

HUMAN SERVICES DEPARTMENT[441]

Regulatory Analysis

Notice of Intended Action to be published: 441—Chapter 152
“Foster Care Contracting”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 234.6

State or federal law(s) implemented by the rulemaking: Iowa Code section 234.6

Public Hearing

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

July 28, 2026
10 a.m.

Microsoft Teams
Meeting ID: 291 340 678 349 357
Passcode: LT7oc32E

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:

Victoria L. Daniels
321 East 12th Street
Des Moines, Iowa 50319
Phone: 515.829.6021
Email: compliancerules@hhs.iowa.gov

Purpose and Summary

This proposed chapter was reviewed as a part of the Red Tape Review set forth by Executive Order 10. As a part of this review, restrictive terms were eliminated and rules were updated to reflect modern practices, while also reducing regulatory burdens. The proposed chapter sets forth the contracting process used for providers of foster group care, child welfare emergency services shelter, and supervised apartment living. This proposed chapter also establishes provider qualifications, service authorization procedures, documentation requirements, and service termination and appeal procedures associated with these foster care services.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs associated with the proposed rulemaking.

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

Facilities and providers that contract with the Department, as well as the children and residents who utilize the facilities, will benefit from clear, well-organized rules.

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:**

There is not expected to be a quantitative impact from this rulemaking.

- **Qualitative description of impact:**

Facilities and providers that contract with the Department, as well as the children and residents who utilize the facilities, will benefit from clear, well-organized rules.

3. **Costs to the State:**

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

There are no implementation or enforcement costs aside from personnel expenses.

- **Anticipated effect on State revenues:**

This proposed rulemaking is not expected to have an effect on State revenues.

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

The rules set forth in this proposed chapter are appropriate under Iowa Code section 234.6.

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

Not applicable.

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:**

Not applicable.

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 rulemaking is not expected to have an impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 441—Chapter 152 and adopt the following **new** chapter in lieu thereof:

CHAPTER 152
FOSTER CARE CONTRACTING

441—152.1(234) Definitions.

“*Affiliates*” means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

“*Authorized representative*” means that person appointed to carry out audit procedures, including an assigned auditor, fiscal consultant, or agent contracted for a specific audit or audit procedure.

“Child” means the same as defined in Iowa Code section 234.1.

“Claim” means each record the department receives that tells the amount of requested payment and the service rendered by a provider to a child and family.

“Client” means a child who has been found to be eligible for foster care services through the department.

“Confidence level” means the probability that an overpayment or underpayment rate determined from a random sample of charges is less than or equal to the rate that exists in the sample from which the sample was drawn.

“Contract” means a formal written agreement between the department and a provider of foster care services.

“Extrapolation” means using sample data meeting the confidence level requirement to estimate the total dollars of overpayment or underpayment.

“Family,” for purposes of child welfare service delivery, includes the following:

1. The natural or adoptive parents, stepparents, domestic partner of the natural or adoptive parent, and children who reside in the same household.
2. A child who lives with an adult related to the child within the fourth degree of consanguinity and the adult relatives within the fourth degree of consanguinity in the child’s household who are responsible for the child’s supervision. Relatives within the fourth degree of consanguinity include full or half-siblings, aunts, uncles, great-aunts, great-uncles, nieces, great-nieces, nephews, great-nephews, grandparents, great-grandparents, great-great-grandparents, and first cousins.
3. A child who lives alone or who resides with a person or persons not legally responsible for the child’s support.

“Fiscal record” means a tangible and legible history that documents financial and statistical records.

“Juvenile court officer” means a person appointed as a juvenile court officer or chief juvenile court officer under Iowa Code chapter 602.

“Overpayment” means any payment or portion of a payment made to a provider that is incorrect according to the laws and rules applicable to foster care services and results in a payment greater than that to which the provider is entitled.

“Probation” means a specified period of conditional participation in the provision of foster care services.

“Provider” means the entity that has executed a contract with the department to provide services.

“Random sample” means a systematic (or every “nth” unit) sample for which each item in the sample has an equal probability of being selected.

“Referral worker” means the department worker or juvenile court officer who refers the case to a provider and who is responsible for carrying out the follow-up activities of determining client eligibility and ensuring that the service authorization is completed.

“Service authorization” means the process of determining service necessity and the level of care and number of units of service to be provided to a child.

“Service record” means an individual, tangible, and legible file that records service-related activities set forth in subrule 152.2(4).

“Site” means each licensed location of the foster care provider.

“Underpayment” means any payment or portion of a payment not made to a provider for services delivered to eligible recipients according to the laws and rules applicable to the foster care services program and to which the provider is entitled.

“Unit of service” means one day for group care and child welfare emergency services shelter.

“Withholding of payments” means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted claims for purposes of offsetting overpayments previously made to the provider.

441—152.2(234) Conditions of participation.

152.2(1) *Provider licensure.* A provider facility shall obtain licensure prior to accepting placements from the department.

152.2(2) *Provider staffing.* At a minimum, all providers shall meet all licensure requirements for staff qualifications, training, and number of staff pursuant to 441—Chapter 105, 108, or 114.

152.2(3) *Provider charges.* A provider cannot charge department clients more than it receives for the same foster care services provided to nondepartment clients. The provider shall agree not to require any fee from department clients unless a fee is required by the department and is consistent with federal regulation and state policy.

152.2(4) *Maintenance of service records.* A provider shall maintain complete and legible records as required in this subrule.

a. For foster group care and shelter care, the provider shall establish and maintain confidential, individual service records for each client receiving foster care services. The service records must adequately support the provision of child welfare services and group care maintenance. The service record shall include, at a minimum, those items identified in rule 441—114.11(237) and 441—Chapter 105 and shall also include all of the following:

- (1) Additional reports, if requested by the referral worker.
- (2) Referral and Authorization Form.
- (3) Daily documentation of billed per diem services. The documentation shall include:
 1. The child's first and last name;
 2. The month, day, and year service was provided;
 3. The first and last names of the persons who or organizations that provided the service;
 4. A clear description of the specific service rendered, including interventions, actions, and activities performed that support the provision of child welfare services.
- (4) Notes, which shall be entered no less than every seven calendar days, indicating the child's general progress in regard to the child's care plan.
- (5) Any problem areas or unusual behavior for the child.

b. For supervised apartment living, the provider shall establish and maintain confidential, individual service records for each client receiving supervised apartment living services.

c. Failure to maintain records or failure to make records available to the department or to its authorized representatives upon request may result in a notice of violation and recoupment of payments.

152.2(5) *Maintenance of financial and statistical records.* The provider shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department. The records shall be available for review at any time during normal business hours by department personnel, the department's fiscal consultant, and state or federal audit personnel.

a. At a minimum, financial and statistical records shall include all revenue and expenses supported by a provider's general ledger and documentation on file in the provider's office. These records include, at a minimum:

- (1) Payroll information.
- (2) Capital asset schedules.
- (3) All canceled checks, deposit slips, and invoices (paid and unpaid).
- (4) Audit reports (if any).
- (5) The board of directors' minutes (if applicable).
- (6) Loan agreements and other contracts.
- (7) Reviewable, legible census reports and documentation of units of service provided to department clients that identify the individual client and are kept on a daily basis and summarized in a monthly report.
- (8) For nondepartment clients, sufficient documentation of utilization to establish a complete unit of service count.

b. The provider shall maintain a list of all staff and supervisors providing foster care services and their qualifications for each program.

c. When a provider has an independent audit conducted, a firm not related to the provider shall conduct the audit. The provider shall submit a copy of the independent audit report to the department within 30 days of receipt of the report.

152.2(6) Cost report. Providers shall complete the Combined Cost Report Form as required by contract.

a. *Due date.* The cost report shall be submitted to the department no later than three months after the close of the provider's established fiscal year. The provider may request a one-month extension.

b. *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate noncompliance with reporting instructions.

c. *County reimbursement for child welfare services shelter costs.* If a shelter care provider's actual and allowable costs as set forth in 441—Chapter 156 for a child's shelter care placement exceed the amount the department is authorized to pay and the provider is reimbursed by the child's county of legal settlement for the difference between actual and allowable costs and the amount reimbursed by the department, the amount paid by the county cannot be included by the department in its reimbursement rate determination, as long as the amount paid is not greater than the provider's actual and allowable costs or the statewide average of actual and allowable costs as identified in annual appropriations, whichever is less.

441—152.3(234) Provider reviews. The department may, at its discretion, review any provider at any time. Records generated and maintained by the department or its fiscal agent may be used by reviewers and in all proceedings of the department.

152.3(1) Review of provider records. The department has the authority to conduct a scheduled or unannounced visit to evaluate the adequacy of service records in compliance with the policies and procedures for foster care services.

152.3(2) Purpose. Upon proper identification, authorized representatives of the department have the right to review the service and fiscal records of the provider to determine whether:

- a. The department has accurately paid claims for services.
- b. The provider has furnished the services.
- c. The provider has retained service records and fiscal records that substantiate claims submitted for payment during the review period.
- d. Expenses reported to the department have been handled as required under subrule 152.2(6).

152.3(3) Method. The department will select the appropriate method of conducting a review and will protect the confidential nature of the records being reviewed. The provider may be required to furnish records to the department. The provider may select the method of delivering any requested records to the department. Review procedures may include but are not limited to the following:

- a. Comparing service and fiscal records with each claim.
- b. Interviewing clients and employees of providers.

152.3(4) Sampling. The department's procedures for reviewing a provider's service records may include the use of random sampling and extrapolation. When these procedures are used, all sampling will be performed within acceptable statistical methods, yielding not less than a 95 percent confidence level.

a. *Findings.* The review findings generated through the review procedure constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

b. *Extrapolation.* Findings of the sample will be extrapolated for the review period. The total of the payments determined to be in error in the review sample will be divided by the total payments in

the reviewed sample to calculate the percentage of dollars paid in error. This percentage will then be multiplied by the total payments in the review sample to determine the extrapolated overpayment.

c. Disagreement with findings. When the provider disagrees with the department's review findings and the findings have been generated through sampling and extrapolation, the provider may present evidence to show that the sample was invalid. The burden of proof of compliance rests with the provider. The evidence may include a 100 percent review of the provider records used by the department in the drawing of the department's sample. This review shall:

- (1) Be arranged and paid for by the provider.
- (2) Be conducted by a certified public accountant.
- (3) Demonstrate that bills and records not reviewed in the department's sample complied with program regulations and requirements.
- (4) Be submitted to the department with all supporting documentation.

152.3(5) Actions based on review findings.

a. The department will report the results of a review of provider records to concerned parties consistent with the provisions of 441—Chapter 2505.

b. When an overpayment is found, the department may do one or more of the following:

- (1) Request repayment in writing.
- (2) Impose sanctions provided for in rule 441—152.4(234).
- (3) Investigate and refer the matter to an agency empowered to prosecute.

441—152.4(234) Sanctions against providers. Failure to meet the requirements relevant to provider contracting, financial recordkeeping, billing and payment, and client recordkeeping may subject providers to sanctions.

152.4(1) Grounds for sanction. The department may impose sanctions against a provider for committing one or more of the following actions:

a. Failing to provide and maintain the quality of the services to children and families within established standards, including:

- (1) Failing to meet standards required by state or federal law for licensure.
- (2) Failing to correct deficiencies in provider operations after receiving notice of these deficiencies from the department.
- (3) Engaging in a course of conduct or performing an act that is in violation of state or federal regulations or continuing that conduct following notification that it should cease.
- (4) Violating any laws, regulations, or code of ethics governing the conduct of occupations or professions subject to this chapter.
- (5) Receiving a formal reprimand or censure by an association of the provider's peers for unethical practices.
- (6) Being suspended or terminated from participation in another governmental program.
- (7) Committing a negligent practice resulting in client death or injury.

b. Failing to disclose or make available to the department or its authorized agent records of services provided to a child and family and records of payments made for those services.

c. Failing to provide accurate and auditable cost report information or engaging in deceptive billing practices, such as:

- (1) Presenting or causing to be presented for payment any false or deceptive claim for services.
- (2) Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled.

d. Submitting or causing to be submitted false information to meet service authorization requirements.

e. Inducing, furnishing or otherwise causing the child or family to receive foster care services that are not authorized (overutilization of services).

f. Rebating or accepting a fee or portion of a fee or a charge for referrals of a child or family.

g. Failing to repay or arrange for the repayment of identified overpayments or other erroneous payments.

h. Failing to submit the cost report on time or failing to submit complete responses to follow-up questions from the department or its fiscal consultant within 14 days of request without written approval from the department.

152.4(2) Notice of violation.

a. Should the department have information that indicates a provider may have done the following, the department will notify the provider of the discrepancies noted.

- (1) Submitted bills or been practicing in a manner inconsistent with the program requirements, or
- (2) Received payment for which the provider may not be properly entitled.

b. Notification to the provider will set forth:

- (1) The nature of the discrepancies or violations.
- (2) The known dollar value of the discrepancies or violations.
- (3) The method of computing the dollar value.
- (4) Further actions to be taken or sanctions to be imposed by the department.
- (5) Any actions required of the provider.

152.4(3) Sanctions. The following sanctions may be imposed on providers based on the grounds specified in subrule 152.4(1):

- a. A term of probation for provision of foster care services.
- b. Termination from participation in the provision of foster care services.
- c. Suspension from provision of foster care services.
- d. Suspension or withholding of payments to the provider.
- e. Review of 100 percent of the provider's claims before payment.
- f. Referral to the appropriate state licensing board for investigation.
- g. Referral of the matter to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.
- h. Suspension of foster care services licensure.
- i. Termination of foster care services licensure.
- j. Reduction of payment to 75 percent of the current rate for failure to submit the cost report or cost report clarifications timely.
- k. Termination of the provider's contract for failure to submit the report within six months of the end of the fiscal year.

152.4(4) Imposition and extent of sanction. The department will determine the sanction to impose. The following factors will be considered in determining the sanction or sanctions to be imposed:

- a. Seriousness of the offense.
- b. Extent of violations.
- c. History of prior violations.
- d. Prior imposition of sanctions.
- e. Prior provision of technical assistance.
- f. Pattern of failure to follow program rules.
- g. Whether a lesser sanction will be sufficient to remedy the problem.
- h. Actions taken or recommended by peer review groups or licensing bodies.

152.4(5) Scope of sanction.

a. The sanction may be applied to all known affiliates of a provider. Each decision to include an affiliate will be made on a case-by-case basis after giving due regard to all relevant factors and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated when the conduct was committed in the course of official duty or was effectuated with the knowledge or approval of that person.

b. When there are grounds for sanction pursuant to subrule 152.4(1) against a provider facility, campus, or site, the department may suspend or terminate the provision of foster care services by:

- (1) The provider; or
- (2) The specific facility, campus, or site; or
- (3) Any individual within the provider's organization who is responsible for the violation.

c. No provider shall submit claims for payments to the department for any services provided by any facility, campus, site, or person within the organization that has been suspended or terminated from provision of foster care services, except for those services provided before the suspension or termination.

d. Suspension or termination from provision of foster care services shall preclude the submission of claims to the department for payment for any services provided after suspension or termination, whether submitted personally or through the provider.

152.4(6) *Suspension or withholding of payments pending a final determination.* When the department has notified a provider of a violation and has demanded repayment of an identified overpayment, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payments pending a final determination. When the department intends to withhold or suspend payments, it will notify the provider in writing.

152.4(7) *Notice of sanction.* When a provider has been sanctioned, the department will notify, as appropriate, the applicable professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

441—152.5(234) Adverse actions. Notice of adverse actions shall be given in accordance with 441—Chapter 16. The right to appeal the licensing decision shall be given in accordance with 441—Chapter 2506.

These rules are intended to implement Iowa Code section 234.6.