

August 28, 2019

Dear Council Member:

The following amendments to the administrative rules are presented for adoption at the September 10-11, 2019 meeting of the Council on Human Services:

**N-1.** Amendments to Chapter 13, "Program Evaluation". These proposed amendments clarify the programs that are reviewed by the Department of Human Services Quality Control Bureau. These amendments also update forms that are required in that process and remove obsolete forms.

**N-2.** Amendments to Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 83, "Medicaid Waiver Services". The Department is clarifying the Brain Injury (BI) Waiver provider qualifications to align with the services and supports that are rendered by qualified brain injury professionals and accredited brain injury rehabilitation programs.

**N-3.** Amendments to Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 80, "Procedure and Method of Payment," and Chapter 81, "Nursing Facilities." These proposed amendments provide updated form names, numbers and terminology and remove references to form names and numbers that are no longer in use.

**N-4.** Amendments to Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program". The proposed amendments add language to reflect the Department's implementation of a passive managed care enrollment. HAWK-I- eligible individuals will be passively enrolled with a managed care plan; however, the effective date will remain consistent with current practices. The propose amendments also add necessary definitions, revise the time frame for a decision on eligibility, clarify policy on when a waiting period does not apply, revise premium payment language, eliminate the lock-out period for premium nonpayment, make technical changes and remove outdated program language.

**N-5.** Amendments to Chapter 105, "Juvenile Detention and Shelter Care Homes", Chapter 112, "Licensing and Regulation of Child Foster Care Facilities," and Chapter 114, "Licensing and Regulation of All Group Foster Care Facilities for Children," Chapter 115, "Licensing and Regulation of Comprehensive Residential Facilities for Children," and Chapter 116, "Licensing and Regulation of Residential Facilities for Children with an Intellectual Disability." These proposed amendments remove obsolete elements within the administrative rules, bring better alignment to current practice and implement changes required within federal law.

**N-6.** Amendments to Chapter 109, "Child Care Centers." These proposed amendments document the expectation of a pre-inspection visit prior to granting a new child care center permission to open. Pre-inspection visits occur in practice already. These amendments clarify the expectation around Department receipt of the regulatory fee during application and when and where the fee is submitted. These proposed amendments better align rules to current practice.

**N-7.** Amendments to Chapter 109, "Child Care Centers," Chapter 110, "Child Development Homes," and Chapter 120, "Child Care Homes." These proposed amendments change child abuse mandatory reporter training requirements for child care providers from once every five years to once every three years with modified expectations. These proposed amendments remove the five-year requirement and state that certification must be maintained. Additionally, the proposed amendments require all child care providers to participate in minimum health and safety training as a preservice or orientation requirement. The requirement for child care providers to take preservice training every five years without training credit is removed. Child care providers would be able to continue their professional development requirements without repeating the same training and may also receive credit for the training taken.

The monthly rules-in-process spreadsheet detailing all rules currently in process for implementation within SFY 2020 is enclosed.

Sincerely,

*Nancy Freudenberg*

Nancy Freudenberg  
Bureau Chief  
Policy Coordination

Enclosures

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to definitions and forms  
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 13, "Program Evaluation," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.6.

*Purpose and Summary*

These proposed amendments clarify the programs that are reviewed by the Department of Human Services Quality Control Bureau. These amendments also update forms that are required in that process.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 3, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **441—Chapter 13**, preamble, as follows:

PREAMBLE

The purpose of this chapter is to define the methods and procedures used by the department to provide a systematic ~~method~~ process for measuring the validity of the eligibility determinations in the ~~aid to dependent children (ADC)~~ family investment program (FIP), food stamp assistance program, child care assistance program, and Medicaid programs medical assistance program; to provide a basis for establishing state agency liability for errors that ~~exceed the national standard and state agency eligibility for enhanced funding~~; and to provide program information which that can be used by the department in determining a corrective action plan to ensure the rules and regulations are implemented in accordance with the ~~ADC, food stamp and Medicaid~~ program rules.

ITEM 2. Rescind rule 441—13.1(234,239B,249A) and adopt the following **new** rule in lieu thereof:

**441—13.1(234,239B,249A,514I) Definitions.**

"*Active case*" means a case that was receiving assistance for the month of review.

"*Case record*" means the record used to establish a client's eligibility.

"*Client*" means a current or former applicant or recipient of the family investment program (FIP), food assistance program, child care assistance program, or medical assistance program.

"*Department*" means the Iowa department of human services.

"*Field investigation*" means a contact involving the public or other agencies to obtain information about the client's circumstances for the appropriate month of review.

"*Local agency*" means the local or service area office of the department.

"*Medical assistance programs*" means those programs funded by Medicaid or the Children's Health Insurance Program (CHIP).

"*Month of review*" means the specific calendar or fiscal month for which the assistance under review is received.

"*Negative case*" means a case that was terminated or denied assistance in the month of review.

"*Public assistance programs*" means those programs involving federal funds, i.e., family investment program (FIP), food assistance program, child care assistance program, and medical assistance program.

"*Random sample*" means a systematic (or every nth unit) sample drawn monthly for which each item in the universe has an equal probability of being selected. Sample size is determined by federal guidelines or state corrective action needs.

"*State policies*" means the rules and regulations used by the department to administer the family investment program (FIP), food assistance program, child care assistance program, and medical assistance program.

This rule is intended to implement Iowa Code sections 234.12, 239B.4, 249A.4 and 514I.4.

ITEM 3. Amend rule 441—13.2(234,239B,249A) as follows:

**441—13.2(234,239B,249A,514I) Review of public assistance records by the department.**

**13.2(1)** No change.

**13.2(2)** All pertinent case records within the department may be used by the reviewer to assist in substantiating an accurate reflection as to the correctness of the assistance ~~paid to~~ received by the client.

This rule is intended to implement Iowa Code sections 234.12, 239B.4, ~~and 249A.4~~ and 514I.4.

ITEM 4. Amend rule 441—13.3(234,239B,249A) as follows:

**441—13.3(234,239B,249A,514I) Who shall be reviewed.** Any active or negative public assistance case may be reviewed at any time at the discretion of the department based upon a random sample to:

**13.3(1) to 13.3(3)** No change.

This rule is intended to implement Iowa Code sections 234.6, 234.12, 239B.4, and 249A.4, and 514I.4.

ITEM 5. Amend rule 441—13.4(234,239B,249A) as follows:

**441—13.4(234,239B,249A,514I) Notification of review.** On positive case actions, clients shall be notified, either orally or in writing, that their case has been selected for review when contact is required by federal guidelines, or when contact is allowed and additional information is required to complete the review. The client will be contacted in a negative case only if a discrepancy exists ~~which that~~ cannot be resolved from the case record and contact is allowed by federal guidelines.

This rule is intended to implement Iowa Code sections 234.6, 234.12, 239B.4, and 249A.4, and 514I.4.

ITEM 6. Rescind rule 441—13.5(234,239B,249A) and adopt the following **new** rule in lieu thereof:

**441—13.5(234,239B,249A,514I) Review procedure.** The department will select the appropriate method of conducting the review. Review procedures may include, but are not limited to, the following:

**13.5(1)** A random sampling of active and negative case actions shall be used to determine the case records to be studied.

**13.5(2)** The case record shall be analyzed for discrepancies and correct application of policies and procedures and shall be used as the basis for a field investigation.

**13.5(3)** Client interviews shall be required as follows:

*a.* Personal interviews are required on all active food assistance reviews.

*b.* An appointment letter may be sent to the client on department letterhead to schedule or confirm the appointment date, time and location.

*c.* Client contacts are only required in negative case reviews when there is a discrepancy that cannot be resolved from the case record.

**13.5(4)** Collateral contacts are made whenever the client is unable to furnish information needed or the reviewer needs additional information to establish the correctness of eligibility and payment but only when allowed by federal guidelines. Verification to confirm the accuracy of statements or information may be obtained by documentary evidence or a contact with a third party.

*a.* The client shall be required to release specific information whenever necessary to verify information essential to the determination of eligibility and payment.

*b.* Should the client refuse to authorize the department to contact an informant to verify information that is necessary for the completion of the review, collateral contacts shall still be made through use of the general release statement contained in the financial support application or the review/recertification eligibility document;

This rule is intended to implement Iowa Code sections 234.6, 234.12, 239B.4, 249A.4, and 514I.4.

ITEM 7. Amend rule 441—13.6(234,239B,249A) as follows:

**441—13.6(234,239B,249A) Failure to cooperate.** Client cooperation with quality control is a

program eligibility requirement as set forth in ~~441—subrule 40.7(4), paragraph “d,” and rules~~ rule 441—65.3(234) and 441—76.8(249A). When quality control determines that the client has refused to cooperate with the review process, the client is no longer eligible for the program benefits and will not be eligible for the program benefits until the client has cooperated.

This rule is intended to implement Iowa Code sections section 234.12, 239B.4 and 249A.4.

ITEM 8. Amend rule 441—13.7(234,239B,249A) as follows:

**441—13.7(234,239B,249A,514I) Report of findings.** The quality control review findings are utilized by the department in the following ways:

**13.7(1)** The local agency will use the findings in taking the appropriate case actions where an overpayment or underpayment has been found in a client’s case record.

**13.7(2)** The department will use the overall findings to identify ~~error-prone~~ error-prone program issues to be used in planning ~~their~~ its corrective action plan.

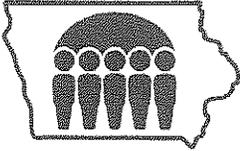
**13.7(3)** The department will use the findings of the overall sample period to determine the error rate used to establish state agency liability ~~or enhanced funding~~.

This rule is intended to implement Iowa Code sections 234.12, 239B.4, and 249A.4, and 514I.4.

ITEM 9. Amend rule 441—13.8(234,239B,249A) as follows:

**441—13.8(234,237A,239B,249A,514I) Federal rereview.** A sample of the cases selected by the department for review will may also be reviewed by the applicable federal agency to determine the correctness of the department’s action or of the department’s review of the case.

This rule is intended to implement Iowa Code sections 234.12, 237A.12, 239B.4, 249A.4, and 514I.4.



# Administrative Rule Fiscal Impact Statement

Date: March 26, 2019

**Agency:** Human Services  
**IAC citation:** 441 IAC 13  
**Agency contact:** Carol Stratemeyer

**Summary of the rule:**

This rulemaking clarifies the programs that are reviewed by the Quality Control Bureau and updates the forms that are used in that process.

*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:**

Budget Analysts must complete this section for ALL fiscal impact statements.  
There is no expected impact on DHS.

*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 2020)</u>	<u>Year 2 (FY 2021)</u>
<b>Revenue by each source:</b>		
General fund	0.00	0.00
Federal funds	0.00	0.00
Other (specify):	0.00	0.00
<b>TOTAL REVENUE</b>	<u>0.00</u>	<u>0.00</u>
<b>Expenditures:</b>		
General fund	0.00	0.00
Federal funds	0.00	0.00
Other (specify):	0.00	0.00
<b>TOTAL EXPENDITURES</b>	<u>0.00</u>	<u>0.00</u>
<b>NET IMPACT</b>	<u>0.00</u>	<u>0.00</u>

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:*  
 There is no impact on DHS.

***Fiscal impact to persons affected by the rule:***

There is no impact.

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

None

Agency representative preparing estimate: Rob Beran

Telephone number: 515-281-6188

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to brain injury waiver  
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 249A.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.3.

*Purpose and Summary*

The Department is clarifying the brain injury (BI) waiver provider qualifications to align with the services and supports that are rendered by qualified brain injury professionals and accredited brain injury rehabilitation programs. The Department began evaluating core standardized assessments for the BI waiver in 2011 as part of the Balancing Incentive Payment Program (BIPP), and the Iowa Medicaid Enterprise (IME) adopted the interRAI Home Care Assessment Tool for the purposes of determining level of care for BI waiver eligibility. The Department adopted this tool recognizing that an additional or alternative tool would need to be identified which would address the cognitive disabilities related to brain injury. The primary goal of moving forward with adoption of the most current version of the Mayo-Portland Adaptability Inventory Scale is to fulfill the purposes of a valid and appropriate assessment of need, possible allocation of resources and comprehensive community-based, person-centered service planning for both the HCBS brain injury waiver and the community-based neurobehavioral rehabilitation service.

*Fiscal Impact*

This rule making has a fiscal impact of \$100,000 annually or \$500,000 over five years to the State of Iowa. The fiscal impact for family training and counseling and behavior programming providers cannot be determined at this time because the number of new providers that will enroll and the number of members who will access the service are not known.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making.

Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 17, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

#### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** paragraph **77.39(21)“f”**:

*f.* Agencies which are accredited by a department-approved, nationally recognized accreditation organization as specialty brain injury rehabilitation service providers.

ITEM 2. Adopt the following **new** subparagraphs **77.39(23)“b”(6)** and **(7)**:

(6) Agencies which are accredited by a department-approved, nationally recognized accreditation organization as specialty brain injury rehabilitation service providers.

(7) Individuals who meet the definition of “qualified brain injury professional” as set forth in rule 441—83.81(249A).

ITEM 3. Amend subrule 77.52(3) as follows:

**77.52(3) Provider standards.** All community-based neurobehavioral rehabilitation service providers shall meet the following criteria:

*a.* The organization meets the outcome-based standards for community-based neurobehavioral rehabilitation service providers as follows:

(1) to (3) No change.

(4) The program administrator shall be a certified brain injury specialist trainer (CBIST) through the Academy of Certified Brain Injury Specialists or a certified brain injury specialist under the direct supervision of a CBIST or a qualified brain injury professional as defined in rule 441—83.81(249A) with additional certification as approved by the department. The administrator shall be present in the assigned location for 25 hours per week. In the event of an absence from the assigned location exceeding four weeks, the organization shall designate a qualified replacement to act as administrator for the duration of the assigned administrator’s absence.

(5) A minimum of 75 percent of the organization’s administrative and direct care personnel shall meet one of the following criteria:

1. to 3. No change.

4. Be a certified brain injury specialist (CBIS) certified through the Academy for the

Certification of Brain Injury Specialists (ACBIS) or have other nationally recognized brain injury certification as approved by the department.

(6) No change.

b. No change.

c. Within 30 days of commencement of direct service provision, employees shall complete nationally recognized cardiopulmonary resuscitation (CPR) training certification, a first-aid course, fire prevention and reaction training and universal precautions training. These training courses shall be completed no less than annually, with the exception of CPR certification, which must be renewed prior to expiration of the certification.

d. Within the first six months of commencement of direct service provision, employees shall complete training required by ~~441—subparagraph 78.54(3)“a”~~(6) subparagraph 77.52(3)“a”(6).

e. Within 12 months of the commencement of direct service provision, employees shall complete a department-approved, nationally recognized certified brain injury specialist training. A majority of eligible employees within 12 months of the commencement of direct service provision shall be CBISs certified through ACBIS or have other nationally recognized brain injury certification as approved by the department.

f. to j. No change.

k. The organization shall implement the following outcome-based standards for rights and dignity:

(1) to (4) No change.

(5) When a member requires any restrictive interventions, the interventions will be implemented in accordance with ~~481—subrule 63.23(4), rule 481—63.33(135C), and rule 481—63.37(135C)~~ rules 481—63.21(135C), 481—63.27(135C), and 481—63.28(135C). When a member has a guardian or legal representative, the guardian or legal representative shall provide informed consent to treat and consent for any restrictive interventions that may be required to protect the health or safety of the member. Restrictive interventions include but are not limited to:

1. to 8. No change.

(6) to (11) No change.

ITEM 4. Amend subrule 78.56(2) as follows:

**78.56(2) Member eligibility.** To be eligible to receive community-based neurobehavioral rehabilitation services, a member shall meet the following criteria:

a. to c. No change.

d. *Needs assessment.* The member shall have ~~a standardized comprehensive functional neurobehavioral assessment reviewed or an assessment of need completed prior to admission. The member shall have the Mayo-Portland Adaptability Inventory (MPAI) assessment completed by a licensed neuropsychologist, neurologist, M.D., or D.O qualified trained assessor.~~ an assessment of need shall document the member's need for community-based neurobehavioral rehabilitation, and the medical services unit of the Iowa Medicaid enterprise or the member's managed care organization has determined that the member is in need of specialty neurobehavioral rehabilitation services.

e. *Standards for assessment.* Each member will have had ~~a department-approved, standardized comprehensive functional neurobehavioral~~ the MPAI assessment completed within the 90 days prior to admission. ~~Each~~ In addition to the functional assessment, the needs assessment will have been completed and will include the assessment of a member's individual physical, emotional, cognitive, medical and psychosocial residuals related to the member's brain injury ~~, which and~~ and must include the following:

(1) to (10) No change.

f. No change.

ITEM 5. Amend rule ~~441—83.81(249A)~~, definition of “Qualified brain injury professional,” as follows:

*“Qualified brain injury professional”* means one of the following who meets the educational and

licensure or certification requirements for the profession as required in the state of Iowa and who has two years' experience working with people living with a brain injury: a psychologist; psychiatrist; physician; physician assistant; registered nurse; certified teacher; licensed clinical social worker; mental health counselor; physical, occupational, recreational, or speech therapist; or a person with a bachelor of arts or science degree in human services, social work, psychology, sociology, or public health or rehabilitation services plus 4,000 hours of direct experience with people living with a brain injury.

ITEM 6. Amend paragraph **83.82(1)“f”** as follows:

*f.* Be determined by the IME medical services unit as in need of intermediate care facility for persons with an intellectual disability (ICF/ID), skilled nursing, or ICF level of care based on information submitted on a completed Form 470-4694 for children aged 3 and under, the interRAI - Pediatric Home Care (PEDS-HC) for those aged 4 to 20, or the interRAI - Home Care (HC) for those aged 21 and over, the most recent version of the Mayo-Portland Adaptability Inventory (MPAI), and other supporting documentation as relevant. Form 470-4694, the interRAI - Pediatric Home Care (PEDS-HC), and the interRAI - Home Care (HC), Form 470-4694, and Form 470-5572, the Mayo-Portland Adaptability Inventory (MPAI), are available on request from the member's managed care organization or the IME medical services unit. Copies of the completed information submission tool for an individual are available to that individual from the individual's case manager or managed care organization.

ITEM 7. Amend subrule 83.82(4) as follows:

**83.82(4) Securing a state payment slot.**

*a. to c.* No change.

*d.* Applicants who currently reside in a community-based neurobehavioral rehabilitation residential setting, an intermediate care facility for persons with an intellectual disability (ICF/ID), a skilled nursing facility, or an ICF and have resided in that setting for six or more months may request a reserved capacity slot through the brain injury waiver.

(1) Applicants shall be allocated a reserved capacity slot on the basis of the date the request is received by the income maintenance worker or the waiver slot manager.

(2) In the event that more than one request for a reserved capacity slot is received at one time, applicants shall be allocated the next available reserved capacity slot on the basis of the month of birth, January being month one and the lowest number.

(3) Persons who do not fall within the available reserved capacity slots shall have their names maintained on the reserved capacity slot waiting list. As reserved capacity slots become available at the beginning of the next waiver year, persons shall be selected from the reserved capacity slot waiting list to utilize the number of approved reserved capacity slots based on their order on the waiting list.

*e.* The department shall reserve a set number of funding slots each waiver year for emergency need for all applicants who are on the waiting list maintained by the state on July 1, 2019, and for all new applications received on or after July 1, 2019. Applicants may request an emergency need reserved capacity slot by submitting the completed Home- and Community-Based Services (HCBS) Brain Injury Waiver Emergency Need Assessment, Form 470-5583, to the IME medical services unit.

(1) Emergency need criteria are as follows:

1. The usual caregiver has died or is incapable of providing care, and no other caregivers are available to provide needed supports.

2. The applicant has lost primary residence or will be losing housing within 30 days and has no other housing options available.

3. The applicant is living in a homeless shelter, and no alternative housing options are available.

4. There is founded abuse or neglect by a caregiver or others living within the home of the applicant, and the applicant must move from the home.

5. The applicant cannot meet basic health and safety needs without immediate supports.

(2) Urgent need criteria are as follows:

1. The caregiver will need support within 60 days in order for the applicant to remain living in

the current situation.

2. The caregiver will be unable to continue to provide care within the next 60 days.
3. The caregiver is 55 years of age or older and has a chronic or long-term physical or psychological condition that limits the ability to provide care.
4. The applicant is living in temporary housing and plans to move within 31 to 120 days.
5. The applicant is losing permanent housing and plans to move within 31 to 120 days.
6. The caregiver will be unable to be employed if services are not available.
7. There is a potential risk of abuse or neglect by a caregiver or others within the home of the applicant.
8. The applicant has behaviors that put the applicant at risk.
9. The applicant has behaviors that put others at risk.
10. The applicant is at risk of facility placement when needs could be met through community-based services.

(3) Applicants who meet an emergency need criterion shall be placed on the emergency reserved capacity priority waiting list based on the total number of criteria in subparagraph 83.82(4) "e"(1) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(4) Applicants who meet an urgent need criterion shall be placed on the priority waiting list after applicants who meet emergency need criteria. The position on the waiting list shall be based on the total number of criteria in subparagraph 83.82(4) "e"(2) that are met. If applicants meet an equal number of criteria, the position on the waiting list shall be based on the date of application and the age of the applicant. The applicant who has been on the waiting list longer shall be placed higher on the waiting list. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(5) Applicants who do not meet emergency or urgent need criteria shall remain on the waiting list, based on the date of application. If the application date is the same, the older applicant shall be placed higher on the waiting list.

(6) Applicants shall remain on the waiting list until a payment slot has been assigned to them for use, they withdraw from the list, or they become ineligible for the waiver. If there is a change in an applicant's need, the applicant may contact the local department office and request that a new emergency needs assessment be completed. The outcome of the assessment shall determine placement on the waiting list as directed in this subrule.

f. To maintain the approved number of members in the program, persons shall be selected from the waiting list as payment slots become available, based on their priority order on the waiting list.

(1) Once a payment slot is assigned, the department shall give written notice to the person within five working days.

(2) The department shall hold the payment slot for 30 days for the person to file a new application. If an application has not been filed within 30 days, the slot shall revert for use by the next person on the waiting list, if applicable. The person originally assigned the slot must reapply for a new slot.



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

Name of Program Specialist	Telephone Number 256-4653	Email Address lmoskow@dhs.state.ia.us
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1. Give a brief summary of the rule changes:

The proposed rule amends Iowa Admin Code 441-77

- Updates the providers that are eligible to participate in the Brain Injury Waiver as Family Training and Counseling and Behavior Programming providers.
- Adopts the current version of the Mayo Portland Adaptability Inventory as a supplement to the interRAI-HC for the purposes of BI Waiver level of care determination, comprehensive person-centered service planning and measuring individual member service outcomes.
- Adds an additional requirement for the CNRS Administrator to be present for a specific amount of time in the service location
- Clarifies the training and certification expectations for CNRS direct care staff.
- Formalizes the most current version of the Mayo Portland Adaptability Inventory as the required standardized assessment for Community-based Neurobehavioral Rehabilitation.
- Makes two technical corrections to incorrect rule citations.
- Adding the reserved capacity slot criteria for the BI Waiver.

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

Section 249A.15A, Code 2018

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

The Department is clarifying the BI Waiver provider qualifications to align with the services and supports that are being rendered by Qualified Brain Injury Professionals and accredited brain injury rehabilitation programs

The Department began evaluating core standardized assessments for the BI Waiver in 2011, as part of the Balancing Incentive Payment Program (BIPP), the IME adopted the InterRAI Home Care Assessment Tool for the purposes of determining level of care for BI Waiver eligibility. The department adopted this tool recognizing that an additional or alternative tool would need to be identified which would address the cognitive disabilities related to brain injury.

The primary goal of moving forward with adoption of the most current version of the Mayo Portland Adaptability Inventory Scale is to fulfill the purposes of a valid and appropriate assessment of need, possible allocation of resources and comprehensive community-based person-centered service planning for both the HCBS Brain Injury Waiver and the Community-Based Neurobehavioral Rehabilitation service.

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

Adoption of the Mayo-Portland Adaptability Inventory will:

- assist service providers in the clinical evaluation of people during the post-acute (post-hospital) period following acquired brain injury (ABI),
- assist the Department in the evaluation of rehabilitation programs designed to serve people with brain injury, and
- assist the Department to better understand the outcomes of acquired brain injury (ABI) services, and
- assist service providers with comprehensive service planning to assure the appropriate scope, duration, and intensity of service delivery.

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?

Yes, Brain Injury Waiver members and applicants to the Brain Injury Waiver will have an appropriate and reliable clinical evaluation of the physical, cognitive, emotional, behavioral, and social problems that people present after a brain injury. Members may experience additional assessment fatigue by being required to participate in an additional assessment. However, the member's will be better served through the use of a valid and reliable BI assessment tool for service planning.

Medicaid member's identified for Community Based Neurobehavioral Rehabilitation Services (CNRS) will have a standardized, appropriate and reliable clinical evaluation of the physical, cognitive, emotional, behavioral, and social problems that people present after a brain injury.

Providers of post-acute brain injury services will have a reliable means of evaluating the physical, cognitive, emotional, behavioral, and social problems that people present after a brain injury to support and enhance the provider's ability to target interventions and measure individual members' progress in response to those targeted interventions and strategies. Providers not currently using the MPAL-IV will require training on completion of the assessment and the use of the tool in service planning.

Community Based Neurobehavioral Rehabilitation Providers, the Brain Injury Alliance of Iowa, the MHDS Regions and various other HCBS BI Waiver providers throughout the state are utilizing the MPAL-IV for the assessment of individual's need for services and to measure individual progress and service outcomes.

The Department and the MCOs will need to plan for the additional time and cost associated with completing the MPAL.

7. What are the potential benefits of this rule?

The benefits of adoption of the Mayo-Portland Adaptability Inventory will:

- assist service providers in the clinical evaluation of people during the post-acute (post-hospital) period following acquired brain injury (ABI), and
- assist providers to provide more customized services to the BI population, and
- assist the Department in the evaluation of the efficacy of the range of post-acute interventions and rehabilitation services designed to serve people with brain injury, and
- assist the Department to better document and evaluate the outcomes of acquired brain injury (ABI) and ABI services.

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

The MPAI-4 form consists of four pages that contain brief instructions for completing the ratings for each item, the 29 items comprising the MPAI-4, 6 additional items (items 30-35) for recording additional preinjury and post-injury information about the person being evaluated, and the scoring area. The inventory has been translated into French, German, Danish, and Spanish. All materials for the MPAI-4, including the translations, are available for download for free on the web site ([www.tbims.org/combi/mpai](http://www.tbims.org/combi/mpai)) for the Center for Outcome Measurement in Brain Injury (COMBI) sponsored by the National Institute of Disability and Rehabilitation Research (NIDRR) through its TBI Model System Program.

The MPAI may be downloaded from the COMBI web site, copied, and used without fee or other charge. Malec, J. (2005). The Mayo Portland Adaptability Inventory. The Center for Outcome Measurement in Brain Injury. <http://www.tbims.org/combi/mpai>

Providers not currently using the tool will have new costs related to training.

The cost of the adoption of the MPAI will be the additional cost to the MCOs and FFS to train assessors and case managers. The MCOs will need to build the new assessment into their care management systems to be able to provide IME with assessment data and other information related to required reporting. All costs will need to be considered for implementing the new assessment of completing the assessment in addition to the interRAI, the state will need to account for these costs in the MCO capitated payment negotiations for the July 1, 2019 Amendment to the IA Health Link contracts and the FFS CSA Contract. MPAI tool is in the public domain, is free to use and only requires approximately 1.5 hours of time to complete the assessment with an additional 15 to 30 minutes to derive the T-score. There is no requirement to purchase licenses for this tool.

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

No.

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

One alternative to direct regulation is to continue as status quo solely utilizing the interRAI for BI Waiver level of care, service authorization and service delivery, and provide clarifying guidance in the provider manuals.

A second alternative is to discontinue the use of interRAI for the BI Waiver and replace it entirely with the MPAI; however the MPAI does not identify specific ADL or IADL deficits that are required to determine NF, SNF or ICF/ID Level of Care. The workgroup will address this in Phase 2 of the project.

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

A waiver provision is not necessary. 441 -1.8(17A, 217) provides for waiver of administrative rules in exceptional circumstances.

12. What are the likely areas of public comment?

BI Waiver applicants and CNRS participants will be pleased to have a reliable and valid tool used to identify the level of disability related to their physical, cognitive, emotional, behavioral, and social problems associated with brain injury which will enable appropriate services can to be targeted to those specific needs. BI Waiver members and applicants are also likely to comment on the challenge of scheduling the time to participate in two assessments (the interRAI and the MPAI)

The brain injury provider community will be pleased that the Department is adopting a reliable and valid tool to identify the physical, cognitive, emotional, behavioral, and social problems associate with brain injury and provide a means of targeting treatment interventions and strategies for person centered planning consistently across the population.

Managed Care Organizations may be concerned about access to information and/or training on the use of the MPAI. However Iowa has a significant number of professionals who have facility in training on the use of the MPAI including the Brain Injury Alliance of Iowa who have been trained on the use of the MPAI by its author, Dr. James Malec and who serve multiple MHDS regions in contract to administer the MPAI for recommendations on brain injury service scope, duration and intensity.

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)

The jobs impact is unknowable but is anticipated to be minimal.

If an application has not been filed within 30 days, the slot shall revert for use by the next person on the waiting list, if applicable. The person originally assigned the slot must reapply for a new slot.



## Administrative Rule Fiscal Impact Statement

Date: 4/15/2019

**Agency:** Human Services  
**IAC citation:** 441 IAC 77, 78, 83  
**Agency contact:** LeAnn Moskowitz

### Summary of the rule:

The proposed rule amends Iowa Admin Code 441:

- Updates the providers that are eligible to participate in the Brain Injury Waiver as Family Training and Counseling and Behavior Programming providers.
- Adopts the current version of the Mayo Portland Adaptability Inventory as a supplement to the interRAI-HC for the purposes of BI Waiver level of care determination, comprehensive person-centered service planning and measuring individual member service outcomes.
- Adds an additional requirement for the CNRS Administrator to be present for a specific amount of time in the service location
- Clarifies the training and certification expectations for CNRS direct care staff.
- Formalizes the most current version of the Mayo Portland Adaptability Inventory as the required standardized assessment for Community-based Neurobehavioral Rehabilitation.
- Makes two technical corrections to incorrect rule citations.
- Adding the reserved capacity slot criteria for the BI Waiver.

*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.

### **Brief explanation:**

*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:**

**Family Training and Counseling and Behavior Programming providers** - The fiscal impact cannot be determined at this time because the number of new providers that will enroll and the number of members that will access the service is not known.

**Mayo Portland Adaptability Inventory for BI Waiver** – The MPAI tool is in the public domain, is free to use and only requires approximately 1.5 hours of time to complete the assessment with an additional 15 to 30 minutes to derive the T-score. There is no requirement to purchase licenses for this tool. However, there will be an additional cost to the MCOs and FFS to train assessors and case managers. The MCOs will need to build the new assessment into their care management systems to be able to provide IME with assessment data and other information related to required reporting. All costs will need to be considered for implementing the new assessment and for completing the assessment. The cost per assessment is estimated at \$430 based on current core standardized assessment costs. This cost is applied to the entire BI waiver population in order to estimate cost across both FFS and MCO.

The remaining changes are not expected to have a fiscal impact.

An October 2019 implementation date is assumed.

The Medicaid state match rate is estimated at 39.12 percent in SFY20 and 38.01 percent in SFY21.

**Describe how estimates were derived:**

There were 1,436 Brain Injury waiver members in March 2019. \$430 per assessment x 1,436 members results in an annual cost of \$617,480. SFY20 costs will be \$463,110 based on the October implementation date.

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (SFY20)</u>	<u>Year 2 (SFY21)</u>
<b>Revenue by each source:</b>		
General fund		
Federal funds	\$281,941	\$382,776
Other (specify):		
<b>TOTAL REVENUE</b>	\$281,941	\$382,776
<b>Expenditures:</b>		
General fund	\$181,169	\$234,704
Federal funds	\$281,941	\$382,776
Other (specify):		
<b>TOTAL EXPENDITURES</b>	\$463,110	\$617,480
<b>NET IMPACT</b>	(\$181,169)	(\$234,704)

\_\_\_\_\_ 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:*  
The changes will be covered by existing appropriations.

***Fiscal impact to persons affected by the rule:***  
Providers not currently using the tool will have new costs related to training.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***  
No fiscal impact anticipated.

Agency representative preparing estimate: Jason Buls  
Telephone number: 515-281-5764

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to forms and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 80, "Procedure and Method of Payment," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4.

*Purpose and Summary*

These proposed amendments provide updated form names, numbers, and terminology and remove references to form names and numbers that are no longer in use.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 3, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or

more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subparagraph **79.3(2)“d”(33)** as follows:

(33) Case management services, including HCBS case management services:

- ~~1. Form 470-3956, MR/CMI/DD Case Management Service Authorization Request, for services authorized before May 1, 2007.~~
- ~~2. 1. Notice of decision for service authorization.~~
- ~~3. 2. Service notes or narratives.~~
- ~~4. 3. Social history.~~
- ~~5. 4. Comprehensive service plan.~~
- ~~6. 5. Reassessment of member needs.~~
- ~~7. 6. Incident reports in accordance with 441—subrule 24.4(5).~~
- ~~8. 7. Other service documentation as applicable.~~

ITEM 2. Amend subparagraph **79.3(2)“d”(38)** as follows:

(38) Hearing aid dealer and audiologist services:

1. Physician examinations and audiological testing (Form 470-0361, Sections A, B, and C).
- ~~2. Documentation of hearing aid evaluation and selection (Form 470-0828).~~
- ~~3. 2. Waiver of informed consent.~~
- ~~4. 3. Prior authorization documentation.~~
- ~~5. 4. Service or office notes or narratives.~~

ITEM 3. Amend subparagraphs **79.8(1)“c”(1)** and **(2)** as follows:

- (1) Use Form ~~470-3970~~ 470-0829, Prior Authorization Attachment Control, as the cover sheet for the paper attachments or supporting clinical documentation; and
- (2) Reference on Form ~~470-3970~~ 470-0829 the attachment control number submitted on the ASC X12N 278 electronic transaction.

ITEM 4. Amend paragraph **80.2(2)“b”** as follows:

~~b. All other nursing facilities and intermediate care facilities for the mentally retarded persons with an intellectual disability shall file claims on Form 470-0039, Iowa Medicaid Long-Term Care Claim using an electronic version of Form UB-04 CMS-1450.~~

ITEM 5. Amend subparagraph **81.6(16)“g”(9)** as follows:

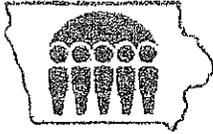
(9) Source of measurements. Source reports are due to the department by May 1 of each year. For those measures whose source is self-certification, the data shall be drawn from ~~Form 470-4828, Nursing Facility Medicaid Pay-for-Performance Self-Certification Report~~, a report submitted by the facility to IME. The independent party that collects and compiles the results of the resident/family survey shall communicate the results to IME on Form 470-3891, Nursing Facility Opinion Survey Transmittal. The department shall request required source reports from the long-term care ombudsman and the department of inspections and appeals (DIA).



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

Name of Program Specialist Leann Howland	Telephone Number 256-4642	Email Address lhowlan@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:  
Department has undertaken a project to identify obsolete forms and then remove those forms from the Iowa Administrative code. This rule package removes or revises obsolete form numbers when the form is controlled by IME policy staff.
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):  
SF2418, Sec. 128(1)(e)
3. Describe who this rulemaking will positively or adversely impact.
  - Positive impact will be reduced confusion regarding forms needed to conduct business with the IME.
  - There is no known adverse impact for this rule change.
4. Does this rule contain a waiver provision? If not, why?  
There is no waiver provision as there is no adverse impact for this rule change.
5. What are the likely areas of public comment?  
No public comment is anticipated.
6. 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.)  
This rule package does not impact private sector jobs and employment opportunities in Iowa.



## Administrative Rule Fiscal Impact Statement

Date: May 15, 2019

<b>Agency:</b> Human Services
<b>IAC citation:</b> 441 IAC 73.8
<b>Agency contact:</b> Leann Howland
<b>Summary of the rule:</b> Department has undertaken a project to identify obsolete forms and then remove those forms from the Iowa Administrative code. This rule package removes obsolete forms controlled by IME policy.
<i>Fill in this box if the impact meets these criteria:</i> <input checked="" type="checkbox"/> No fiscal impact to the state. <input type="checkbox"/> Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years. <input type="checkbox"/> Fiscal impact cannot be determined.
<b>Brief explanation:</b> Budget Analysts must complete this section for ALL fiscal impact statements. The rule addresses the removal of obsolete forms controlled within IME so no fiscal impact is expected.
<i>Fill in the form below if the impact does not fit the criteria above:</i> <input type="checkbox"/> Fiscal impact of \$100,000 annually or \$500,000 over 5 years.
<b>Assumptions:</b>
<b>Describe how estimates were derived:</b>

**Estimated Impact to the State by Fiscal Year**

	Year 1 (FY _____)	Year 2 (FY _____)
<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:

SF2418, Sec. 128(1)(e)

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:*

There is no fiscal impact.

**Fiscal impact to persons affected by the rule:**

There is no fiscal impact for this rule change.

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

No impact.

Agency representative preparing estimate: Jason Buls

Telephone number: 515-281-5764

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to managed care passive enrollment and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 5141.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 514I.

*Purpose and Summary*

The proposed amendments add language to reflect the Department's implementation of a passive managed care enrollment process. HAWK-I-eligible individuals will be passively enrolled with a managed care plan; however, the eligibility effective date will remain consistent with current practices. The proposed amendments also add necessary definitions, revise the time frame for a decision on eligibility, clarify policy on when a waiting period does not apply, revise premium payment language, eliminate the lock-out period for premium nonpayment, make technical changes, and remove outdated program language.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 17, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Enrollment broker” and “Passive enrollment process” in rule **441—86.1(514I)**:

“*Enrollment broker*” shall mean the entity the department uses to enroll eligible children with a managed care organization. The enrollment broker must be conflict-free and meet all applicable requirements of state and federal law.

“*Passive enrollment process*” shall mean the process by which the department assigns a child to a participating health or dental plan and which seeks to preserve existing provider-enrollee relationships, if possible. In the absence of existing relationships, the process ensures that members are equally distributed among all available health or dental plans.

ITEM 2. Amend subrule 86.3(8) as follows:

**86.3(8) Time limit for decision.** Decisions regarding the applicant’s eligibility to participate in the HAWK-I program shall be made within ~~ten~~ 45 working days from the date of receiving the completed application and all necessary information and verification unless the application cannot be processed for reasons beyond the control of the department ~~or third-party administrator~~. Day one of the ~~ten-day~~ 45-day period starts the first working day following the date of receipt of a completed application and all necessary information and verification.

ITEM 3. Amend subrule 86.5(1) as follows:

**86.5(1) Initial application.** Coverage for a child who is determined eligible for the HAWK-I program on the basis of an initial application for either HAWK-I or Medicaid shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed. However, when the child does not meet the provisions of paragraph 86.2(4) “a,” coverage shall be effective the first day of the month following the month in which health insurance coverage is lost. Also, a one-month waiting period shall be imposed for a child who is subject to a monthly premium pursuant to paragraph 86.8(2) “c” when the child’s health insurance coverage ended in the month of application. EXCEPTIONS: A waiting period shall not be imposed if any of the following conditions apply:

a. to e. No change.

f. The child’s parent is determined eligible for advance payment of the premium tax credit for enrollment in a qualified health plan through the Health Insurance Marketplace because the employer-sponsored insurance in which the family was enrolled is determined unaffordable in accordance with 26 CFR 1.36B-2(c)(3)(v).

g. The cost of family coverage that includes the child exceeds 9.5 percent of the annual household income.

ITEM 4. Amend rule 441—86.6(514I) as follows:

**441—86.6(514I) Selection of a plan.** ~~At the time of initial application, if there is more than one~~

participating health or dental plan available in the child's county of residence, the applicant shall select the health or dental plan in which the applicant wishes to enroll as part of the eligibility process. Upon the child's eligibility effective date, the child shall be assigned to a health or dental plan using the department's passive enrollment process. The enrollee may change plans only at the time of the annual review unless the provisions of subrule 86.7(1) or paragraph 86.6(2)"a" 86.6(1)"a" or subrule 86.6(2) apply. ~~The applicant may designate the plan choice verbally or in writing. Form 470-3574, Selection of Plan, may be used for this purpose but is not required.~~

**86.6(1) Period of enrollment.** Once enrolled in a health or dental plan, the child shall remain enrolled in the selected health or dental plan for a period of 12 months.

*a. Exceptions.* A child may be enrolled in a plan for less than 12 months if:

(1) The child is disenrolled in accordance with the provisions of rule 441—86.7(5141). If a child is disenrolled from the health or dental plan and subsequently reapplies before the end of the original 12-month enrollment period, the child shall be enrolled in the health or dental plan from which the child was originally disenrolled ~~unless the provisions of subrule 86.7(1) apply.~~

(2) No change.

(3) A request to change plans is accepted in accordance with paragraphs 86.6(2)"b" and "e." 86.6(1)"b."

*b. Request to change plan.* An enrollee may ask to change the health or dental plan either verbally or in writing to the enrollment broker:

(1) ~~Within 90 days following the date the initial enrollment was sent to the health or dental plan regardless of the reason for the plan change or whether the original health or dental plan was selected by the applicant or was assigned in accordance with subrule 86.6(3) of the enrollee's initial enrollment with the health or dental plan for any reason.~~

(2) At any time for cause. "Cause" as defined in 42 CFR 438.56(d)(2) as amended to May 13, 2010 May 6, 2016, includes, but is not limited to:

1. to 4. No change.

All approved changes shall be made prospectively and shall be effective no later than the first day of the second month beginning after the date on which the change request is received.

*e. Response to request.*

(1) ~~If the enrollee has not requested to change health or dental plans within 90 days following the date the initial enrollment was sent to the health or dental plan and it is determined that cause does not exist, the request to change plans shall be denied.~~

(2) ~~All approved changes shall be made prospectively and shall be effective on the first day of the month following the month in which the request was made.~~

~~**86.6(2) Failure to select a health or dental plan.** When more than one health or dental plan is available, if the applicant fails to select a health or dental plan within ten working days of the written request to make a selection, the third-party administrator shall select the health or dental plan and notify the family of the enrollment. The third-party administrator shall select the plan on a rotating basis to ensure an equitable distribution between participating health and dental plans.~~

~~**86.6(3) 86.6(2) Child moves from the service area.** The child may be disenrolled from the health or dental plan when the child moves to an area of the state in which the health or dental plan does not have a provider network established. If the child is disenrolled, the child shall be enrolled in a participating health or dental plan in the new location. The period of enrollment shall be the number of months remaining in the original certification period.~~

~~**86.6(4) 86.6(3) Change at annual review.** If more than one health or dental plan is available at the time of the annual review of eligibility, the family may designate another plan either verbally or in writing to the enrollment broker. Form 470-3574, Selection of Plan, may be used for this purpose. The child shall remain enrolled in the current health or dental plan if the family does not notify the third-party administrator enrollment broker of a new health or dental plan choice by the end of the current 12-month enrollment period.~~

ITEM 5. Amend subrule 86.7(3) as follows:

**86.7(3) Nonpayment of premiums.** The child shall be canceled from the program as of the first day of the month in which premiums are not paid in accordance with the provisions of subrules 86.8(3); ~~86.8(4) and 86.8(5), unless premiums are subsequently received in accordance with the grace period provisions of subrule 86.8(4).~~

ITEM 6. Amend rule 441—86.8(514I) as follows:

**441—86.8(514I) Premiums and copayments.**

**86.8(1) and 86.8(2)** No change.

**86.8(3) Due date.**

*a.* No change.

*b. Payment upon renewal.* “Renewal” means any application used to establish ongoing eligibility, without a break in coverage, for any enrollment period subsequent to an enrollment period established by an initial application.

(1) No change.

(2) All premiums due must be paid before the child will be enrolled for coverage. When the premium is received, the ~~third-party administrator~~ department shall notify the health and dental plans of the enrollment.

*c. Subsequent payments.* All subsequent premiums are due by the fifth day of each month for the next month’s coverage ~~and must be postmarked no later than the last day of the month before the month of coverage.~~ Premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

*d.* No change.

**86.8(4) Grace period.** A grace period shall be allowed on any monthly premium not received as prescribed in paragraph 86.8(3)“c.” The grace period shall be the ~~coverage month for which the premium is due~~ month immediately following the last month for which the premium has been paid.

*a.* Failure to submit a premium by the last calendar day of the grace period shall result in disenrollment.

*b.* If the premium for the grace period and the premium for the following month’s coverage is subsequently received within 45 calendar days following the last calendar day of the grace period, coverage will be reinstated if the premium was postmarked or otherwise paid, effective the first day of the calendar month following the grace period, without the need to reapply for coverage.

(1) ~~In the grace period, or~~

(2) ~~In the 14 calendar days following the grace period.~~

**86.8(5) Method of premium payment.** Premiums may be submitted in the form of cash, personal checks, electronic funds transfers (EFT), or other methods established by the ~~third-party administrator~~ department.

**86.8(6) and 86.8(7)** No change.

**86.8(8) Program lock-out.** ~~A child who has been disenrolled from the program due to nonpayment of premiums shall be locked out of the program until the arrearage is paid in full or for a period not to exceed 90 days, whichever occurs first.~~

*a.* ~~Failure to pay the unpaid premiums shall result in denial of the application if less than 90 days has elapsed since the effective date of disenrollment. EXCEPTION: The unpaid premium obligation shall be reduced to zero if upon reapplication a premium would not be assessed because the household’s income is less than 150 percent of the federal poverty level.~~

*b.* ~~If the arrearage is not paid within 24 months of failing to pay a premium, the debt shall be expunged and shall no longer be owed.~~

ITEM 7. Amend subrule 86.20(3) as follows:

**86.20(3) Premiums.** Premiums for participation in the supplemental dental-only plan are assessed as follows:

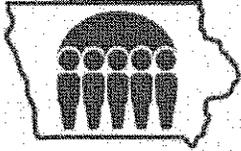
*a.* No premium is charged to families who meet the provisions of subparagraph 86.8(2)“a”(1) or to families whose countable income is less than or equal to 167 percent of the federal poverty level for

a family of the same size using the modified adjusted gross income methodology.

*b.* If the family's countable income is equal to or exceeds ~~167~~ 168 percent of the federal poverty level but does not exceed 203 percent of the federal poverty level for a family of the same size, the premium is \$5 per child per month with a \$10 monthly maximum per family.

*c.* to *e.* No change.

*f.* The provisions of subrules 86.8(3) to 86.8(6) and ~~86.8(8)~~ apply to premiums specified in this subrule.



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

Name of Program Specialist Anna Ruggle	Telephone Number 515-974-3286	Email Address aruggle@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

These proposed amendments revise rules 86.1 (514I), 86.6 (514I), and 86.8 (514I) as well as subrules 86.3(8), 86.5(1), 86.7(3) and 86.20(3). The purpose of these amendments is to add language to reflect the Department's implementation of a passive managed care enrollment process. HAWK-I-eligible individuals will be passively enrolled with a managed care plan; however, the eligibility effective date will remain consistent with current practices. The proposed amendments also add necessary definitions, revise the timeframe for a decision on eligibility, clarify policy on when a waiting period does not apply, revise premium payment language, eliminate the lock-out period for premium non-payment, make technical edits, and remove outdated program language.

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

Iowa Code 514I.4 and 514I.5; 42 CFR 457.

3. Describe who this rulemaking will positively or adversely impact.

Eligibility groups mandatorily enrolled in managed care will be automatically enrolled with a managed care organization (MCO) or dental-prepaid ambulatory health plan (PAHP) using the State's passive or default enrollment process, rather than requiring enrollees to make a choice for MCO or dental PAHP assignment, upon eligibility determination. This will benefit enrollees as it will ensure quicker access to efficient care coordination but will still provide that an enrollee has the ability to change plans for any reason within 90 days of their initial enrollment.

Members will also benefit by the elimination of a lock-out period for premium non-payment. Currently, individuals who have outstanding premium payments at the time of renewal or re-application are not permitted to reenroll in HAWK-I until they pay their outstanding premiums or 90 days has passed. Under this proposed rulemaking, the lock-out period is removed and repayment of premiums is no longer a condition of re-enrollment.

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

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

5. What are the likely areas of public comment?

The public may comment that the State, through its default or passive enrollment process, is limiting an enrollee's choice of plans; however, these changes do not impact the ability of enrollees to change plans within 90 days of initial enrollment. The elimination of the lock-out period will likely receive comments of support from member advocates.

6. 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.)

These changes are not likely to have an impact on jobs or employment opportunities in Iowa.



## Administrative Rule Fiscal Impact Statement

Date: February 12, 2019

**Agency:** Human Services  
**IAC citation:** 441 IAC 86.1; 86.3(8); 86.5(1); 86.6; 86.7(3); 86.8; 86.20(3)  
**Agency contact:** Anna Ruggle

**Summary of the rule:**

These proposed amendments revise rules 86.1 (514I), 86.6 (514I), and 86.8 (514I) as well as subrules 86.3(8), 86.5(1), 86.7(3) and 86.20(3). The purpose of these amendments is to add language to reflect the Department's implementation of a passive managed care enrollment process. HAWK-I-eligible individuals will be passively enrolled with a managed care plan; however, the eligibility effective date will remain consistent with current practices. The proposed amendments also add necessary definitions, revise the timeframe for a decision on eligibility, clarify policy on when a waiting period does not apply, revise premium payment language, remove the lock-out period for premium non-payment, make technical edits, and remove outdated program language.

*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:**

Budget Analysts must complete this section for ALL fiscal impact statements.

Though some training associated with these rule changes may be necessary, no additional staff will be necessary, the work will be handled by current staff. Any form or manual changes are expected to be minimal and not have an impact. Changes to the data system are being taken care of in the movement from the contractor to in-house (MMIS), and this project is already funded. Therefore, this change will not cause additional fiscal impact to the program.

The elimination of the lock out period will not cause an increase in enrollment nor a reduction in premium collections. The rules are being updated to align with current practice.

*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 2020)</u>	<u>Year 2 (FY 2021)</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>	<u>0.00</u>	<u>0.00</u>
<b>NET IMPACT</b>	<u>0.00</u>	<u>0.00</u>

- 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:*  
There is no fiscal impact.

**Fiscal impact to persons affected by the rule:**

N/A

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

N/A

Agency representative preparing estimate: Phil Davis - Budget Analyst III

Telephone number: 515-281-6017

JD  
2-18-19  
HDS

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to residential care facilities for children and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 105, “Juvenile Detention and Shelter Care Homes,” Chapter 112, “Licensing and Regulation of Child Foster Care Facilities,” Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and Chapter 116, “Licensing and Regulation of Residential Facilities for Children With an Intellectual Disability,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.6.

*Purpose and Summary*

These proposed amendments remove obsolete elements within the administrative rules, bring better alignment to current practice and implement changes required by federal law.

*Fiscal Impact*

This rule making makes a number of changes, most of which have no fiscal impact. However, federal law changes now require fingerprint checks for group care and shelter care staff. There are fiscal impacts associated with this new requirement.

*Jobs Impact*

The background checks included in these licensure or approval standards could prohibit employment of persons with criminal or abuse histories. The number of potential jobs that would result from implementation of these rule changes are unknown.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 17, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor

1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: appeals@dhs.state.ia.us

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Administrator,” “Immediate family,” “Schedule II medications,” “Staff” and “Time out” in rule **441—105.1(232)**:

“*Administrator*,” when used for matters related to a certificate of approval or a certificate of license, means the administrator of the division of adult, children and family services.

“*Immediate family*,” for the purposes of this chapter, means persons who have a blood or legal relationship with the child.

“*Schedule II medications*” means those controlled substances identified in Iowa Code chapter 124.

“*Staff*” means any person providing care or services to or on behalf of the residents whether the person is an employee of the facility, an independent contractor or any other person who contracts with the facility, an employee of an independent contractor or any other person who contracts with the facility, or a volunteer.

“*Time out*” applies only to shelter care homes and means the temporary and short-term restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control. Staff physically preventing the resident from leaving the time out area would be considered seclusion in control room conditions.

ITEM 2. Amend rule **441—105.1(232)**, definitions of “Administer medication,” “Child care worker or house parent” and “Facility,” as follows:

“~~Administer medication~~ Medication management and administration” means to ~~remove~~ properly tend to prescription and nonprescription medications, including, but not limited to: properly obtaining and storing medication; removing medication from its storage place; ~~to ensure~~ ensuring to the extent possible that the child ingests, applies, or uses the appropriate dosage at the appropriate time of day; and ~~to document~~ documenting the dosage and the time and date that the child ingested, applied, or used the medication.

“~~Child care worker or house parent~~” shall mean an individual employed by a facility whose primary responsibility is the direct care of the children in the facility.

“*Facility*” shall mean a county or multicounty “juvenile detention home” or county or multicounty “juvenile shelter care home” as ~~those terms are~~ defined in Iowa Code section 232.2, and private juvenile detention and shelter care homes as defined in Iowa Code section 232.2 which do not meet the requirements of being “county or multicounty.”

ITEM 3. Rescind the definitions of “Controlled substances,” “Family shelter home” and “Prime programming time” in rule 441—105.1(232).

ITEM 4. Rescind subrule 105.2(12) and adopt the following **new** subrule in lieu thereof:

**105.2(12) Private water supplies.**

a. Maintenance and operation. Each privately operated water supply shall be maintained and operated in a manner that ensures safe drinking water. Each water supply used as part of a facility shall be annually inspected and evaluated for deficiencies that may allow contaminants access to the well interior. Items such as open or loose well caps, missing or defective well vents, poor drainage around the wells, and the nearby storage of potential contaminants shall be evaluated. All deficiencies shall be corrected by a well contractor certified by the state within 30 days of discovery.

b. Evaluation and water testing. As part of the inspection and evaluation, water samples shall be collected and submitted by the local health sanitarian or a well contractor certified by the state to the state hygienic laboratory or other laboratory certified for drinking water analysis by the department of natural resources. The minimum yearly water analysis shall include coliform bacteria and nitrate (NO<sub>3</sub>-) content. Total arsenic testing shall be performed once every three years. The water shall be deemed safe when there are no detectible coliform bacteria, when nitrate levels are less than 10 mg/L as nitrogen, and when total arsenic levels are 10 µg/L or less. A copy of the laboratory analysis report shall be provided to the department within 72 hours of receipt by the water supply.

c. Multiple wells supplying water. When the water supply obtains water from more than one well, each well connected to the water distribution system shall meet all of the requirements of these rules.

d. Deficiencies. When no apparent deficiencies exist with the well or its operations and the water supply is proven safe by meeting the minimum sampling and analysis requirements, water safety requirements have been met. Wells with deficiencies that result in unsafe water analysis require corrective actions through the use of a well contractor certified by the state.

e. When water is proven unsafe. When the water supply is proven unsafe by sampling and analysis, the facility shall immediately provide a known source of safe drinking water for all water users and hang notification at each point of water use disclosing the water is unsafe for drinking water uses. In addition, the facility shall provide a written statement to the department disclosing the unsafe result and detail a plan on how the water supply deficiencies will be corrected and the supply brought back into a safe and maintained condition. The statement shall be submitted to the department within ten days of the laboratory notice. All corrective work shall be performed and the water supply sampled and analyzed again within 45 days after any water test analysis report that indicates the water supply is unsafe for drinking water uses.

f. Water obtained from another source through hauling and storage must meet the requirements of the department of natural resources.

ITEM 5. Amend subrule 105.2(17) as follows:

**105.2(17) Emergency evacuation and safety procedures.** Upon admission, all children shall receive instruction regarding evacuation and safety procedures. All living units utilized by children shall have a posted plan for evacuation in case of and safety procedures regarding severe weather events, fire or disaster with practice other natural or man-made disasters. Practice fire drills shall be held at least every six months monthly, and severe weather drills shall be held twice annually.

ITEM 6. Amend subrule 105.3(2) as follows:

**105.3(2) Health of employees.** Each staff person who has direct client contact or is involved in food preparation shall be medically determined to be free of serious infectious communicable diseases and able to perform assigned duties tested for tuberculosis and have had a physical examination within six months prior to hiring. A statement attesting to these facts shall be secured at the time of employment and filed in the personnel records of the staff person. A new statement shall be secured at least every three years. Physical examinations shall be completed at least every three years thereafter, or whenever circumstances require them more frequently. Evidence of these examinations or tests

shall be included in each personnel file. ~~The statement shall be signed examinations or tests shall be completed~~ by one of the following:

a. to c. No change.

ITEM 7. Rescind and reserve rule 441—105.4(232).

ITEM 8. Amend rule 441—105.5(232) as follows:

**441—105.5(232) Staff.**

**105.5(1) Number of staff.**

a. *Generally.* A sufficient number of child care ~~or house parent~~ staff shall be on duty at all times so as to provide adequate coverage. ~~The number of staff required will vary depending on the size and complexity of the program. All facilities shall have at least one staff person on duty. Facilities having six or more residents shall have at least two staff persons on duty at all times that children are usually awake and present in the facility. A minimum staff-to-child ratio of one child care worker to five children shall be maintained at all times children are awake and present in the facility and during supervised outings.~~ Coed facilities having more than five residents should have both male and female staff on duty at all times. All child care ~~or house parent~~ staff shall be at least 18 years of age.

b. *On-call system.* ~~There shall be an on-call system for coed facilities to provide that staff of the same sex as the resident shall perform the following: There shall be an on-call system operational 24 hours a day to provide supervisory consultation. There shall be a written plan documenting this system.~~

(1) All personal body searches.

(2) Supervision of personal care.

c. *Prime programming time.* ~~A minimum staff-child ratio of one child care worker or house parent to five children shall be maintained during prime programming times~~ Reserved.

d. *Night hours.* At night, there shall be a staff person awake in each living unit and making regular visual checks throughout the night. The visual checks shall be made at least every hour in shelter care and every half hour in detention. A log shall be kept of all checks, including the time of the check and any significant observations. ~~There shall be an on-call system which allows backup within minutes for both child care staff and casework personnel.~~

**105.5(2) and 105.5(3)** No change.

**105.5(4) Organization and administration.** Whenever there is a change in the name of the facility, the address of the facility, the executive, or the capacity, the information shall be reported to the ~~licensing manager~~ department. A table of organization including the identification of lines of responsibility and authority from policymaking to service to clients shall be available to the licensing staff. An executive director shall have full administrative responsibility for carrying out the policies, procedures and programs.

**105.5(5) Record checks.** Record checks are required for an entity being considered for a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside are required to determine whether any founded child abuse reports or criminal convictions exist related to the entity or whether the person has been placed on a sex offender registry. The facility shall not employ or use any staff person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child. The facility shall not employ or use any staff person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has a record of a criminal conviction or founded child abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of a certificate of approval or a certificate of license, volunteering or employment. For each person working in a shelter care home on a facility campus where children reside, fingerprints shall be provided to the department of public safety for submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check. Fingerprints shall be provided to the department of public safety for

submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check. Fingerprinting, for the purpose of a national criminal history check, is required for any entity being considered for a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside.

a. and b. No change.

**105.5(6) Record check procedure.** Each entity being considered for a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside shall be checked for all of the following:

a. Records with the Iowa central abuse registry;

b. Records with the Iowa division of criminal investigation;

c. Records with the Iowa sex offender registry;

d. Records with the child abuse registry of any state where the person has lived during the past five years; and,

e. Fingerprints provided to the department of public safety for submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check.

**105.5(7) Evaluation of record.** If the entity for whom background checks are required has a record of founded child or dependent adult abuse, a criminal conviction, or placement on a sex offender registry, the department shall complete an evaluation to determine that the abuse, criminal conviction, or placement on a sex offender registry does not warrant prohibition of a certificate of approval or a certificate of license or employment by an approved entity on a facility campus where children reside.

**105.5(8) Evaluation form.** The entity with the founded child or dependent adult abuse or criminal conviction report shall complete and return record check evaluation forms required by the department within ten calendar days of the date of receipt to be used to assist in the evaluation.

**105.5(9) Evaluation decision.** The department shall conduct the evaluation and issue a notice of decision in writing to the requesting entity.

ITEM 9. Amend paragraph **105.6(2)“c”** as follows:

c. When the child is in the facility more than four days, the following information shall be made available to requested by the facility if not yet received.

(1) to (3) No change.

ITEM 10. Amend subrule 105.8(1) as follows:

**105.8(1) Care Service plan.** There shall be a written care service plan developed for each resident remaining in the facility over four days and completed according to the time frames identified for the contracted service. The care service plan will be based on individual needs determined through the assessment of each youth. The care service plan shall be developed in consultation with child care services, probation services, social services and educational, medical, psychiatric and psychological personnel as appropriate. The plan shall include:

a. to e. No change.

ITEM 11. Amend paragraph **105.8(5)“b”** as follows:

b. The facility Shelter care homes shall plan and carry out efforts to establish and maintain workable relationships with the community recreational resources. The facility staff shall enlist the support of these resources to provide opportunities for children to participate in community recreational activities.

ITEM 12. Amend subrule 105.8(8) as follows:

**105.8(8) Dietary program.** The facility shall provide properly planned, nutritious and inviting food and take into consideration the special food dietary and health needs and tastes of children. The facility shall follow all dietary recommendations prescribed by medical personnel or a dietitian licensed in the state of Iowa.

ITEM 13. Adopt the following **new** subrule 105.8(10):

**105.8(10) Safety, protection, and well-being of children in care.** Facilities shall develop and follow written policies and procedures that assure the safety, protection, and well-being of children in care. Policies shall address, but not be limited to, the following:

- a. Supportive leadership of the facility that promotes protecting each child from abuse or bullying from other children and staff.
- b. Defining the facility's culture to reduce the use of unnecessary restraint.
- c. Clear definitions of unsafe behavior and the emergency situations when it is appropriate to use physical interventions.
- d. Staff training and development that give staff confidence that they are supported by leadership with proper supervision and ongoing access to information about best practices and evidence-based approaches to care.
- e. Adequate supervision of children while the children are using any hazardous or dangerous objects or equipment and when children are using the Internet or other social media.
- f. The social, cultural, and developmental needs of children in care.

ITEM 14. Adopt the following **new** subrule 105.8(11):

**105.8(11) Staff duties.** The staff duties shall include, but not be limited to, the following:

- a. Providing a supportive atmosphere for each child.
- b. Providing for coordination of internal and external activities of each child as needed.
- c. Providing leadership and guidance to each child as needed.
- d. Being responsible for overseeing and maintaining the general health and well-being of each child.
- e. Supervising all living activities.
- f. At all times, knowing where the children are and where they are supposed to be to assure ongoing safety.
- g. Providing for a liaison with the referring agency.
- h. Monitoring and recording behavior on a daily basis.

ITEM 15. Adopt the following **new** subrule 105.8(12):

**105.8(12) Volunteers.** A facility that utilizes volunteers to work directly with a particular child or group of children shall have a written plan for using volunteers. This plan shall be given to all volunteers. The plan shall indicate that all volunteers shall:

- a. Be directly supervised by a paid staff member.
- b. Be oriented and trained in the philosophy of the facility and the needs of children in care and methods of meeting those needs.
- c. Be subject to character, reference, and record check requirements as described in this chapter.

ITEM 16. Amend rule 441—105.9(232) as follows:

**441—105.9(232) Medication management and administration.** The facility shall have and follow written policies and procedures governing the methods of handling prescription drugs and over-the-counter drugs within the facility. No prescription or narcotic drugs are allowed in the facility without the authorization of a licensed physician or other prescriber authorized by law. Only drugs which have been approved by the federal Food and Drug Administration for use in the United States may be used. No experimental drugs may be used.

**105.9(1) Obtaining prescription medications.** Facilities shall permit prescription medications to be brought into the facility for a child.

- a. Prescription medication in its original container, clearly labeled and prescribed for the child, may be accepted as legitimate prescription medication for the child. The label serves as verification that the medication was ordered by an authorized prescriber. Medication shall be prescribed by a provider authorized to prescribe the medication. Medication provided to residents shall be dispensed only from a licensed pharmacy in the state of Iowa in accordance with the pharmacy laws in the Iowa Code, from a licensed pharmacy in another state according to the laws of that state, or by a licensed

physician.

b. No change.

**105.9(2)** No change.

**105.9(3) Storing medications.** Prescription and nonprescription medications shall be stored in a locked cabinet, a locked refrigerator, or a locked box within an unlocked refrigerator.

a. ~~Controlled substances~~ Schedule II medications shall be stored in a locked box within a locked cabinet. Nothing other than ~~controlled substances~~ Schedule II medications shall be stored in the locked box. ~~Controlled substances~~ Schedule II medications requiring refrigeration also shall be maintained within a double-locked container separate from food and other items.

b. The facility administrator shall determine distribution and maintenance of keys or other access to the medication storage cabinets and boxes.

c. A shelter facility administrator or the administrator's designee may preapprove shelter staff to carry prescription or nonprescription medications with them temporarily for use ~~while on day trips or~~ at sites away from the facility.

**105.9(4) Labeling medications.** ~~Controlled substances~~ Schedule II medications and prescription medications shall be maintained in their original containers, clearly labeled by an authorized prescriber and prescribed for the child. Sample prescription medications shall be accompanied by a written prescription. Nonprescription medications shall be maintained as purchased in their original containers.

**105.9(5) Administering ~~controlled~~ Schedule II medications.** Only staff who have completed a medication ~~administration~~ management course shall be allowed to administer ~~controlled substances~~ Schedule II medications.

**105.9(6) Administering prescription and nonprescription medications.** The facility administrator shall determine and provide written authority as to which staff may administer prescription and nonprescription medications.

a. Prescription medications shall be administered only in accordance with the orders of the authorized prescriber. Nonprescription medications shall be administered by following the directions on the label.

b. The facility administrator or the administrator's designee may allow a child to self-administer prescription ~~and nonprescription medication in appropriate situations with written authorization by the~~ authorized prescriber. The facility shall have written policies relating to self-administration of prescription and nonprescription medication. The facility shall require documentation if the child self-administers a medication.

**105.9(7)** No change.

**105.9(8) Medication for discharged residents.** When a child is discharged or leaves the facility, the facility shall turn over to a responsible agent ~~controlled substances~~ Schedule II medications and prescription medications currently being administered. The facility may send nonprescription medications with the child as needed. The facility shall document in the child's file:

a. to c. No change.

**105.9(9) Destroying outdated and unused medications.** Unused ~~controlled~~ Schedule II medications and prescription medications ~~kept at the facility for more than six months may not be kept~~ at the facility for more than 15 days after the child has left the facility and the Schedule II medications and prescription medications shall be destroyed by the administrator or the administrator's designee in the presence of at least one witness. Outdated, discontinued, or unusable nonprescription medications shall also be destroyed in a similar manner. The person destroying the medication shall document:

a. to d. No change.

ITEM 17. Amend paragraph **105.10(3)"f"** as follows:

f. A staff member shall always be ~~within hearing distance~~ positioned outside of the control room ~~and the child shall be visually checked by the staff at least every 15 minutes and each check shall be recorded.~~ Visual and auditory observations of the child's behavior and condition shall be recorded at five-minute intervals, and a complete written report shall be documented in the child's file by the end

of the staff person's work shift.

ITEM 18. Amend rule 441—105.14(232) as follows:

**441—105.14(232) Daily log.** The facility shall maintain a daily log to generally record noteworthy occurrences regarding the children in care. The log shall be used to note general progress in regard to the care plan and any problem areas or unusual behavior for each child. Problem areas or unusual behavior for specific children shall be recorded in individual children's records.

ITEM 19. Amend subrule 105.16(1) as follows:

**105.16(1) Generally.** A facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Discipline shall not include withholding of basic necessities such as food, clothing, or sleep. Discipline shall not be used for anyone other than a child whose actions resulted in consequences. Group discipline shall not be used because of actions of an individual child or other children. Agency staff shall be in control of and responsible for discipline at all times.

ITEM 20. Amend subrule 105.16(4) as follows:

**105.16(4) Room confinement—juvenile detention home only.** ~~Facilities shall provide sufficient programming and staff coverage to enable children to be involved in group activities during the day and evening hours. A child shall only be confined to the child's room for illness, at the child's own request, or for disciplinary reasons. A juvenile detention home may confine a child to the child's room during normal sleeping hours or for disciplinary reasons if the facility has written policies and procedures which are approved by the department regarding this confinement that include, but are not limited to, the reasons for and time limitations of the confinement.~~

ITEM 21. Renumber subrule **105.16(5)** as **105.16(6)**.

ITEM 22. Adopt the following **new** subrule 105.16(5):

**105.16(5) Time out—juvenile shelter care home only.**

- a. A resident in time out must never be physically prevented from leaving the time out area.
- b. Time out may take place away from the area of activity or from other residents, such as in the resident's room, or in the area of activity of other residents.
- c. Staff must monitor the resident while the resident is in time out.

ITEM 23. Rescind paragraph **105.17(4)“b”** and adopt the following **new** paragraph in lieu thereof:

b. A summary related to discharge from the facility including:

- (1) The name, address, and relationship of the person or agency to whom the child was discharged.
- (2) The discharge summary (as included in the service plan).
- (3) Final disposition of a child's medications as applicable.
- (4) Identification of who transported the child and destination post discharge.

ITEM 24. Rescind rule 441—105.18(232) and adopt the following **new** rule in lieu thereof:

**441—105.18(232) Discharge.** Children in shelter care should be discharged to a permanent placement at the earliest possible time, preferably within 30 days. The facility shall collaborate with referral workers to assess each child's need for ongoing placement and the reasons for longer stays shall be documented in the child's case file. Children in detention shall be discharged as determined by the court.

ITEM 25. Amend rule 441—105.19(232), introductory paragraph, as follows:

**441—105.19(232) Approval.** The department will issue a Certificate of Approval, ~~Form 470-0620,~~ or a certificate of license annually without cost to any juvenile detention home or juvenile shelter care home which meets the standards. The department may offer consultation to assist homes in meeting the standards.

ITEM 26. Amend subrule 105.19(7) as follows:

**105.19(7) Certificate of approval or certificate of license.** Upon approval, ~~the home county or multicounty homes will be issued a certificate of approval and private juvenile detention and shelter care homes will be issued a certificate of license~~ containing the name of the home, address, capacity, and the date of expiration. Renewals will be shown by a seal bearing the new date of expiration, unless a change requires a new certificate to be issued.

ITEM 27. Rescind rule 441—105.20(232) and adopt the following **new** rule in lieu thereof:

**441—105.20(232) Provisional approval.**

**105.20(1) Required conditions.** The administrator may issue a provisional license for not more than one year when a facility does not meet the requirements of this chapter and the facility submits a written corrective action plan that is approved by the administrator to bring the facility into compliance with the applicable requirements.

**105.20(2) Written report.** The department or the department's designee will provide a report identifying the reasons for the provisional license and the standards that have not been met.

**105.20(3) Corrective action.** The director of the facility, chairperson of the county board of supervisors, or chairperson of the multicounty board of directors shall provide the department with a written plan of action that is approved by the department for correcting the deficiencies to bring the facility into compliance with the applicable requirements. The plan shall give specific dates by which the corrective action will be completed.

**105.20(4) Completed corrective action.** When the corrective action is completed on or before the date specified, a full approval shall be issued.

**105.20(5) Uncompleted corrective action.** When the corrective action is not completed by the date specified on a provisional approval, the department shall not grant a full approval and has the option of rejecting or extending the provisional approval. An extension of a provisional approval shall not cause the effective period of a provisional approval to exceed 18 months. If the corrective action plan is not completed within 18 months, the approval shall be rejected.

ITEM 28. Amend paragraph **105.21(1)“d”** as follows:

*d.* ~~Each~~ Except for mechanical restraint of a child by the staff of a juvenile detention facility for the amount of time needed while that child is being transported to a point outside the facility and as necessary when there is a serious risk of the child exiting a vehicle while the vehicle is in motion or otherwise absconding, each authorization of mechanical restraint shall not exceed ~~one~~ 1 hour in duration without a visit by and written authorization from a licensed psychologist, psychiatrist or physician ~~or psychologist employed by a local mental health center.~~

ITEM 29. Amend paragraph **105.21(1)“e”** as follows:

*e.* No child shall be kept in mechanical restraint for more than 1 hour in a 12-hour period without a visit by and written authorization from a licensed psychologist, psychiatrist or physician ~~or psychologist employed by a local mental health center.~~

ITEM 30. Amend paragraph **105.21(2)“c”** as follows:

*c.* Each facility authorized to use mechanical restraint shall submit a quarterly report, which shall include all the information required in paragraph 105.21(2)“b,” ~~to the bureau of adult, children and family services of the department which shall include all the information required in 105.21(2)“b.”~~ its licensing manager.

ITEM 31. Amend subrule 105.21(4) as follows:

**105.21(4) In transporting children.** ~~Notwithstanding 105.21(1)“d,” mechanical restraint of a child by the staff of a juvenile detention facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record and the mechanical restraint file. This report shall document the necessity for the use of restraint.~~

Seat belts are not considered mechanical restraints. Agency policies should encourage the use of

seat belts and comply with Iowa law while transporting children.

ITEM 32. Adopt the following new rule 441—105.23(232):

**441—105.23(232) Mandatory reporting of child abuse and training.**

**105.23(1) Mandatory reporters.** All defined in Iowa Code section 232.69 who, in the scope of professional practice or in their employment responsibilities, examine, attend, counsel, or treat a child and reasonably believe a child has suffered abuse, shall make a report in accordance with Iowa Code section 232.69 whenever the provider reasonably believes a child for whom the provider is providing foster care has suffered abuse.

**105.23(2) Required training.** Mandatory reporters shall receive training relating to the identification and reporting of child abuse as required by Iowa Code section 232.69.

**105.23(3) Training documentation.** Each licensee shall develop and maintain a written record for each mandatory reporter in order to document the content and amount of training.

This rule is intended to implement Iowa Code section 232.69.

ITEM 33. Amend rule 441—112.1(237) as follows:

**441—112.1(237) Applicability.** This chapter relates to licensing procedures for all child foster care facilities authorized by Iowa Code chapter 237. Rules relating to specific types of facilities are located in 441—Chapter 113, “Licensing and Regulation of Foster Family Homes,” 441—Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for Children with an Intellectual Disability or Brain Injury.”

This rule is intended to implement Iowa Code chapter 237.

ITEM 34. Adopt the following new definition of “Administrator” in rule **441—112.2(237)**:

“Administrator,” when used for matters related to licensing, means the administrator of the division of adult, children and family services.

ITEM 35. Amend rule **441—112.2(237)**, definitions of “Applicant,” “Comprehensive residential facility,” “Director’s designee,” and “Residential facility for children with an intellectual disability” as follows:

“Applicant:”

1. No change.
2. For a proprietary child-care facility, the applicant is the owner or designee of the facility.
3. No change.

“Comprehensive residential facility” means a facility which provides care and treatment for children who are unable to live in a family situation due to social, emotional, or physical disabilities and who require varying degrees of supervision as indicated in the individual ~~treatment~~ service plan. Care includes room and board. Services include the internal capacity for individual, family, and group treatment. These services and others provided to the child shall be under the administrative control of the facility. Community resources may be used for medical, recreational, and educational needs. Comprehensive residential facilities have higher staff to client ratios than community residential facilities and may use control rooms, locked cottages, and mechanical restraints, ~~and chemical restraints~~ when these controls meet licensing requirements.

“Director’s Administrator’s designee:”

1. For group facilities, the ~~director’s~~ administrator’s designee is the chief of the bureau of protective child welfare and community services.
2. For foster family homes, the designee is the department of human services’ service area manager.

“Residential facility for children with an intellectual disability or brain injury” means any residential facility which serves children with an intellectual disability as defined in Iowa Code

chapter 222 or children with brain injury as defined in Iowa Code chapter 225C.

ITEM 36. Amend paragraph 112.3(1)“b” as follows:

b. *Group care.* A person wishing to apply for a group care license shall ~~may~~ contact the department:

(1) ~~Through the “Child Welfare” link~~ Using the “Contact Us” link found on the department’s Web Internet site , [www.dhs.iowa.gov](http://www.dhs.iowa.gov) at [dhs.iowa.gov](http://dhs.iowa.gov); or

(2) By mail to the DHS Iowa Department of Human Services, Division of Child Adult, Children and Family Services, Attn: Group Care Licensing, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

ITEM 37. Amend subrule 112.4(6) as follows:

**112.4(6)** A foster family home license shall be approved for a term of one year for the first and second years of licensure. Thereafter, the license shall be approved for a term of two years unless it is determined by the administrator that a one-year license shall be issued. A group facility license shall be approved for a term of one to three years according to the following criteria:

a. A one-year license may be approved for all new ~~agencies~~ facilities that meet licensure standards.

b. A ~~two-year~~ one- to two-year license may be approved ~~upon completion of a survey for a renewal license when it is determined:~~

(1) ~~Some health or safety concerns have been identified , but they are determined to be minor or easily corrected; or~~

(2) ~~Some complaints against a facility have been substantiated , but they are determined to be minor; and or~~

(3) ~~Deficiencies that have been identified are determined to be minor or easily corrected.~~

c. A three-year license may be approved ~~upon completion of a survey for a renewal license when:~~

(1) to (3) No change.

ITEM 38. Amend paragraph 112.5(1)“a” as follows:

a. The minimum standards set forth in these rules are not met and a provisional license is inappropriate or disapproved by the ~~director’s~~ administrator or administrator’s designee.

ITEM 39. Amend subrule 112.7(1) as follows:

**112.7(1)** ~~Statement of reasons~~ Time frame for provisional licenses. ~~Provisional licenses shall be accompanied by a statement of the reasons for the provisional license, the standards that have not been met, the date that the facility must make required changes to meet standards. The administrator may issue a provisional license for not more than one year when a licensee’s facility does not meet the requirements of this chapter and the licensee submits a written corrective action plan that is approved by the administrator to bring the facility into compliance with the applicable requirements.~~

ITEM 40. Amend subrule 112.7(2) as follows:

**112.7(2)** ~~Corrective action~~ Written report. ~~The facility shall furnish the licensing agency with a plan of action to correct deficiencies listed that resulted in the provisional license. The plan shall give specific dates upon which the corrective action will be completed. The administrator or the administrator’s designee will provide a report identifying the reasons for the provisional license and the standards that have not been met.~~

ITEM 41. Adopt the following new subrule 112.7(3):

**112.7(3)** Corrective action plan. The facility shall furnish the licensing agency with a plan of action to correct deficiencies listed that resulted in the provisional license. The plan shall give specific dates upon which the corrective action will be completed.

ITEM 42. Amend subrule 112.9(2) as follows:

**112.9(2)** Requirements for emergency suspension. The emergency suspension of a license by the ~~director~~ administrator or administrator’s designee shall occur only when all of the following

conditions exist:

a. to d. No change.

ITEM 43. Amend subrule 112.9(3) as follows:

**112.9(3) Requirements for time-limited suspensions.** The time-limited suspension of a license by the ~~director~~ administrator or administrator's designee shall occur only when all of the following conditions exist:

a. to f. No change.

ITEM 44. Amend rule 441—112.10(232) as follows:

~~441—112.10(232) Mandatory reporting of child abuse and training.~~

~~112.10(1) Mandatory reporters.~~ All defined in Iowa Code section 232.69 who, in the scope of professional practice or in their employment responsibilities, examine, attend, counsel, or treat a child and reasonably believe a child has suffered abuse, shall make a report ; in accordance with Iowa Code section 232.69, whenever they the provider reasonably believe believes a child for whom they are the provider is providing foster care has suffered abuse;.

~~a. Any social worker who is employed by a licensed child foster care facility and who works with foster children.~~

~~b. Any licensed foster parent providing child foster care.~~

~~112.10(2) Required training.~~ After completing the initial mandatory reporter training, and every five years thereafter, any person required to make a report under subrule 112.10(1) shall complete two hours of training relating to the identification and reporting of child abuse. Mandatory reporters shall receive training relating to the identification and reporting of child abuse as required by Iowa Code section 232.69.

~~112.10(3) Training provider.~~

~~a. If the foster care provider is a social worker employed by a licensed child foster care facility, the employer shall be responsible for providing the required training in child abuse identification and reporting.~~

~~b. If the foster care provider is a licensed foster parent, the foster parent shall be responsible for obtaining the required two-hour training in child abuse identification and reporting as part of a continuing education program required under Iowa Code section 232.69 and chapter 272C and approved by the department of public health.~~

~~112.10(4) Training content.~~

~~a. Training in child abuse identification shall include physical and behavioral signs of physical abuse, denial of critical care, sexual abuse and other categories of child abuse pursuant to Iowa Code section 232.68.~~

~~b. Training in child abuse reporting shall include reporting requirements and procedures.~~

~~112.10(5) 112.10(3) Training documentation.~~ Each licensee shall develop and maintain a written record for each mandatory reporter in order to document the content and amount of training.

~~a. If the foster care provider is a social worker employed by a licensed child foster care facility, the employer shall document in the employee's personnel record the content and amount of training.~~

~~b. If the foster care provider is a licensed foster parent, the foster parent shall be responsible for securing documentation of the training content, amount, and provider, and shall forward the documentation to the department's recruitment and retention contractor, which will provide a copy to the department licensing worker for the service area where the family resides for inclusion in the licensing file.~~

This rule is intended to implement Iowa Code section 232.69.

ITEM 45. Adopt the following **new** rule 441—112.12:

**441—112.12(237) Record checks.** Record checks as defined in 441—Chapter 114 are required for any entity being considered for licensure or employment by a licensee on a facility campus where children reside to determine whether any applicant has any founded child abuse reports or criminal

convictions or has been placed on a sex offender registry.

ITEM 46. Adopt the following **new** definitions of “Immediate family,” “Schedule II medications” and “Time out” in rule **441—114.2(237)**:

“*Immediate family*,” for the purposes of this chapter, means persons who have a blood or legal relationship with the child.

“*Schedule II medications*” means those controlled substances identified in Iowa Code chapter 124.

“*Time out*” means the temporary and short-term restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control. Staff physically preventing the resident from leaving the time out area would be considered seclusion in control room conditions.

ITEM 47. Amend rule **441—114.2(237)**, definition of “Staff,” as follows:

“*Staff*” means any person providing care or services to or on behalf of the facility residents whether the person is an employee of the facility, an independent contractor or any other person who contracts with the facility, an employee of an independent contractor or any other person who contracts with the facility, or a volunteer.

ITEM 48. Rescind the definitions of “Highly structured juvenile program,” “Locked cottage,” and “Prime programming time” in rule **441—114.2(237)**.

ITEM 49. Amend subrule 114.4(1) as follows:

**114.4(1) Bathroom facilities.**

- a. No change.
- b. Each bathroom shall be properly equipped with toilet tissue in dispensers, towels, soap, and other items required for personal hygiene unless children are individually given these items. ~~Paper towels, when used, and toilet tissue shall be in dispensers.~~
- c. to e. No change.
- f. At least one toilet and one lavatory wash basin shall be provided for each six children or portion thereof.
- g. to k. No change.

ITEM 50. Rescind subrule 114.4(8) and adopt the following **new** subrule in lieu thereof:

**114.4(8) Private water supplies.** Any facility that serves at least 25 people for at least 60 days during the year and is supplied by its own well meets the definition of a public water supply and must be regulated by the department of natural resources.

a. Maintenance and operation. Each privately operated water supply shall be maintained and operated in a manner that ensures safe drinking water. Each water supply used as part of a facility shall be annually inspected and evaluated for deficiencies that may allow contaminants access to the well interior. Items such as open or loose well caps, missing or defective well vents, poor drainage around the wells, and the nearby storage of potential contaminants shall be evaluated. All deficiencies shall be corrected within 30 days of discovery by a well contractor certified by the state.

b. Evaluation and water testing. As part of the inspection and evaluation, water samples shall be collected and submitted by the local health sanitarian or a well contractor certified by the state to the state hygienic laboratory or other laboratory certified for drinking water analysis by the department of natural resources. The minimum yearly water analysis shall include coliform bacteria and nitrate (NO<sub>3</sub>-) content. Total arsenic testing shall be performed once every three years. The water shall be deemed safe when there are no detectible coliform bacteria, when nitrate levels are less than 10 mg/L as nitrogen, and when total arsenic levels are 10 µg/L or less. A copy of the laboratory analysis report shall be provided to the department within 72 hours of receipt by the water supply.

c. Multiple wells supplying water. When the water supply obtains water from more than one well, each well connected to the water distribution system shall meet all of the requirements of these rules.

d. Deficiencies. When no apparent deficiencies exist with the well or its operations and the water

supply is proven safe by meeting the minimum sampling and analysis requirements, water safety requirements have been met. Wells with deficiencies that result in unsafe water analysis require corrective actions through the use of a well contractor certified by the state.

*e.* When water is proven unsafe. When the water supply is proven unsafe by sampling and analysis, the facility shall immediately provide a known source of safe drinking water for all water users and hang notification at each point of water use disclosing the water is unsafe for drinking water uses. In addition, the facility shall provide a written statement to the department disclosing the unsafe result and detail a plan on how the water supply deficiencies will be corrected and the supply brought back into a safe and maintained condition. The statement shall be submitted to the department within ten days of the laboratory notice. All corrective work shall be performed and the water supply sampled and analyzed again within 45 days from any water test analysis report that indicates the water supply is unsafe for drinking water uses.

*f.* Water obtained from another source through hauling and storage must meet the requirements of the department of natural resources.

ITEM 51. Amend subrule 114.5(1) as follows:

**114.5(1) General.** ~~*a.*~~ Facilities shall take sufficient measures to ensure the safety of the children in care in all of its programs.

~~*b.*~~ Stairways, halls and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

~~*e.*~~ Radiators, registers, and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

~~*d.*~~ Fuse boxes shall be inaccessible to children.

~~*e.*~~ Facilities shall have written procedures for the handling and storage of hazardous materials.

~~*f.*~~ Firearms and ammunition shall be kept under lock and key and inaccessible to children. When firearms are used, the facility shall have written policies regarding their purpose, use, and storage.

~~*g.*~~ All swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

~~*h.*~~ The facility shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the institution grounds and accessible to the children.

ITEM 52. Renumber subrules **114.5(2)** to **114.5(4)** as **114.5(3)** to **114.5(5)**.

ITEM 53. Adopt the following new subrule 114.5(2):

**114.5(2) Premises.**

*a.* Stairways, halls and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

*b.* Radiators, registers, and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

*c.* Fuse boxes and circuit breakers shall be inaccessible to children.

*d.* Facilities shall have written procedures for the handling and storage of hazardous materials.

*e.* Firearms and ammunition shall be kept under lock and key and inaccessible to children. When firearms are used, the facility shall have written policies regarding their purpose, use, and storage.

*f.* All swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

*g.* The facility shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the facility grounds and accessible to the children.

ITEM 54. Amend renumbered subrule 114.5(3) as follows:

**114.5(3) Emergency evacuation and safety procedures.** Upon admission all children shall receive instruction regarding evacuation and safety procedures. All living units utilized by children shall have a posted plan for evacuation in case of and safety procedures regarding severe weather events, fire or

~~disaster with practice~~ other natural or man-made disasters. Practice fire drills shall be held at least every six months monthly and severe weather drills shall be held twice annually.

ITEM 55. Adopt the following **new** subrule 114.5(6):

**114.5(6) Safety, protection, and well-being of children in care.** Facilities shall develop and follow written policies and procedures that assure the safety, protection, and well-being of children in care. Policies shall address, but not be limited to, the following:

a. Supportive leadership of the facility that promotes protecting each child from abuse or bullying from other children and staff.

b. Defining the facility's culture to reduce the use of unnecessary restraint.

~~c. Clear definitions of unsafe behavior and the emergency situations when it is appropriate to use~~ physical interventions.

d. Staff training and development that give staff confidence they are supported by leadership with proper supervision and ongoing access to information about best practices and evidence-based approaches to care.

e. Adequate supervision of children while the children are using any hazardous or dangerous objects or equipment and when children are using the Internet or other social media.

f. The social, cultural, and developmental needs of children in care.

This rule is intended to implement Iowa Code section 237.3.

ITEM 56. Amend rule 441—114.6(237) as follows:

**441—114.6(237) Organization and administration.** Any change in the name of the facility, the address of the facility, the executive, or the capacity shall be reported to the ~~licensing manager~~ department.

**114.6(1)** No change.

**114.6(2) Purpose of agency or facility.** The purpose or function of the organization shall be clearly defined in writing and shall include a description of the children to be accepted for care and the services offered.

**114.6(3)** No change.

**114.6(4) Executive director.** The governing body or proprietor or partner(s) shall select and appoint an executive director with full administrative responsibility and qualifications for carrying out the policies, procedures and programs established by the governing body.

**114.6(5)** No change.

This rule is intended to implement Iowa Code section 237.2.

ITEM 57. Amend subrule 114.7(2) as follows:

**114.7(2) Health of staff.** Each staff person who has direct client contact or is involved in food preparation shall be medically determined to ~~be free of serious infectious communicable diseases and able to perform assigned duties~~ be tested for tuberculosis and have a physical examination within six months prior to hiring. Physical examinations shall be completed every three years thereafter. A statement attesting to these facts shall be secured at the time of employment and filed in the staff record of the staff person. A new statement shall be secured at least every three years. Evidence of these examinations or tests shall be included in each personnel file. The statement shall be signed examinations or tests shall be completed by one of the following:

a. to c. No change.

ITEM 58. Amend paragraph **114.7(3)“a”** as follows:

a. The facility shall maintain the following information with respect to each staff person:

(1) and (2) No change.

(3) ~~Documentation that a criminal records check with the Iowa division of criminal investigation has been completed on the staff person prior to providing any care or service directly or indirectly to children under the care of the agency. A copy of the department's evaluation of the criminal record check shall be kept in the staff record~~ of all record checks and evaluations as required in subrule

114.8.

(4) No change.

(5) ~~Documentation that a check of the staff person has been completed with the Iowa central abuse registry for any founded reports of child abuse prior to the person's providing any care or services directly or indirectly to children under the care of the agency. A copy of the department's evaluation of this child abuse record check shall be kept in the staff record~~ Reserved.

(6) Records of a health physical examination or a record of a health report, as required in subrule 114.7(2), plus a written record of subsequent health services rendered to staff necessary to ensure that each individual is physically able to perform the job duties or functions.

(7) ~~If the staff person has completed and submitted Form 470-2310, Record Check Evaluation, to the agency, a copy shall be kept in the staff record~~ Reserved.

(8) and (9) No change.

ITEM 59. Amend paragraph 114.8(2)"d" as follows:

d. The number and qualifications of the staff will vary depending on the needs of the children. There shall be at least a one to eight staff to client ratio during prime programming time all times children are awake and present in the facility and during supervised outings.

ITEM 60. Amend subrule 114.8(3) as follows:

**114.8(3) Staff duties.**

a. No change.

b. Caseworkers shall:

(1) Develop a care service plan for each child containing goals and objectives with projected dates of accomplishment and shall involve the client, referral agency, and family whenever possible.

(2) No change.

c. The facility staff shall ~~define in writing who shall be responsible for the following staff duties:~~

(1) Documenting case reassessments quarterly, involving the same personnel as previously involved in care service plan development.

(2) Documenting the implementation of the care service plan.

(3) to (11) No change.

(12) At all times, knowing where the children are and where they are supposed to be to assure ongoing safety.

ITEM 61. Amend subparagraph 114.8(4)"c"(5) as follows:

(5) Access to current ~~literature, including books, monographs, and journals~~ information and evidence based practices relevant to the facility's services.

ITEM 62. Adopt the following new subrule 114.8(5):

**114.8(5) Volunteers.** A facility that utilizes volunteers to work directly with a particular child or group of children shall have a written plan for using volunteers. This plan shall be given to all volunteers. The plan shall indicate that all volunteers shall:

a. Be directly supervised by a paid staff member.

b. Be oriented and trained in the philosophy of the facility and the needs of children in care, and methods of meeting those needs.

c. Be subject to character, reference, and record check requirements described in Iowa Administrative Code 441—Chapter 112 and in this chapter.

ITEM 63. Amend subrule 114.9(3) as follows:

**114.9(3) Referral requirements information.** The following information shall be available requested from the referral worker prior to any decision being made regarding the acceptance of a child:

a. to g. No change.

ITEM 64. Amend subrule 114.9(5) as follows:

**114.9(5) Personal assessment.** At the time of intake, individual needs will be identified by staff

based on written and verbal information from referral sources, observable behavior at intake and the initial interview with youth or family, school contacts, physical examinations, and other relevant material. The individual assessment shall provide the basis for development of a care service plan for each child.

ITEM 65. Amend subrule 114.10(2) as follows:

**114.10(2) Care Service plan.** There shall be a written care service plan for each child. The care service plan shall be based on the individual needs determined through the assessment of each resident, provide for consultation with the family, and shall include the following:

- a. No change.
- ~~b. Description of planned services including measurable goals and objectives which indicate which staff person will be responsible for the specific services in the plan.~~
- c. No change.
- d. A discharge summary.

ITEM 66. Rescind subrule 114.10(4) and adopt the following **new** subrule in lieu thereof:

**114.10(4) Daily log.** The facility shall maintain a daily log to generally record noteworthy occurrences regarding the children in care. Problem areas or unusual behavior for specific children shall be recorded in individual children's records.

ITEM 67. Amend paragraph **114.10(6)"d"** as follows:

~~d. A facility shall have and staff shall follow written procedures for staff members to follow in case of medical emergency.~~

ITEM 68. Amend subrule 114.10(7) as follows:

**114.10(7) Dietary program.** The facility shall provide properly planned, nutritious and inviting food and take into consideration the special food dietary and health needs and tastes of children. The facility shall follow all dietary recommendations prescribed by medical personnel or a dietitian licensed in the state of Iowa.

ITEM 69. Rescind subrule 114.10(8) and adopt the following **new** subrule in lieu thereof:

**114.10(8) Recreation and leisure programs.**

- a. The facility shall provide adequately designed and maintained indoor and outdoor activity areas, equipment, and equipment storage facilities appropriate for the residents it serves. There shall be a variety of activity areas and equipment so that all children can be active participants in different types of individual and group sports and other motor activities.
- b. Games, toys, equipment, and arts and crafts material shall be selected according to the ages and number of children with consideration to the needs of the children to engage in active and quiet play.
- c. The facility shall plan and carry out efforts to establish and maintain workable relationships with community recreational resources so these resources may provide opportunities for children to participate in community recreational activities.

ITEM 70. Amend subrule 114.10(9) as follows:

**114.10(9) Casework services.** A facility shall provide or obtain casework services in the form of counseling in accordance with the needs of each child's individual care service plan. Casework services include crisis intervention, daily living skills, interpersonal relationships, future planning and preparation for placement as required by the child.

ITEM 71. Rescind and reserve subrule **114.10(11)**.

ITEM 72. Amend paragraph **114.11(2)"g"** as follows:

~~g. Telephone number and address of the agency or court making the referral and contact information of the child's attorney or guardian ad litem.~~

ITEM 73. Amend subrule 114.11(9) as follows:

**114.11(9) Care Service plan.** Individual child care service plan , ~~and semiannual review quarterly~~

update, and revision revisions of care the service plan. The service plan shall be updated quarterly or any time upon receipt of a new case permanency plan or juvenile court services plan or as otherwise needed to address the changing needs of the child. Discharge summary completing the service plan information shall be completed upon a child's discharge from placement.

ITEM 74. Amend subrule 114.11(10) as follows:

**114.11(10) *Dietation Documentation.*** The following information shall be documented in each child's record.

a. No change.

b. ~~Information on release of the child from the facility including the name, address and relationship of the person or agency to whom the child was released. A summary related to discharge including:~~

(1) The name, address and relationship of the person or agency to whom the child was released.

(2) The discharge summary (as included in the service plan).

(3) Final disposition of a child's medications as applicable.

(4) Identification of who transported the child and destination post discharge.

ITEM 75. Adopt the following **new** subrule 114.11(11):

**114.11(11) *Electronic records.*** An authorized representative of the department shall be provided unrestricted access to electronic records pertaining to the care provided to the residents of the facility.

a. If access to an electronic record is requested by the authorized representative of the department, the facility may provide a tutorial on how to use its particular electronic system or may designate an individual who will, when requested, access the system, respond to any questions or assist the authorized representative as needed in accessing electronic information in a timely fashion.

b. The facility shall provide a terminal where the authorized representative may access records.

c. If the facility is unable to provide direct print capability to the authorized representative, the facility shall make available a printout of any record or part of a record on request in a time frame that does not intentionally prevent or interfere with the department's survey or investigation.

ITEM 76. Amend rule 441—114.12(237), introductory paragraph, as follows:

**441—114.12(237) Drug utilization and control.** The agency shall have and follow written policies and procedures governing the methods of handling prescription drugs and over-the-counter drugs within the facility. No prescription or narcotic drugs are to be allowed in the facility without the authorization of a licensed physician or authorized prescriber.

ITEM 77. Amend subrule 114.12(2) as follows:

**114.12(2) *Prescribed by physician or other authorized prescriber.*** Drugs shall be prescribed by a physician licensed to practice in the state of Iowa or the state in which the physician is currently practicing, or by an advanced registered nurse practitioner or physician assistant as permitted by Iowa law, and may be prescribed only for use in accordance with dosage ranges and indications approved by the federal Food and Drug Administration.

ITEM 78. Amend subrule 114.12(4) as follows:

**114.12(4) *Locked cabinet.*** All drugs shall be maintained in a locked cabinet. ~~Controlled substances~~ Schedule II medications shall be maintained in a locked box within the locked cabinet. The cabinet key shall be in the possession of a staff person. A bathroom shall not be used for drug storage. A documented exception can be made by ~~a physician for persons identified in these rules who may allow self-administered drugs as discussed in subrule 114.12(17).~~

ITEM 79. Amend subrule 114.12(9) as follows:

**114.12(9) *Medication for discharged residents.*** When a resident is discharged or leaves the facility, ~~medications currently being administered shall be sent, in the original container, with the resident or with a responsible agent, and with the approval of the physician the facility shall turn over to a responsible agent~~ Schedule II medications and prescription medications currently being

administered. The facility may send nonprescription medications with the child as needed. The facility shall document in the child's file:

- a. The name, strength, dosage form, and quantity of each medication.
- b. The signature of the facility staff person who turned over the medications to the responsible agent.
- c. The signature of the responsible agent receiving the medications.

ITEM 80. Rescind subrule 114.12(10) and adopt the following **new** subrule in lieu thereof:

**114.12(10) Unused prescription drugs.** Unused prescription drugs prescribed for residents may not be kept at the facility for more 15 days after the resident has left the facility. The unused ~~prescription drugs shall be destroyed by the facility executive director or the executive director's~~ designee in the presence of at least one witness. Outdated, discontinued, or unusable nonprescription medications shall also be destroyed in a similar manner. The person destroying the medication shall document:

- a. The resident's name.
- b. The name, strength, dosage form, and quantity of each medication.
- c. The date the medication was destroyed.
- d. The names and signatures of the witness and staff person who destroyed the medication.

ITEM 81. Amend subrule 114.12(11) as follows:

**114.12(11) Refills.** Prescriptions shall be refilled only with the permission of the attending ~~physician~~ prescriber authorized under Iowa law.

ITEM 82. Amend subrule 114.12(13) as follows:

**114.12(13) Order of ~~physician~~ authorized prescriber.** No prescription medication may be administered to a resident without the order of a ~~licensed physician~~ an authorized prescriber.

ITEM 83. Amend subrule 114.12(14) as follows:

**114.12(14) Patient reaction.** Any unusual patient reaction to a drug shall be reported to the attending physician or prescriber immediately.

ITEM 84. Amend subrule 114.12(16) as follows:

**114.12(16) Administration of drugs.** Medications shall be administered only in accordance with the instructions of the attending physician or authorized prescriber. ~~Controlled substances~~ Medications shall be administered only by ~~qualified personnel~~ staff who have completed a medication management course. The type and amount of the medication, the time and date, and the staff member administering the medication shall be documented in the child's record. (See ~~IAC 620—8.16(204)~~.)

ITEM 85. Amend subrule 114.12(17) as follows:

**114.12(17) Self-administration of drugs.** There shall be written policy and procedures relative to self-administration of prescription medications by residents and only when:

- a. Medications are prescribed by a physician or other authorized prescriber.
- b. The physician ~~agrees~~ or authorized prescriber provides written approval that the patient is capable of participating and can self-administer the drug.
- c. No change.

ITEM 86. Adopt the following **new** subrule 114.12(18):

**114.12(18) Obtaining nonprescription medications.** Facilities shall maintain a supply of standard nonprescription medications for use for children residing at the facility. Examples of standard nonprescription medications include cough drops and cough syrups, aspirin substitutes and other pain control medication, poison antidote, and diarrhea control medication.

- a. All nonprescription medications kept on the premises for the use of residents shall be preapproved annually by a licensed pharmacist or an authorized prescriber.
- b. Facilities shall maintain a list of all preapproved nonprescription medications. The list shall indicate standard uses, standard dosages, contraindications, side effects, and common drug interaction warnings. The facility administrator or the administrator's designee shall be responsible for

determining the scope of the list and brands and types of medications included.

c. Only nonprescription medications on the preapproved list shall be available for use. However, the facility administrator or the administrator's designee, in consultation with an authorized prescriber or licensed pharmacist, may approve use of a nonprescription medication that is not on the preapproved list for a specific child.

ITEM 87. Amend paragraph **114.13(3)“f”** as follows:

f. The child shall be allowed to send and receive mail unopened unless contraindicated. Contraindications, except those listed below, should be documented in the child's file. The facility may require the child to open incoming mail in the presence of a staff member when it is suspected to contain contraband articles, or when there is money that should be received and deposited.

ITEM 88. Amend subrule 114.20(1) as follows:

**114.20(1) Generally.** The facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Agency staff shall be in control of and responsible for discipline at all times. Discipline shall not include the withholding of basic necessities such as food, clothing, or sleep. Discipline shall not be used for anyone other than a child whose actions resulted in consequences. Group discipline shall not be used because of actions of an individual child or other children.

ITEM 89. Amend subrule 114.20(3) as follows:

**114.20(3) Physical restraint.** The use of physical restraint shall be employed only to prevent the child from injury to self, to others, or to property. Physical restraint must be conducted with the child in a standing position whenever possible. Each child has the right to be free from restraint and seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.

a. to c. No change.

d. The rationale and authorization for the use of physical restraint and staff action and procedures carried out to protect the child's rights and to ensure safety shall be clearly ~~set forth~~ documented in the child's record by the responsible staff persons no later than the end of the shift in which the restraint was used.

e. Documentation of restraint use shall include, but need not be limited to, the following:

(1) Each use of restraint or control room.

(2) The time the intervention began and ended.

(3) The reason that required the resident to be restrained or put in a control room.

(4) The name of staff involved in the intervention.

ITEM 90. Amend subrule 114.20(4) as follows:

**114.20(4) Other restraints and control room.** Only comprehensive residential facilities may use a control room, locked cottages, or mechanical restraints ~~or chemical restraint.~~

ITEM 91. Adopt the following **new** subrule 114.20(6):

**114.20(6) Time out.**

a. A resident in time out must never be physically prevented from leaving the time out area.

b. Time out may take place away from the area of activity or from other residents, such as in the resident's room, or in the area of activity of other residents.

c. Staff must monitor the resident while the resident is in time out.

ITEM 92. Amend rule 441—114.21(237) as follows:

**441—114.21(237) Illness, accident, death, or unauthorized absence from the facility.**

**114.21(1) Notification of illness.** A facility shall notify the child's parent(s), guardian and responsible agency of any serious illness, incident involving serious bodily injury, ~~or~~ circumstances causing removal of the child from the facility, or elopement.

**114.21(2)** No change.

This rule is intended to implement Iowa Code section 237.2.

ITEM 93. Amend rule 441—114.22(237) as follows:

**441—114.22(237) Records.** In the event of closure of a facility, children's records shall be sent to the department of human services for retention according to the department's records retention policy or the period defined in the department's contract for services, whichever is longer.

This rule is intended to implement Iowa Code section 237.2.

ITEM 94. Rescind rule 441—114.23(237) and adopt the following new rule in lieu thereof:

**441—114.23(237) Unannounced visits.**

**114.23(1) Frequency.**

*a. Time.* At least one annual unannounced visit shall occur during periods of the day when the child would normally be in the facility and awake.

*b. Activities.* The visit shall include an assessment of, but not be limited to, the following areas:

- (1) Interaction between the staff and child.
- (2) Interaction between the children.
- (3) Discussion with the child about experiences in the facility.
- (4) A check on any previously cited deficiencies.
- (5) Overall impression of the facility.
- (6) Staff record checks.

*c. Recommendation.* The licensing staff shall recommend follow-up when needed.

**114.23(2)** Visits at other times may occur as a result of a self-reported incident or specific complaint.

ITEM 95. Renumber rule **441—114.24(237)** as **441—114.25(237)**.

ITEM 96. Adopt the following new rule 441—114.24(237):

**441—114.24(237) Record check information.** Record checks are required for any entity being considered for licensure or employment by a licensee on a facility campus where children reside to determine whether any founded child abuse reports or criminal convictions exist or whether the entity has been placed on a sex offender registry. The facility shall not employ any person who has been convicted of a crime involving the mistreatment or exploitation of a child. The facility shall not employ any person who has a record of a criminal conviction or founded child abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of licensure, volunteering or employment.

**114.24(1) Procedure.** Each entity being considered for licensure or employment shall be checked for all of the following:

*a.* Records with the Iowa central abuse registry, using the request for child and dependent adult abuse information form;

*b.* Records with the Iowa division of criminal investigation, using the department's criminal history record check form;

*c.* Records with the Iowa sex offender registry;

*d.* Records with the child abuse registry of any state where the person has lived during the past five years; and,

*e.* Fingerprints provided to the department of public safety for submission through the state criminal history repository to the United States Department of Justice, federal bureau of investigation, for a national criminal history check. Fingerprinting, for the purpose of a national criminal history check, is required for all entities considered for licensure or employment by a licensee on a facility campus where children reside.

**114.24(2) Evaluation of record.** If an entity for which a background check is required has a record of founded child or dependent adult abuse, a criminal conviction, or placement on a sex offender registry, the department shall prohibit licensure or employment unless an evaluation determines that the abuse, criminal conviction, or placement on a sex offender registry does not warrant prohibition.

a. Scope. The evaluation shall consider the nature and seriousness of the founded child or dependent adult abuse or criminal conviction report in relation to:

- (1) The position sought or held,
- (2) The time elapsed since the abuse or crime was committed,
- (3) The degree of rehabilitation,
- (4) The likelihood that the person will commit the abuse or crime again, and
- (5) The number of abuses or crimes committed by the person.

b. Evaluation form. The person with the founded child or dependent adult abuse or criminal conviction report shall complete and return the department's record check evaluation form within ten calendar days of the date of receipt to be used to assist in the evaluation.

**114.24(3) Evaluation decision.** The department shall conduct the evaluation and make the decision of whether or not the founded child or dependent adult abuse or criminal conviction warrants prohibition of licensure or employment by a licensee. The department shall issue a notice of decision in writing to the requesting entity. The requesting entity is responsible for providing a copy of the notice to the prospective employee. Record check evaluations are valid for 30 days from the date the notice of decision is issued.

ITEM 97. Adopt the following new definition of "Locked cottage" in rule **441—115.2(237)**:

"*Locked cottage*" means an occupied comprehensive residential facility or an occupied unit of a comprehensive residential facility which is physically restrictive because of the continual locking of doors to prevent the children in care from leaving the facility.

ITEM 98. Amend rule **441—115.2(237)**, definitions of "Comprehensive residential facility" and "Secure facility," as follows:

"*Comprehensive residential facility*" means a facility which provides care and treatment for children who are unable to live in a family situation due to social, emotional, or physical disabilities and who require varying degrees of supervision as indicated in the individual treatment service plan. Care includes room and board. Services include the internal capacity for individual, family, and group treatment. These services and others provided to the child shall be under the administrative control of the facility. Community resources may be used for medical, recreational, and educational needs. Comprehensive residential facilities have higher staff to client ratios than community residential facilities and may use control rooms, locked cottages, and mechanical restraints, ~~and chemical restraints~~ when these controls meet licensing requirements.

"*Secure facility*" means any comprehensive residential facility which employs, on a regular basis, locked doors or other ~~physical means~~ building characteristics intended to prevent children in care from leaving the facility without authorization. Secure facilities may only be used for children who have been adjudicated delinquent or placed pursuant to provisions of Iowa Code chapter 229.

ITEM 99. Amend subparagraph **115.4(2)"b"(1)** as follows:

(1) Provide at least weekly group or individually scheduled in-person conferences with each resident for whom the caseworker is responsible. More frequent in-person contact shall be provided if required in the ~~care~~ service plan.

ITEM 100. Rescind rule **441—115.5(237)** and adopt the following new rule in lieu thereof:

**441—115.5(237) Casework services.** The facility shall have the internal capacity to provide individual, family and group counseling and shall provide, but not be limited to, casework dealing with crisis intervention, daily living skills, peer relationships, future planning and preparation for discharge.

ITEM 101. Amend subrule 115.6(4) as follows:

**115.6(4) Use of restraint.**

a. and b. No change.

c. A secure facility which uses ~~any form of~~ restraint permitted by licensing standards, other than physical restraint, shall ensure that all direct service staff are adequately trained in the following areas:

(1) The appropriate use and application or administration of each approved permitted form of restraint.

(2) and (3) No change.

*d.* A secure facility shall continually review any placement of use of a restraint on a child, in any form of restraint other than physical restraint. The facility shall release the child from restraint immediately when the situation precipitating restraint no longer exists.

ITEM 102. Amend subrule 115.7(2) as follows:

**115.7(2) *Written policies.*** When a comprehensive residential treatment facility uses a control room as part of its treatment program, the facility shall have written policies regarding its use. The policy shall:

*a. to c.* No change.

*d.* Limit the utilization of the control room to one of the following two circumstances:

(1) The child's care service plan includes and explains how this use of the control room fits into the treatment service plan for the child.

(2) A one-time one-time placement in an emergency without a care service plan outlining the rationale for its use. This treatment shall be included in the care service plan for a second placement of a child in the control room.

ITEM 103. Amend subrule 115.7(4) as follows:

**115.7(4) *Use of control room.*** The control room shall be used only when a less restrictive alternative to quiet or allow allowing the child to gain control has failed and when it is in the care service plan. The following policies shall apply to the use of the control room:

*a. to e.* No change.

*f.* A staff member shall always be within hearing distance of positioned outside of the control room, the child shall be visually checked by the staff at least every 15 minutes, and each check shall be recorded. Visual and auditory observations of the child's behavior and condition shall be recorded at five-minute intervals, and a complete written report shall be documented in the child's file by the end of the staff person's work shift.

*g. and h.* No change.

ITEM 104. Amend subrule 115.8(3) as follows:

**115.8(3) *As one unit of treatment program Policies.*** ~~When a facility utilizes~~ Licensees utilizing a locked cottage as one unit of its treatment program, it shall have and follow written policies for the locked cottage. The policies shall be provided to the child, the child's parents or guardian and, when the child has an attorney, the child's attorney at the time of admission. The policies shall include:

*a. and b.* No change.

*c.* Requirement Requirements for documentation in writing of particular behaviors of a particular child that led to the locked cottage placement.

*d. to h.* No change.

ITEM 105. Amend rule 441—115.9(237) as follows:

**441—115.9(237) *Mechanical restraint.*** When a facility uses mechanical restraints as a part of its treatment program, the facility shall have and follow written policies regarding their use. These policies shall be approved by the licenser prior to their use. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff.

**115.9(1) and 115.9(2)** No change.

**115.9(3) *In transporting children.*** Notwithstanding paragraph 115.9(1) "*d.*" mechanical restraint of a child in case of a secure facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record. This report shall document the necessity for the use of restraint. Seat belts are not considered mechanical restraints.

Agency policies should encourage the use of seat belts while transporting children and comply with Iowa law.

This rule is intended to implement Iowa Code section 237.4.

ITEM 106. Renumber rule **441—115.10(237)** as **441—115.12(237)**.

ITEM 107. Adopt the following **new** rule 441—115.10(237):

**441—115.10(237) Restraint and control room use debriefing.**

**115.10(1) Initial discussion.** Within a short time after the use of the restraint or control room, staff involved in an intervention and the resident must have a face-to-face discussion except when the presence of a particular staff person may jeopardize the well-being of the resident.

a. Other staff and the resident's parent(s) or legal guardian(s) may participate in the discussion when it is deemed appropriate by the facility. The facility must conduct such discussion in a language that is understood by the resident's parent(s) or legal guardian(s).

b. The discussion must provide both the resident and staff the opportunity to discuss the circumstances resulting in the use of the restraint or control room and strategies to be used by the staff, the resident, or others that could prevent the future use of the restraint or control room.

**115.10(2) Staff discussion.** Within 24 hours after the use of the restraint or control room, all staff involved in the intervention, and appropriate supervisory and administrative staff, must conduct a debriefing session that includes, at a minimum, a review and discussion of the intervention including, but not limited to, the following:

(1) The emergency safety situation that required the intervention, including discussion of the precipitating factors that led up to the intervention;

(2) Alternative techniques that might have prevented the use of the restraint or control room;

(3) The procedures, if any, that staff are to implement to prevent any recurrence of the use of the restraint or control room; and

(4) The outcome of the intervention, including any injuries that may have resulted from the use of the restraint or control room.

**115.10(3) Documentation.** Staff must document in the resident's record that both debriefing sessions took place and must include in that documentation the names of staff who were present for the debriefing, the names of staff who were excused from the debriefing, and any reasons that are applicable.

ITEM 108. Adopt the following **new** rule 441—115.11:

**441—115.11(237) Chemical restraint.** Chemical restraint shall not be utilized in a comprehensive residential facility and each comprehensive residential facility shall have written policies that clearly prohibit the use of chemical restraint.

ITEM 109. Amend **441—Chapter 116**, title, as follows:

LICENSING AND REGULATION OF RESIDENTIAL FACILITIES  
FOR CHILDREN WITH AN INTELLECTUAL DISABILITY OR BRAIN INJURY

ITEM 110. Amend rule 441—116.1(237) as follows:

**441—116.1(237) Applicability.** This chapter relates specifically to the licensing and regulation of residential facilities serving children with an intellectual disability or brain injury. Refer to 441—Chapter 112 for basic licensing and regulation of all foster care facilities, 441—Chapter 114 for definitions and minimum standards for all group living foster care facilities, ~~including community care facilities,~~ and 441—Chapter 115 for definitions and standards for comprehensive residential facilities for children. Chapters 112 and 114 apply to community residential facilities for children with an intellectual disability or brain injury and Chapters 112, 114 and 115 apply to comprehensive residential facilities for children with an intellectual disability or brain injury with the exception of the areas discussed specifically in this chapter.

This rule is intended to implement Iowa Code chapter 237.

ITEM 111. Amend rule **441—116.2(237)**, definitions of “Community residential facility for children with an intellectual disability” and “Comprehensive residential facility for children with an intellectual disability,” as follows:

“*Community residential facility for children with an intellectual disability or brain injury*” means a community residential facility as defined in rule 441—114.2(237) which serves children with an intellectual disability as defined in Iowa Code chapter 222 or brain injury as defined in Iowa Code chapter 225C.

“*Comprehensive residential facility for children with an intellectual disability*” means a comprehensive residential facility as defined in rule 441—115.2(237) which serves children with an intellectual disability as defined in Iowa Code chapter 222 or brain injury as defined in Iowa Code chapter 225C.

ITEM 112. Amend rule 441—116.5(237) as follows:

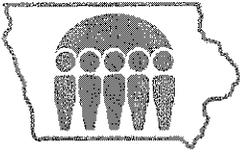
**441—116.5(237) Program components.** In addition to the requirements of 441—subrule 114.8(3), the facility shall ~~define in writing~~ have and follow a written procedure that defines who is responsible for overseeing personal hygiene of children and maintaining general orderliness of the facility.

This rule is intended to implement Iowa Code section 237.3.

ITEM 113. Amend rule 441—116.6(237) as follows:

**441—116.6(237) Restraint.** In addition to the provisions of 441—Chapters 114 and 115, a restraint may be used as stated in the child’s individual ~~care~~ service plan as approved by the parent or guardian, caseworker, and facility as long as that facility meets the standards for utilizing that particular type of restraint.

This rule is intended to implement Iowa Code section 237.4.



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

Name of Program Specialist Jim Chesnik	Telephone Number 281-9368	Email Address jchesni@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

These changes clean up obsolete portions of the rules, bring better alignment to current practice, and implement changes required by federal law.

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

Code of Iowa Chps. 237 and 232.

3. Describe who this rulemaking will positively or adversely impact.

Providers of foster group care services and emergency juvenile shelter care.

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

No. All providers of these services are required to be licensed or approved. These administrative rule chapters are all associated with either licensure or approval.

5. What are the likely areas of public comment?

Potentially any of the changes proposed to licensure standards, even though they essentially clarify requirements. The new federal fingerprinting requirements for background checks may be controversial even though fingerprinting has been required for foster parent licensure for many years. Going forward they will be required for group care and emergency juvenile shelter also.

6. 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.)

The background checks in these licensure or approval standards could prohibit licensure or employment of persons with criminal or abuse histories. The number of potential jobs or the costs that would result from implementation are unknown.



## Administrative Rule Fiscal Impact Statement

Date: February 22, 2019

**Agency:** Human Services  
**IAC citation:** 441 IAC -Chps 105, 112, 114, 115, 116  
**Agency contact:** Jim Chesnik

### Summary of the rule:

These changes clean up obsolete portions of the rules, bring better alignment to current practice, and implement changes required by federal law.

*Fill in this box if the impact meets these criteria:*

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

### Brief explanation:

This rule makes a number of changes, most of which are clean up or clarification which will have no fiscal impact. A component of the change that will have a fiscal impact relates to fingerprinting checks. Federal law changes will now require fingerprinting checks for group care and emergency juvenile shelter.

DHS intends to pay the cost of the fingerprint checks, but at this point we do not have a clear idea of how much that will be. The estimation is that it will total anywhere from \$76,000-\$96,000. An informal accounting of staff completed in 2018 yielded approximately 1,900 staff. It is estimated this will cost \$40 per check. Estimating a 25% staff turnover equates to an additional 500 checks, for a total estimation of 2,400 checks in Year 1. We would then assume 500 checks per year, on an ongoing basis.

#### SFY20

\$40 per check, Estimation of 1,900 current staff, also including 500 more staff for possible staff turnover. Equates to 2,400 staff at \$40 per check, which is \$96,000.

#### SFY21

\$40 per check, estimation of 500 staff for possible turnover at \$40 per check, which is \$20,000.

*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 20)</u>	<u>Year 2 (FY 21)</u>
<b>Revenue by each source:</b>		
General fund	0.00	0.00
Federal funds	0.00	0.00
Other (specify):	0.00	0.00
<b>TOTAL REVENUE</b>	<u>0.00</u>	<u>0.00</u>
<b>Expenditures:</b>		
General fund	96,000.00	20,000.00
Federal funds	0.00	0.00
Other (specify):	0.00	0.00
<b>TOTAL EXPENDITURES</b>	<u>96,000.00</u>	<u>20,000.00</u>
<b>NET IMPACT</b>	<u>-96,000.00</u>	<u>-20,000.00</u>

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Family First Prevention Services Act, Public Law 115-123

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:*

If additional funding is not provided, the cost will need to be absorbed within the Child and Family Services appropriation.

***Fiscal impact to persons affected by the rule:***

The background checks in these licensure or approval standards could prohibit licensure or employment of persons with criminal or abuse histories. The number of potential jobs or the costs that would result from implementation are unknown.

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

None anticipated.

Agency representative preparing estimate: David Philmon

Telephone number: 515-281-6856

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to preinspection visits and application process for child care centers and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 109, "Child Care Centers," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 234.6.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 234.6.

*Purpose and Summary*

These proposed amendments document the expectation of a preinspection visit prior to granting a new child care center permission to open. Preinspection visits occur in practice already. These amendments also clarify the expectation around Department receipt of the regulatory fee during application and when and where the fee is submitted. These proposed amendments better align rules to current practice.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

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 rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 3, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

## Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 109.2(1) as follows:

**109.2(1) Application for license.**

*a.* and *b.* No change.

*c.* When a center makes a sufficient application for an initial license, the center may operate for a period of up to 120 calendar days from the date of issuance of the form granting permission to open without a license, pending a final licensing decision. A center has made a sufficient application when it has had an on-site visit and has submitted the following to the department:

(1) to (4) No change.

(5) ~~The regulatory fee as specified in subrule 109.2(7), and the fee is received by the department’s division of fiscal management.~~

*d.* Applicants shall submit the regulatory fee as specified in subrule 109.2(7) to the department’s division of fiscal management.

~~*e.*~~ Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) and (2) No change.

~~*e.*~~ *f.* The department shall not act on a licensing application for 12 months after an applicant’s child care center license has been denied or revoked.

~~*f.*~~ *g.* When the department has denied or revoked a license, the applicant or person shall be prohibited from involvement with child care unless the department specifically permits involvement through a record check decision.

ITEM 2. Amend paragraph **109.2(4)“f”** as follows:

*f.* The regulatory fee as specified in subrule 109.2(7) is not received by the department’s division of fiscal management by within 60 calendar days from the due date ~~indicated~~ on the ~~child care center licensing fee~~ invoice.

ITEM 3. Amend subrule 109.2(7) as follows:

**109.2(7) Regulatory fees.** A fee based upon center capacity is due to the department ~~before the~~ at the time of issuance of the license in accordance with this subrule.

*a.* to *c.* No change.

*d.* *Payment.* The center shall return the child care center licensing fee invoice to the department with the licensing fee payment within ~~30~~ 60 calendar days from the date of on the ~~licensing consultant’s or designee’s signature on~~ the invoice. Payment may be in the form of cash, check, money order, or cashier’s check. Regulatory fees are nonrefundable and nontransferable.

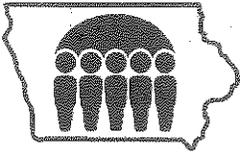
(1) ~~Payment must be received before the department will issue a full or provisional license.~~

(2) ~~Regulatory fees are nonrefundable and nontransferable.~~

ITEM 4. Amend rule 441—109.3(237A), introductory paragraph, as follows:

**441—109.3(237A) Inspection and evaluation.** The department shall conduct an unannounced on-site visit in order to make a licensing recommendation for all initial and renewal applications for licensure and shall determine compliance with licensing standards imposed by licensing laws and these rules when a complaint is received.

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

Name of Program Specialist Ryan Page	Telephone Number 281-7714	Email Address rpage@dhs.state.ia.us
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1. Give a brief summary of the rule changes:

The rules document the expectation of a pre-inspection visit prior to permitting a new child care center permission to open. This occurs in practice already. This also clarifies the expectation around Department receipt of the regulatory fee during application and when and where the fee is submitted. These rule changes better align to current practice.

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

17A, 237A.5

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

These rule changes better align to current practice.

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

Child Care Centers currently have 30 days before they must submit fingerprints to the department of public safety for evaluation upon staff hire. This new rule will require this to be done prior to staff involvement with child care.

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?

This rule allows some flexibility with the collection of regulatory fees which better aligns with current practice. Application renewals, onsite consultation and inspections, and invoicing happen in conjunction with one another but may experience overlapping timeframes.

7. What are the potential benefits of this rule?

Aligns better with current practice. This rule allows some flexibility with the collection of regulatory fees which better aligns with current practice. Application renewals, onsite consultation and inspections, and invoicing happen in conjunction with one another but may experience overlapping timeframes.

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

No costs are associated.

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

No

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

N/A

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

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)

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12. What are the likely areas of public comment?

None

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

No



## Administrative Rule Fiscal Impact Statement

Date: May 7, 2019

**Agency:** Human Services

**IAC citation:** 441 IAC

**Agency contact:** Ryan Page

**Summary of the rule:** These rules clarify the expectation of an on-site inspection and submission of the licensing fee prior to permitting a child care center to open.

*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:** These rules are clarification of current practice and have no fiscal impact to the state.

*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 (FY20)	Year 2 (FY21)
<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>	No Impact	No 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:*  
 There is no fiscal impact.

**Fiscal impact to persons affected by the rule:**  
 None anticipated.

**Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):**  
 None anticipated.

Agency representative preparing estimate: Kathy Blume  
 Telephone number: (515) 281-4196

*Handwritten:*  
 JB  
 5-7-19  
 ADA

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to child abuse mandatory reporter training for child care providers and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 109, "Child Care Centers," Chapter 110, "Child Development Homes," and Chapter 120, "Child Care Homes," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 237A.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 731.

*Purpose and Summary*

These proposed amendments change child abuse mandatory reporter training requirements for child care providers from once every five years to once every three years with modified expectations. These proposed amendments remove the five-year requirement and state that certification must be maintained. Additionally, the proposed amendments require all child care providers to participate in minimum health and safety training as a preservice or orientation requirement. The requirement for child care providers to take preservice training every five years without training credit is removed. Child care providers would be able to continue their professional development requirements without repeating the same training and may also receive credit for the training taken.

*Fiscal Impact*

No fiscal impact is anticipated because the Department will continue to contract with agencies to provide the necessary provider training. Each child care provider will determine the provider's own ongoing professional development needs while maintaining the minimum required training and content areas identified in the rules.

*Jobs Impact*

The proposed rule making would reduce the financial burden to child care providers who are currently required to take 12 hours of mandated orientation/preservice professional development without receiving training credit. Child care providers will take training that meets minimum hour and content area requirements, and approved training will count toward the minimum requirements.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 3, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **109.7(1)“e”** as follows:

e. Minimum health and safety trainings, approved by the department, in the following areas ~~and every five years thereafter:~~

(1) to (10) No change.

Minimum health and safety training may be required ~~prior to the five-year period~~ if content has significant changes which warrant that the training be renewed.

ITEM 2. Amend paragraph **109.7(3)“e”** as follows:

e. Minimum health and safety trainings, approved by the department, in the following areas:

- (1) Prevention and control of infectious disease, including immunizations.
- (2) Prevention of sudden infant death syndrome and use of safe sleep practices.
- (3) Administration of medication, consistent with standards for parental consent.
- (4) Prevention of and response to emergencies due to food and allergic reactions.
- (5) 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.
- (6) Prevention of shaken baby syndrome and abusive head trauma.
- (7) Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event.
- (8) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants.
- (9) Precautions in transporting children.
- (10) Child development, on or after August 1, 2017.

ITEM 3. Amend paragraph **110.9(2)“c”** as follows:

c. Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse as required by Iowa Code section 232.69, completed within three months of employment ~~and every five years thereafter, as required by Iowa Code section 232.69.~~

ITEM 4. Amend paragraph **110.9(3)“c”** as follows:

c. Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse as required by Iowa Code section 232.69, completed within three months of

employment and ~~every five years thereafter~~, as required by Iowa Code section ~~232.69~~.

ITEM 5. Amend paragraph **110.10(1)“a”** as follows:

*a.* Prior to registration and ~~every five years thereafter~~, the provider shall complete minimum health and safety trainings, approved by the department, in all of the following areas:

(1) to (10) No change.

ITEM 6. Amend paragraph **110.10(1)“b”** as follows:

*b.* Prior to registration and ~~every five years thereafter~~, the provider shall complete two hours of Iowa’s training for mandatory reporting of child abuse as required by Iowa Code section 232.69. The provider shall maintain a valid certificate indicating expiration date.

ITEM 7. Rescind paragraph **110.10(1)“e.”**

ITEM 8. Reletter paragraphs **110.10(1)“f”** and **“g”** as **110.10(1)“e”** and **“f.”**

ITEM 9. Amend relettered paragraph **110.10(1)“e”** as follows:

*e.* Minimum health and safety training may be required ~~prior to the five-year period~~ if content has significant changes which warrant that the training be renewed.

ITEM 10. Amend subrule 120.10(1), introductory paragraph, as follows:

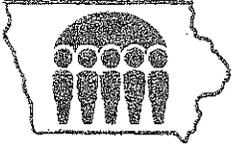
**120.10(1)** Prior to the issuance of a provider agreement and ~~every five years thereafter~~, the provider shall complete minimum health and safety trainings, approved by the department, in all of the following content areas:

ITEM 11. Amend subrule 120.10(2) as follows:

**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 as required by Iowa Code section 232.69. The provider shall maintain a valid certificate indicating expiration date.

ITEM 12. Amend subrule 120.10(4) as follows:

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



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

Name of Program Specialist	Telephone Number	Email Address
Ryan Page	5152817714	rpage@dhs.state.ia.us

1. Give a brief purpose and summary of the rulemaking:

HF 731 changes mandatory reporter training from every 5 years to every 3 years with modified expectations. These rule changes implement the change for child care providers by removing the 5 year requirement and stating that certification must be maintained.

Additionally, all child care providers are required by federal legislation and Iowa administrative rule to participate in minimum health and safety training as a preservice/orientation. DHS wishes to remove a mandate to take this specific training again after 5 years and allow child care providers to determine their ongoing professional development needs while maintaining minimum hour and content area requirements as currently identified in rules.

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

HF 731

3. Describe who this rulemaking will positively or adversely impact.

While mandatory reporter training will be required more often, this was a direct outcome of legislation and will improve understanding of child abuse reporting requirements by mandatory reporters. We are lessening training burden to child care providers by removing the requirement of preservice training to be taken again without training credit every 5 years. They may now continue with their professional development requirements without repeating the same training and may also receive credit for training taken

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

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)

5. What are the likely areas of public comment?

Likely none.

6. 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.)

We will be reducing financial burden to child care providers that would previously have been required to take 12 hours of mandated orientation/preservice professional development without receiving training credit. Child care providers will take minimum hour and content area requirements and approved training will count towards the minimum requirement.



*Estimated Impact to the State by Fiscal Year*

	<u>Year 1 (FY 2020)</u>	<u>Year 2 (FY 2021)</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>	_____	_____
<input checked="" type="checkbox"/> This rule is required by state law or federal mandate. <i>Please identify the state or federal law:</i> Identify provided change fiscal persons: HF 731		
<input type="checkbox"/> Funding has been provided for the rule change. <i>Please identify the amount provided and the funding source:</i>		
<input checked="" type="checkbox"/> Funding has not been provided for the rule. <i>Please explain how the agency will pay for the rule change:</i> No fiscal impact is anticipated.		
<i>Fiscal impact to persons affected by the rule:</i> None anticipated.		
<i>Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):</i> None anticipated.		
Agency representative preparing estimate:	Kathy Blume	JH 6/20/19 AMB
Telephone number:	515-281-4196	