify rules regarding the definition of "child care" and pertaining to allowable exemptions. Programs previously exempt when operating under the Department of Education will no longer be allowable exemptions.

Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 2073C on August 5, 2015. The Department received no comments during the comment period. However, the Department reviewed the Notice of Intended Action and found that an element in ITEM 1. Revise paragraph **109.1(237A)** definition of "Child care" had been incorrectly deleted. The definition of "Child care" in ITEM 1. has been amended as follows:

"Child care" means the care, supervision, or guidance of a child by a person other than the parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child's home, but does not include care, supervision, or guidance of a child by any of the following:

1. An instructional program administered by a public or nonpublic school system accredited by the department of education or the state board of regents ~~or a program provided under Iowa Code sections 279.49 and 280.3A.~~

2. to 14. No change.

The Council on Human Services adopted these amendments on September 9, 2015.

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

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

These amendments are intended to implement Iowa Code section 234.6.

These amendments will become effective January 1, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **441—109.1(237A)**, definition of “Child care,” as follows:

“Child care” means the care, supervision, or guidance of a child by a person other than the parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child's home, but does not include care, supervision, or guidance of a child by any of the following:

1. An instructional program administered by a public or nonpublic school system accredited by the department of education ~~or the state board of regents or a program provided under Iowa Code sections 279.49 and 280.3A.~~

2. to 14. No change.

ITEM 2. Amend **441—Chapter 170**, preamble, as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child care services. Child care services are for children of low-income parents who are in academic or

vocational training; or employed or looking for employment; or for a limited period of time, unable to care for children due to physical or mental illness; or needing protective services to prevent or alleviate child abuse or neglect. Services may be provided in a licensed child care center, a registered child development home, the home of a relative, the child's own home, or a nonregistered family child care home, ~~or in a facility exempt from licensing or registration.~~

ITEM 3. Amend rule ~~441—170.1(237A)~~, definition of “Provider,” as follows:

“Provider” means a licensed child care center, a registered child development home, a relative who provides care in the relative's own home solely for a related child, a caretaker who provides care for a child in the child's home, or a nonregistered child care home, ~~or a child care facility which is exempt from licensing or registration.~~

ITEM 4. Rescind subparagraph ~~170.4(2)“a”(3)~~.

ITEM 5. Rescind paragraph ~~170.4(3)“g.”~~

ITEM 6. Reletter paragraphs ~~170.4(3)“h”~~ to “j” as ~~170.4(3)“g”~~ to “i.”

ITEM 7. Amend relettered paragraph ~~170.4(3)“i”~~ as follows:

i. Transgressions. If any person subject to the record checks in paragraph ~~170.4(3)“h”“g”~~ or ~~170.4(3)“i”“h”~~ has a record of founded child abuse, dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the department shall follow the process for prohibition or evaluation defined at ~~441—subrule 110.7(3)~~.

(1) and (2) No change.

Information on Proposed Rules

Name of Program Specialist Mark Adams	Telephone Number 281-5688	E-mail Address Madams4@dhs.state.ia.us
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1.	<p>Give a brief summary of the rule changes:</p> <p>Revise 441 IAC 170 to revise rules regarding child care providers who are currently allowed to operate child care facilities considered 'exempt' from DHS licensing because they are administered under contract to the Department of Education.</p> <p>Also revise 441 IAC 170 to remove co-pay examples.</p> <p>Revise 441 IAC 109 to modify rules regarding the definition of child care and allowable exemptions. Programs previously exempt when operating under the Department of Education will no longer be an allowable exemption.</p>
2.	<p>What is the reason for the Department to request these changes?</p> <p>HF347 now requires DHS to license these 'school-based' child care providers. They can no longer choose to be exempt from licensing under the Department of Education.</p> <p>The co-pay examples are not necessary.</p>
3.	<p>What will be the effect of the rule adoption? (who, what, when, how)?</p> <p>Child care programs located in school buildings must now be licensed by DHS unless the program is exempt from licensure under a different exemption. The Iowa Code found at 279.49 and 280.3A allowing the option for the Department of Education to administer child care programs has been modified to transfer regulatory authority to DHS to license these providers.</p> <p>Eliminates the need to update the co-pay examples on a regular basis.</p>
4.	<p>Is the change mandated by State or Federal Law? (Cite the authorizing state and federal statutes and federal regulations)</p> <p>State law. HF347 made changes to Iowa Code 237A, 279.49 and 280.3A regarding licensing of providers.</p>
5.	<p>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?</p> <p>Providers must now apply for a DHS center license if they want to operate a child care facility in school buildings unless the program is exempt from licensure under a different exemption.</p>
6.	<p>What are the potential benefits of this rule?</p> <p>Better, more consistent, regulation of all types of center facilities by DHS. Eliminate unnecessary language from rules.</p>
7.	<p>What are the potential costs, to the regulated community or the State of Iowa as a whole, of this rule?</p> <p>Providers will now need to pay a licensing fee to DHS.</p>
8.	<p>Do any other agencies regulate in this area? If so, what agencies and what Administrative Code Sections apply?</p> <p>No.</p>

<p>9. What alternatives to direct regulation in this area are available to the agency? Why were other alternatives not used?</p> <p>N/A</p>
<p>10. Does this rule contain a waiver provision? If not, why?</p> <p>This amendment does not provide a specific waiver authority because families may request a waiver of these provisions in a specified situation under the Department's general rule on exceptions at 441 – 1.8(17A, 217)</p>
<p>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)</p> <p>No.</p>

ADMINISTRATIVE RULE FISCAL IMPACT STATEMENT

Date: 5/20/2015

Agency: Human Services

IAC citation: 441 IAC

Agency contact: Mark Adams

Summary of the rule:

Revise 441 IAC 170 and 109 to change rules relating to child care providers exempt from licensing and to remove unnecessary co-pay examples.

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:

New licensing work will be absorbed by existing staff. No fiscal impact to CCA program.
Removing co-pay examples is a technical change with no fiscal impact.

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

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

Assumptions:

Describe how estimates were derived:

