

CHAPTER 152
FOSTER GROUP CARE CONTRACTING

PREAMBLE

This chapter sets forth the contracting process used for providers of foster group care services, including standards for rate-setting, payment mechanisms, and provider monitoring, audits, and sanctions. The term of the contract is limited to no more than six years pursuant to 11—Chapters 106 and 107. The rules also establish provider qualifications, service authorization procedures, documentation requirements, and service termination and appeal procedures associated with foster group care services. Refer to 441—Chapter 156 for additional program requirements.

441—152.1(234) Definitions.

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

“*Authorized representative*,” within the context of rule 441—152.9(234), 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 a person under 18 years of age or a person 18 or 19 years of age who meets the criteria 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 group care services through the Iowa department of human services.

“*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 universe from which the sample was drawn.

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

“*Contract monitor*” means a department employee who is assigned to assist in developing, monitoring, and evaluating a contract and to provide related technical assistance.

“*Department*” means the Iowa department of human services.

“*Extrapolation*” means that the total dollars of overpayment or underpayment will be estimated by using sample data meeting the confidence level requirement.

“*Family*,” for purposes of child welfare service delivery, shall include the following:

1. The natural or adoptive parents, stepparents, 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 the criteria established for financial and statistical records as set forth in subrule 152.2(7).

“*Grant*” means an award of funds to develop specific programs or achieve specific outcomes.

“*Host area*” means:

1. The department service area where the provider’s corporate office is located, or
2. The service area designated by the chief of the bureau of purchased services when the provider’s corporate office is out of state.

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

“*Level of care*” means a type of foster group care service that is differentiated by the ratio of staff to children. There are three levels of foster group care services:

1. Community-level group care (service code D1), which requires a minimum staff-to-client ratio of 1 to 8 during prime programming time.
2. Comprehensive-level group care (service code D2), which requires a minimum staff-to-client ratio of 1 to 5 during prime programming time.
3. Enhanced comprehensive-level group care (service code D3), which requires a minimum staff-to-client ratio during prime programming time as follows:
 - 1 staff person for facilities serving up to 4 children.
 - 2 staff persons for facilities serving 5 to 7 children.
 - 3 staff persons for facilities serving 8 to 10 children.
 - 4 staff persons for facilities serving 11 to 13 children.
 - 5 staff persons for facilities serving 14 to 16 children.
 - 6 staff persons for facilities serving 17 to 19 children.
 - 1 staff person for every 3 children for facilities serving 20 or more children.

“*Nonprime programming time*” means any period of the day other than prime programming time and sleeping time.

“*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 group care services and results in a payment greater than that to which the provider is entitled.

“*Prime programming time*” means any period of the day when special attention, supervision, or treatment is necessary (for example, upon awakening of the clients in the morning until their departure for school, during meals, after school, during transition between activities, evenings and bedtime, and on nonschool days such as weekends, holidays, and school vacations).

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

“*Provider*” means any natural person, company, firm, association, or other legal entity that is seeking a contract or is under contract with the department pursuant to this chapter.

“*Random sample*” means a systematic (or every “nth” unit) sample for which each item in the universe 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(6).

“*Site*” means a location from which services are delivered or where staff report or records are kept. In the foster group care programs, each separately licensed location is a site.

“*Sleeping time*” means any period of the day during which clients are normally sleeping.

“*Suspension of payments*” means the withholding of all payments due a provider until resolution of the matter in dispute between the provider and the department.

“*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 group care services program and to which the provider is entitled.

“*Unit of service*” means one day.

“*Universe*” means all items (claims) submitted by a specific provider for payment during a specific period, from which a random sample will be drawn.

“*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.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.2(234) Conditions of participation.

152.2(1) Provider licensure. The department shall enter into a contract with a provider for foster group care services only when the provider's facility has achieved full licensure as follows:

- a. A facility providing community-level group care shall be licensed:
 - (1) As a community residential facility pursuant to 441—Chapter 114;
 - (2) As a comprehensive residential facility pursuant to 441—Chapter 115; or
 - (3) Under comparable standards by the state in which the facility is located.
- b. A facility providing comprehensive-level group care shall be licensed:
 - (1) As a comprehensive residential facility pursuant to 441—Chapter 115; or
 - (2) Under comparable standards by the state in which the facility is located.
- c. A facility providing enhanced comprehensive-level group care shall be licensed:
 - (1) As a comprehensive residential facility pursuant to 441—Chapter 115; or
 - (2) Under comparable standards by the state in which the facility is located.

152.2(2) Provider staffing. At a minimum, all providers shall meet the requirements for staff qualifications, training, and number of staff pursuant to 441—Chapter 114 or as identified in appendices to Form 470-3052, Foster Group Care Services Contract.

a. All foster group care programs shall provide an appropriate number of hours of prime programming time sufficient to meet the child welfare service needs of the children served in the program.

b. Staffing during prime programming time, nonprime programming time, and sleeping time shall be sufficient to meet the group care maintenance needs of the children served in the program.

152.2(3) Services provided. The provider shall comply with the requirements for services to be provided, as described on Form 470-3051, Foster Group Care Services Contract Face Sheet, and appendices to Form 470-3052, Foster Group Care Services Contract. These services shall at a minimum meet the requirements found in 441—Chapter 156 and in 441—Chapter 114 or 441—Chapters 114 and 115, as applicable, or the contract may be terminated.

152.2(4) Provider charges. A provider shall not charge departmental clients more than it receives for the same foster group care services provided to nondepartmental clients. The provider shall agree not to require any fee from departmental clients unless a fee is required by the department and is consistent with federal regulation and state policy.

152.2(5) Compliance with the law. The provider and its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing services under the contract.

a. *Drug-free workplace.* The provider shall operate a drug-free workplace.

b. *Use of funds.* The provider shall:

(1) Agree that federally appropriated funds shall not be paid on behalf of the department or provider to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with:

1. The awarding of any federal contract,
2. The making of any federal grant,
3. The making of any federal loan,
4. The entering into of any cooperative agreement, or
5. The extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

(2) Ensure that no funds received or expended will be used in any way to promote or oppose unionization.

152.2(6) Maintenance of service records. A provider shall maintain complete and legible records as required in this subrule. A provider's client service records and case files for foster group care services shall comply with the requirements of this subrule and with the record-keeping requirements related to licensure pursuant to 441—Chapter 114.

a. The provider shall establish and maintain confidential, individual service records for each client receiving foster group care services. The service records must adequately support the provision of child welfare services and group care maintenance as defined in rule 441—156.1(234). The service record shall include, at a minimum, those items identified in rule 441—114.11(237) and the following:

- (1) Additional reports, if requested by the referral worker;
- (2) Form 470-3055, Referral and Authorization for Child Welfare Services;
- (3) Daily documentation of billed per diem services as defined in paragraph “b”; and
- (4) Notes indicating the child’s general progress in regard to the child’s care plan, entered no less than every seven calendar days.

b. Daily documentation of billed per diem services 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 provided the service;
- (4) A clear description of the specific service rendered, including interventions, actions, and activities performed which support the provision of child welfare services; and
- (5) Any problem areas or unusual behavior for the child.

c. If individual case files include service records for services other than foster group care services, the provider has the responsibility to maintain the client records in compliance with all applicable rules.

d. The provider shall retain service records for clients receiving foster group care services for a period of not less than five years following the date of final payment or completion of any required audit or review, whichever is later. If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before the expiration of the five-year period, the records must be retained until the later of:

- (1) The completion of the action and resolution of all issues which arise from it, or
- (2) The end of the regular five-year period.

e. 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, pursuant to rules 441—152.9(234) and 441—152.10(234).

152.2(7) 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, but are not limited to:

- (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 departmental clients that identify the individual client and are kept on a daily basis and summarized in a monthly report.

(8) For nondepartmental clients, sufficient documentation of utilization to establish a complete unit of service count.

b. The provider shall maintain the following documentation for each program.

- (1) A list of all staff and supervisors providing foster group care services and their qualifications.
- (2) The number of staff hired and terminated in the year to date.

c. The documentation prepared by the provider shall be retained for use when any financial report is prepared and for review by the department's fiscal consultant. Financial records must be retained for five years from the date of report submission or final payment for services.

d. Independent audits. When a provider has an 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. The bureau of purchased services shall maintain the report and provide a copy of the report to the fiscal consultant.

152.2(8) *Special-purpose organizations.* A provider may establish a separate, special-purpose organization to conduct certain client-related or non-client-related activities on behalf of the provider. (For example, a provider may establish a development foundation to assume the provider's fund-raising activity.) Even if the provider does not own the special-purpose organization (e.g., a nonprofit, non-stock-issuing corporation) and has no common governing body membership, a separate special-purpose organization shall be considered a related party for purposes of this chapter when one of the following applies:

a. The provider controls the organization through contracts or other legal documents that give the provider the authority to direct the organization's activities, management, and policies.

b. For all practical purposes, the provider is the primary beneficiary of the organization's activities. The provider shall be considered the special-purpose organization's primary beneficiary if one or more of the following circumstances exist:

(1) The organization has solicited funds on the provider's behalf with provider approval, and substantially all funds so solicited were contributed with the intent of benefiting the provider.

(2) The provider has transferred some of its resources to the organization, substantially all of whose resources are held for the benefit of the provider.

(3) The provider has assigned certain of its functions to a special-purpose organization that is operating primarily for the benefit of the provider.

152.2(9) *Certification by department of transportation.*

a. If the provider furnishes public transit service as defined in rule 761—910.1(324A), the provider shall annually submit to the contract monitor information regarding compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 324A and department of transportation rules in 761—Chapter 910. This information shall include:

(1) Form 020107, Certification Application for Coordination of Public Transit Services, which the contract monitor shall submit to the department of transportation; and

(2) A copy of an ACORD Certificate of Insurance or similar self-insurance documentation, as applicable.

b. If a provider believes it does not furnish public transit service as defined in rule 761—910.1(324A) and, therefore, is exempt from the requirements in paragraph "a," the provider shall submit Form 020107 with only Section 1 completed when the provider enters into a new contract.

c. If a provider that has furnished public transit service as defined in rule 761—910.1(324A) ceases to do so, the provider becomes exempt from the requirements in paragraph "a."

d. If an exempt provider begins to furnish public transit service as defined in rule 761—910.1(324A), the provider shall inform the contract monitor within 30 days of the change and shall adhere to the procedures in paragraph "a."

e. Failure of the provider to cooperate in obtaining or providing the required documentation of compliance or exemption is grounds for denial or termination of the contract.

152.2(10) *Copyright and patents.* The activities and results of contract activity may be published subject to confidentiality requirements.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.3(234) *Determination of rates.* Rates for foster group care services effective on or after November 1, 2006, shall be based on the historical payment rate negotiated between the provider and the department and shall be calculated based on rule 441—156.9(234).

152.3(1) *Negotiation of rates.* Rates for foster group care services effective on or after November 1, 2006, must be established in accordance with this subrule, except as provided in subrule 152.3(4).

a. All historical rate negotiations made under the former rehabilitative treatment and supportive services program on or after February 1, 1998, remain true and valid.

b. The scope of negotiations is limited solely to the rate to be paid for each service.

c. No other items, such as, but not limited to, changes in staff qualifications, service definition, required components, allowable costs or any licensing or other contractual requirements, shall be the subject of negotiations or be used as a basis for changing rates.

d. The service area manager of the host area is responsible for the negotiation of rates for each provider whose contract for foster group care services is administered by the host area, regardless of where the services are provided. Only the service area manager of the host area may approve the rates negotiated for a provider, except as provided in subrule 152.3(4).

(1) The service area manager of the host area shall take into consideration the other service areas served by a provider when negotiating a rate for a service provided in multiple service areas.

(2) When a service is provided only in a nonhost area, the two service area managers shall determine which one will negotiate the rate for that service.

e. The service area manager of the host area and the provider are mutually responsible for initiating the rate negotiation process. Negotiations may be conducted in a manner acceptable to both parties, but shall be conducted face to face upon the request of either party.

f. At the initiation of the rate negotiation process, the provider must disclose all relevant subcontractual and related-party relationships involved in the provision of foster group care services.

g. Negotiated rates shall not exceed any rate ceiling established or authorized by the legislature.

h. Once a negotiated rate is established, it shall not be changed or renegotiated, except in the following circumstances:

(1) Rates may be changed when funds are appropriated for an across-the-board increase.

(2) Rates may be changed by mandated across-the-board decreases. Effective for the period from January 1, 2010, to June 30, 2010, the negotiated reimbursement rates for foster group care shall be decreased by 5 percent of rates in effect on December 31, 2009.

152.3(2) *New service.* When a prospective provider contracts to provide a foster group care service or an existing provider adds a new foster group care service on or after November 1, 2006, the rate for the new service shall be established based on a payment rate negotiated with the provider.

a. The starting point for negotiated rates shall be the weighted average for each service as of July 1, 1997, as previously established in accordance with 441—subrule 185.109(1), in effect at that time, and further calculated based on rule 441—156.9(234). These rates shall become the established weighted average rates for each service code as described in 441—Chapter 156 and in the appendices of the foster group care contract.

(1) The rate for community-level group care child welfare service is \$8.43 per unit of service.

(2) The rate for community-level group care maintenance is \$50.16 per unit of service.

(3) The rate for comprehensive-level group care child welfare service is \$10.13 per unit of service.

(4) The rate for comprehensive-level group care maintenance is \$60.31 per unit of service.

(5) The rate for enhanced comprehensive-level group care child welfare service is \$13.36 per unit of service.

(6) The rate for enhanced comprehensive-level group care maintenance is \$79.55 per unit of service.

b. In the event the department and a new provider or an existing provider adding a new foster group care service are unable to reach agreement on a rate for a service within 60 days of initiating rate negotiations, a rate resolution process may be used. If no rate is agreed upon within 60 days of initiation of a rate resolution process, no rate shall be established and the services in question shall not be part of any approved contract for foster group care services.

152.3(3) *Interruptions in a program.*

a. The rate for a new provider shall remain the same as the rate established for the former provider if:

- (1) A provider assumes the delivery of a program from a related-party provider, or
- (2) The difference between the former provider and the new provider is a change in name or a change in the legal form of ownership (i.e., a change from partnership to corporation).

b. If a provider ceases to contract for and provide a foster group care service on or before October 31, 2006, and before the calculation of new rates according to rule 441—156.9(234), the rate in effect when the contract ceased shall be used to calculate the new rates to be used as the starting point in negotiations.

c. If a provider ceases to contract for and provide a foster group care service after a rate has been established in accordance with rule 441—156.9(234) and then decides to again contract for and provide the foster group care service, the rate shall be established at the rate in effect when the service was interrupted.

152.3(4) *Exception to rate policy.* When a provider not located in Iowa has been granted an exception to these rules based upon another state's requirement that its providers be paid the same rate they are paid for clients from that state, the exception shall continue in effect as written for the life of the contract.

152.3(5) *Across-the-board cuts.* Payment under the contract may be subject to across-the-board cuts pursuant to Iowa Code section 8.31.

[ARC 7741B, IAB 5/6/09, effective 7/1/09; ARC 8449B, IAB 1/13/10, effective 1/1/10; ARC 8652B, IAB 4/7/10, effective 5/12/10]

441—152.4(234) *Initiation of contract proposal.* All potential providers have a right to request a contract.

152.4(1) *Initial contact.* The initial contact shall be between the potential provider and the bureau of purchased services.

a. At the beginning of the contract development process, the bureau shall give the potential provider:

- (1) Information about the contracting process; and
- (2) Instructions on how to access the foster group care services provider handbook electronically.

b. The provider shall sign Form 470-3057, Verification of Receipt, at the end of the contract development process to verify receipt of information on how to access the handbook.

152.4(2) *Contract proposal development.* When the bureau of purchased services determines that a new contract is to be developed, a contract monitor shall be assigned to assist in contract development and processing. The contract monitor shall assist the applicant in the completion of the contract proposal and required fiscal information. The contract proposal shall include all of the following:

- a.* Form 470-3051, Foster Group Care Services Contract Face Sheet.
- b.* Form 470-3404, Foster Group Care Services Negotiated Rate Establishment Amendment. This form need not be completed until the completion of the rate negotiation process, but the contract proposal will not be acted upon until the form is completed and attached to the contract proposal.
- c.* Form 470-3052, Foster Group Care Services Contract, or Form 470-3053, Amendment to Foster Group Care Services Contract.

152.4(3) *Contract proposal approval.* The department shall review all complete proposed contracts for compliance with state and federal requirements.

a. The applicant shall submit four copies of the contract proposal to the assigned contract monitor 60 calendar days in advance of the desired effective date of the contract.

b. Submission within the time frame does not ensure the effective date of the contract. The department shall give the applicant notice and explanation in writing of any delay in the approval process.

c. The contract monitor shall forward four signed copies of the contract proposal to the bureau of purchased services within four weeks of receipt.

d. Before the contract can be effective, it shall be approved and signed by the following persons:

- (1) An authorized representative of the provider.
- (2) The service area manager, who shall make a decision within one week of receipt.
- (3) The director of the department or the director's designee, who shall make a decision within 15 days of receipt.

152.4(4) Rejection of contract proposal. The department shall give the applicant notice and explanation in writing of the reasons for rejection of the contract proposal within ten working days of the decision. The following criteria may cause a proposed contract or proposed contract amendment to be rejected:

- a. The proposed contract does not meet applicable rules, regulations, or guidelines.
- b. The applicant has falsified any information required as a condition of participation.
- c. Licenses submitted as a condition of participation in the contract process have never been approved or have been revoked or suspended.
- d. The provider fails to provide notification within seven days of any changes that may significantly affect the licenses submitted as a condition of contracting.
- e. The department and the provider fail to reach agreement on negotiated rates.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.5(234) Contract. All providers shall enter into a contract with the department using Form 470-3052, Foster Group Care Services Contract.

152.5(1) Contract effective date. When the agreed-upon contract conditions have been met, the effective date of a new contract, a renewed contract, or an amendment to add a new service code to the contract is the day following signature of the director of the department or the director's designee, unless the provider and the department agree to a later specified date.

- a. The contract shall be effective only after the provider is licensed to provide foster group care services as described in subrule 152.2(1).
- b. The contract shall be effective only when signed by all parties as required by paragraph 152.4(3) "d."

152.5(2) Liability for payment. The department shall not be liable for payment for any programs or services before:

- a. The contract effective date, or
- b. The effective date of the rate for the program or service.

152.5(3) Term of contract. Pursuant to the provisions of 11—Chapters 106 and 107, the term of the contract is limited to no more than six years from the effective date of the contract.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.6(234) Client eligibility and referral.

152.6(1) Determination of eligibility. The department shall determine a child's eligibility for foster group care services. The department shall not make payment for foster group care services provided before the child's eligibility determination and service authorization.

152.6(2) Court order. If a child and family have been referred to the department and the department has not authorized foster group care services, but the services have been ordered by the juvenile court, the department shall make payment subject to availability of authorized funds.

152.6(3) Service authorization. Any change in the level of care or increase in the number of units or duration of foster group care services shall be authorized by the department.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.7(234) Billing procedures. At the end of each month, the provider shall prepare Form 470-0020, Purchase of Service Provider Invoice, for contractual services provided during the month for which the provider has documentation of the billed per diem services as described in subrule 152.2(6). Separate invoices shall be prepared for each county from which clients were referred. Each invoice shall contain claims for only one month of service. A separate invoice is required for each separate month of service if the service spans more than one month.

152.7(1) Submission of invoices. Complete invoices shall be sent to the department local office responsible for the client for approval and forwarding for payment. The time limit for submission of original invoices shall be 90 days from the date of service, except at the end of the state fiscal year when claims for services through June 30 shall be submitted by August 10.

152.7(2) Resubmittal of rejected claims. Valid claims that were originally submitted within the time limit specified in subrule 152.7(1) but were rejected because of an error shall be resubmitted as soon as corrections are made.

152.7(3) Payment. The invoices shall be subject to audit and adjustment by the department. Within 60 days of the date of receipt of a valid invoice, the department shall make payment in full of all claims concerning foster group care services rendered to clients.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.8(234) Contract management. During the contract period, the assigned contract monitor designated in the contract shall be the contract liaison between the department and the provider.

152.8(1) The provider shall contact the contract monitor about all interpretations and problems relating to the contract, and the contract monitor shall follow the issues through to their resolution.

152.8(2) The contract monitor shall also monitor performance under the contract and shall provide or arrange for technical assistance to improve the provider's performance if needed. Form 470-0670, Report of On-Site Visit, shall be used to monitor performance under the contract.

152.8(3) The contract monitor shall make at least one on-site visit to each provider during the term of the provider's contract. The on-site visit shall be coordinated with on-site visits scheduled to fulfill requirements for provider reviews, licensing, or other on-site visits required by the department. Site visits to out-of-state providers shall be made at the discretion of the service area responsible for administration of the contract.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.9(234) Provider reviews. The department may review any provider at its discretion 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.

152.9(1) Review of provider records. The department shall have the authority to conduct a scheduled or an unannounced site visit to evaluate the adequacy of service records in compliance with the policies and procedures for foster group care services.

152.9(2) Purpose. Upon proper identification, authorized representatives of the department shall 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, as described in subrules 152.2(6) and 152.2(7), 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(8).

152.9(3) Method. The department shall select the appropriate method of conducting a review and shall 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.

152.9(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 shall 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 to the universe for the review period. The total of the payments determined to be in error in the review sample shall be divided by the total payments in the reviewed sample to calculate the percentage of dollars paid in error. This percentage shall then be multiplied by the total payments in the review universe 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 universe of 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.

152.9(5) Actions based on review findings.

a. The department shall report the results of a review of provider records to concerned parties consistent with the provisions of 441—Chapter 9.

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—152.10(234).
- (3) Investigate and refer the matter to an agency empowered to prosecute.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.10(234) Sanctions against providers. Failure to meet the requirements relevant to provider contracting, financial record keeping, billing and payment, and client record keeping may subject providers to sanctions.

152.10(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 such as, but not limited to, workers' compensation or Medicaid remedial services.

(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. 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 group 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.

152.10(2) *Notice of violation.* Should the department have information that indicates that a provider may have submitted bills or been practicing in a manner inconsistent with the program requirements, or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepancies noted.

a. Notification shall 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.

b. The provider shall have 15 days after the date of the notice and before the department action to show cause why the action should not be taken.

152.10(3) *Sanctions.* The following sanctions may be imposed on providers based on the grounds specified in subrule 152.10(1):

- a.* A term of probation for provision of foster group care services.
- b.* Termination from participation in the provision of foster group care services.
- c.* Suspension from provision of foster group 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 group care services licensure.

i. Termination of foster group care services licensure.

152.10(4) *Imposition and extent of sanction.* The department shall determine what sanction to impose. The following factors shall 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.

152.10(5) *Scope of sanction.*

a. The sanction may be applied to all known affiliates of a provider. Each decision to include an affiliate shall 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 152.10(1) against a provider facility, campus, or site, the department may suspend or terminate the provision of foster group 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 group care services except for those services provided before the suspension or termination.

d. Suspension or termination from provision of foster group 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.

152.10(6) *Suspension or withholding of payments pending a final determination.* When the department has notified a provider of a violation pursuant to paragraph 152.9(5) “b” or subrule 152.10(2) 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 payment pending a final determination. When the department intends to withhold or suspend payments, it shall notify the provider in writing.

152.10(7) *Notice of sanction.* When a provider has been sanctioned, the department shall 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.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

441—152.11(234) Appeals of departmental actions. Providers may appeal decisions of the department, other than rate determinations, according to rules in 441—Chapter 7.

[ARC 7741B, IAB 5/6/09, effective 7/1/09]

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