Regulatory Analysis

Notice of Intended Action to be published: 441—Chapter 119
"Record Check Evaluations for Certain Employers and Educational Training Programs"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 135B.34(2)"d"
State or federal law(s) implemented by the rulemaking: Iowa Code section 135C.33

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 24, 2026 10 a.m.	Microsoft Teams Meeting ID: 287 677 567 218 98 Passcode: Ny3YJ3ES

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department of Health and Human Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

These proposed rules establish procedures for the performance of record check evaluations by the Department for personnel employed by health care facilities and other programs and for students in educational training programs for nurses and certified nurse aides. Record check evaluations are performed, at the request of a prospective employer or training program, on persons who have been found to have been convicted of a crime under a law of any state or have a record of founded child or dependent adult abuse, to determine whether the crimes or founded abuses warrant prohibition of employment or enrollment in a training program.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Some businesses may pay an administrative fee to maintain a Single Contact Repository (SING) account that allows them to independently conduct background checks.

- **Classes of persons that will benefit from the proposed rulemaking:**

The general public will benefit from the protections provided from conducting background checks on potential employees who care for dependent adults and children.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

In calendar year 2025, the Department processed 16,357 record check evaluation packets. This number includes reprocessing packets that were initially rejected for failure to submit the required information.

- **Qualitative description of impact:**

This proposed rulemaking does not make any policy changes.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

The Department incurs personnel and other administrative costs associated with implementing this proposed chapter.

- **Anticipated effect on State revenues:**

This proposed rulemaking has no impact on State revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

Rulemaking is required by Iowa Code section 135C.33. The current review is required by Executive Order 10.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

Rulemaking is required by Iowa Code section 135C.33.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

Not applicable.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Rulemaking is required by Iowa Code section 135C.33.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This proposed rulemaking has no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 119 and adopt the following **new** chapter in lieu thereof:

CHAPTER 119
RECORD CHECK EVALUATIONS FOR
CERTAIN EMPLOYERS AND EDUCATIONAL TRAINING PROGRAMS

441—119.1(135B,135C) Definitions.

"Deferred judgment" means the same as defined in Iowa Code section 907.1 and is considered an admission of committing an act. Under this chapter, the admission of committing an act must be considered a conviction for purposes of public protection.

"Requesting entity" means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can be employed by the entity or participate in a training or education program and includes the following:

1. Health care facilities as defined in Iowa Code section 135C.1.
2. Programs in which the provider is regulated by the state or receives any state or federal funding and the employee being evaluated provides direct services to consumers, including but not limited to programs that employ homemakers or home health aides, programs that provide adult day services, hospices, federal home- and community-based services waiver providers, elder group homes, and assisted living programs.
3. Substance abuse programs for juveniles as described in Iowa Code section 125.14A.
4. Hospitals as defined in Iowa Code section 135B.1.
5. Psychiatric medical institutions for children as defined in Iowa Code section 135H.1.
6. The department as described in Iowa Code sections 217.44 and 217.45.
7. Department institutions as described in Iowa Code section 218.13.
8. Child foster care facilities as described in Iowa Code section 237.1.
9. Medicaid home- and community-based services waiver providers as described in Iowa Code section 249A.29.
10. Certified nurse aide training programs as described in Iowa Code section 135C.33(9).
11. Nursing education programs as described in Iowa Code chapter 152.

"Start employment or attend the training program" means to begin to receive a salary or take classes.

"Training" means certified nurse aide training programs as described in Iowa Code section 135C.33(9) or nursing education programs as described in Iowa Code chapter 152.

441—119.2(135B,135C) When record check evaluations are requested.

119.2(1) *Record check evaluations on prospective employees and students.* A requesting entity shall request a record check evaluation prior to employment or enrollment of a person whose background check indicates a criminal or dependent adult abuse or child abuse record. Any deferred judgments will be considered in criminal background checks. Criminal, child abuse and dependent adult abuse background checks are required on all prospective employees or students, including employees or students who have terminated employment or participation in a training program for any reason or any length of time and wish to return to the same employment or training program, unless an exemption is provided in these rules.

a. A hospital or licensee of a health care facility may employ a person for up to 60 calendar days pending completion of the evaluation if all of the following criteria are met:

(1) The employment does not involve operation of a motor vehicle; and

(2) The person to be employed has been convicted of a simple misdemeanor offense under Iowa Code section 123.47 or chapter 321 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and

(3) The person to be employed does not have a record of founded child or dependent adult abuse; and

(4) The hospital or licensee has requested an evaluation.

b. A training program in a facility licensed under Iowa Code chapter 135C may allow a student who is applying for, enrolled in, or returning to a certified nurse aide training program to participate in the clinical education component of the training program for up to 60 calendar days pending completion of the evaluation if all of the following criteria are met:

(1) The student's clinical education component of the training program involves children or dependent adults; and

(2) The program does not involve operation of a motor vehicle; and

(3) The student has been convicted of a simple misdemeanor offense under Iowa Code section 123.47 or chapter 321 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and

(4) The student does not have a record of founded child or dependent adult abuse; and

(5) The training program has requested an evaluation.

119.2(2) *Record check evaluations on current employees and students.* A requesting entity shall request a record check evaluation on current employees and students when a current employee or student background check indicates a criminal conviction other than an Iowa Code chapter 321 simple misdemeanor or equivalent simple misdemeanor offense from another jurisdiction or a dependent adult or child abuse record and the requesting entity intends to continue to employ the employee or to continue the student's enrollment in a training program. The requesting entity shall request a current criminal or dependent adult or child abuse record check when the entity receives credible information as determined by the entity that a current employee or student has a criminal or dependent adult or child abuse record that has not been previously considered by the requesting entity.

119.2(3) *Transfer of employee between facilities.* If a person owns or operates more than one facility, and an employee of one of the facilities is transferred to another facility without a lapse in employment, the facility is not required to request additional criminal or abuse record checks of the employee or obtain a new record check evaluation.

119.2(4) *Exceptions to record check evaluation requirements for employment under Iowa Code chapter 135B or 135C or participation in a training program in facilities licensed under Iowa Code chapter 135C.* If an evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment, the person who is or was employed by a hospital licensed under Iowa Code chapter 135B and is hired by another hospital or the person who is or was employed by a facility licensed under Iowa Code section 135C.33 and is hired by another facility licensed under Iowa Code section 135C.33 may commence employment without further action by the department subject to the following conditions:

a. The record check performed by the subsequent employer does not indicate that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation.

b. 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.

c. Any restriction placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

d. The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides 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, a new record check evaluation shall be performed.

e. Although an authorized new evaluation is not required, the subsequent employer may choose to request a reevaluation of the person's criminal and abuse background and may employ the person while the reevaluation is being performed.

f. The subsequent employer must maintain the previous evaluation in the employee's or student's personnel file for verification of the exception to the requirement for a record check evaluation.

119.2(5) *Exceptions to record check evaluation requirements for new employees under Iowa Code chapter 135B or 135C or participants in a training program in facilities licensed under Iowa Code chapter 135C.* If the person approved for employment or participation does not start employment or attend the training program within 30 days from the notice of decision approving the person, the requesting entity must perform a new record check.

a. If the evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment or

participation in a training program, the person being considered for employment may commence employment without further action by the department subject to the following conditions:

(1) The record check performed by the employer does not indicate that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation.

(2) The position with the employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

(3) Any restriction placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

(4) The employer or person subject to the record checks has maintained a copy of the previous evaluation. If a physical copy of the previous evaluation is not maintained, a new record check evaluation shall be requested.

(5) Although an authorized new evaluation is not required, the subsequent employer may choose to request a reevaluation of the person's criminal and abuse background and may employ the person while the reevaluation is being performed.

(6) The employer must maintain the previous evaluation in the employee's or student's personnel file for verification of the exception to the requirement for a record check evaluation.

b. If the record check indicates that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation, a new record check evaluation shall be performed.

c. Record check evaluations completed in accordance with paragraph 119.4(3)*"c"* are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period, the conditions in subrule 119.2(5) shall apply.

441—119.3(135C) Request for evaluation.

119.3(1) *Required documentation.* The requesting entity and the prospective employee or student shall complete and submit a Record Check Evaluation Form (471-2310) to the department by regular mail, email, or fax to request an evaluation. The department will not process evaluations that are not signed by the prospective employee or student. The position sought or held must be clearly written on the first page of the record check evaluation form. The form shall be accompanied by the following documents:

a. A copy of the documentation of the person's status on the division of criminal investigation (DCI) criminal history database generated within 30 days of the date on which the request for evaluation is submitted to the department.

b. A copy of the Iowa criminal history data, if there is a history, as provided to the requesting entity by DCI.

c. A copy of the documentation of the person's status on the dependent adult abuse registry generated within 30 days of the date on which the request for evaluation is submitted to the department.

d. A copy of the documentation of the person's status on the child abuse registry generated within 30 days of the date on which the request for evaluation is submitted to the department.

119.3(2) *Additional documentation.*

a. The requesting entity may provide or the department may request from the prospective employee or student 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 applicant's prior residences.

b. Any person or agency that might have pertinent information regarding the criminal or abuse history and rehabilitation of a prospective employee or student may be contacted.

441—119.4(135B,135C) Completion of evaluation.

119.4(1) *Considerations.* The department will consider the following when conducting a record check evaluation:

a. The nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held.

b. The time elapsed since the commission of the crime or founded child or dependent adult abuse.

c. The circumstances under which the crime or founded child or dependent adult abuse was committed.

d. The degree of rehabilitation.

e. The likelihood that the person will commit a crime or founded child or dependent adult abuse again.

f. The number of crimes or instances of founded child or dependent adult abuse committed by the person involved.

119.4(2) *Evaluation conclusions.*

a. The department may determine the following:

(1) The person may be employed by the entity or enroll in the training program with no restrictions.

(2) The person may be employed by the entity or enroll in the training program with restrictions.

(3) The person may be employed by the entity or enroll in the training program with restrictions specific to a position within the program.

(4) The person may not be employed by the entity or enroll in the training program.

b. Restrictions on a person's employment or enrollment status will be based upon what is necessary for the protection of the person or persons receiving care.

c. Medicaid waiver attendant care evaluations will determine that either the person may work or the person may not work pursuant to Medicaid law.

119.4(3) *Notice of decision.* The department will 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 or student.

a. The notice will be valid only for employment with the employer or enrollment in a training or education program that requested the record check evaluation.

b. The notice shall not be valid for employment with any other prospective employer or enrollment in another training program.

c. Record check evaluations are valid for 30 days from the date the notice of decision is issued pursuant to 441—Chapter 16. If the person does not start employment or attend the training program within the 30-day time period, the conditions in subrule 119.2(5) shall apply.

d. The notice of decision shall contain the notice of right to appeal pursuant to 441—Chapter 7.

441—119.5(135B,135C) Appeal rights. Any person or the person's attorney may file a written statement with the department requesting an appeal of the record check evaluation decision within 30 days of the date of the notice of the results of the record check evaluation in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code section 135C.33.