

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

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

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

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

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

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

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Requesting entity” in rule **441—109.1(237A)**:

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

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

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

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

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

(1) The person with the transgression shall complete ~~and return Form 470-2310,~~ the Record Check Evaluation, ~~within ten calendar days of the date on the form.~~ The requesting entity shall provide the form and any other documents to the department within ten calendar days of the date on the form. The department shall use the information the person with the transgression provides on this form to assist in the evaluation. Failure of the person with the transgression to complete ~~and the licensee~~ the requesting entity to return this form by the specified date shall result in denial or revocation of the license or denial of employment. The department shall not process evaluations that are not signed by the person subject to an evaluation.

(2) No change.

- ~~(3) In an evaluation, the department shall consider all of the following factors:~~
- ~~1. The nature and seriousness of the transgression in relation to the position sought or held.~~
 - ~~2. The time elapsed since the commission of the transgression.~~
 - ~~3. The circumstances under which the transgression was committed.~~
 - ~~4. The degree of rehabilitation.~~
 - ~~5. The likelihood that the person will commit the transgression again.~~
 - ~~6. The number of transgressions committed by the person.~~

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

- ~~1. Documentation of criminal justice proceedings.~~
- ~~2. Documentation of rehabilitation.~~
- ~~3. Written employment references or applications.~~
- ~~4. Documentation of substance abuse education or treatment.~~
- ~~5. Criminal history records, child abuse information, and dependent adult abuse information from other states.~~

~~6. Documentation of the person's prior residences.~~

~~(4) When a person subject to a record check has a transgression that has been determined in a previous evaluation not to warrant prohibition of the person's involvement with child care and has no subsequent transgressions, an exemption from reevaluation of the latest record check is authorized. The person may commence employment with another child care facility in accordance with the department's previous evaluation. The exemption is subject to all of the following conditions:~~

- ~~1. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.~~
- ~~2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.~~
- ~~3. The person subject to the record check has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides to the subsequent employer the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record check shall be reevaluated.~~

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

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

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

- ~~1. The nature and seriousness of the transgression in relation to the position sought or held.~~
- ~~2. The time elapsed since the commission of the transgression.~~
- ~~3. The circumstances under which the transgression was committed.~~
- ~~4. The degree of rehabilitation.~~
- ~~5. The likelihood that the person will commit the transgression again.~~
- ~~6. The number of transgressions committed by the person.~~

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

- ~~1. The person's position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.~~
- ~~2. Any restrictions placed on the person's employment by the department in the previous evaluation shall remain applicable in the person's subsequent employment.~~

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

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

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

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

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

(2) to (4) No change.

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

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

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

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

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

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

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

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

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

(4) and (5) No change.