

CHAPTER 152
FOSTER CARE CONTRACTING

PREAMBLE

This chapter sets forth the contracting process used for providers of foster group care, child welfare emergency services shelter, and supervised apartment living, including standards for rate-setting, payment mechanisms, and provider monitoring, audits, and sanctions. The terms of these contracts are limited to no more than six years pursuant to 11—Chapter 118. This chapter also establishes provider qualifications, service authorization procedures, documentation requirements, and service termination and appeal procedures associated with these foster 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—152.3(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.

“*Bureau of service contract support*” means the division of fiscal management bureau that is responsible for administering performance-based contracts.

“*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 care services through the 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 department of human services and a provider of foster 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 and includes the local offices of the department.

“*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, shall include 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 the criteria established for financial and statistical records as set forth in subrule 152.2(5).

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

“*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.

“*Non-prime 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 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 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 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(4).

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

“*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 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.

“*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 2885C, IAB 1/4/17, effective 3/1/17; ARC 3442C, IAB 11/8/17, effective 1/1/18]

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, Chapter 108, or Chapter 114.

152.2(3) Provider charges. A provider shall not charge departmental clients more than it receives for the same foster 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(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 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 441—Chapter 105 and shall also include all of 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. 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 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.
- (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. The service records must adequately support the provision of services consistent with rules 441—108.10(238) and 441—202.9(234).

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 pursuant to rules 441—152.3(234) and 441—152.4(234).

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, 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 a list of all staff and supervisors providing foster care services and their qualifications for each program.

c. 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 service contract support shall maintain the report.

152.2(6) Cost report. Providers shall complete Form 470-5421, Combined Cost Report, as required by contract. The instructions for the cost report are found in Comm. 502 (7/16), Instructions for the Combined Cost Report.

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 from the chief of the bureau of service contract support.

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 shall not 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.

[ARC 2885C, IAB 1/4/17, effective 3/1/17]

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 shall have 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 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 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 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.

152.3(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 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.

152.3(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—152.4(234).
- (3) Investigate and refer the matter to an agency empowered to prosecute.

[ARC 2885C, IAB 1/4/17, effective 3/1/17]

441—152.4(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.

152.4(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, but not limited to:

(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 chief of the bureau of service contract support.

152.4(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 to appeal to the contract owner.

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 shall determine the 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.

152.4(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 152.4(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 pursuant to paragraph 152.3(5) "b" or subrule 152.4(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 payments pending a final determination. When the department intends to withhold or suspend payments, it shall notify the provider in writing.

152.4(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 2885C, IAB 1/4/17, effective 3/1/17]

441—152.5(234) Adverse actions. Notice of adverse actions and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7.

[ARC 2885C, IAB 1/4/17, effective 3/1/17]

These rules are intended to implement Iowa Code section 234.6.

[Filed emergency 8/12/93—published 9/1/93, effective 8/12/93]

[Filed 12/16/93, Notice 9/1/93—published 1/5/94, effective 3/1/94]

[Filed 2/16/95, Notice 12/21/94—published 3/15/95, effective 5/1/95]

[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]

[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]

[Filed 10/15/97, Notices 7/30/97, 8/13/97—published 11/5/97, effective 1/1/98]

[Filed without Notice 6/10/98—published 7/1/98, effective 8/15/98]

[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]

[Filed 3/8/00, Notice 1/26/00—published 4/5/00, effective 6/1/00]

[Filed 11/14/01, Notice 10/3/01—published 12/12/01, effective 2/1/02]

[Filed emergency 4/15/05—published 5/11/05, effective 5/1/05]

[Filed 10/21/05, Notice 5/11/05—published 11/9/05, effective 12/14/05]

[Filed 3/14/07, Notice 8/30/06—published 4/11/07, effective 7/1/07]

[Filed ARC 7741B (Notice ARC 7526B, IAB 1/28/09), IAB 5/6/09, effective 7/1/09]

[Filed Emergency ARC 8449B, IAB 1/13/10, effective 1/1/10]

[Filed ARC 8652B (Notice ARC 8450B, IAB 1/13/10), IAB 4/7/10, effective 5/12/10]

[Filed Emergency ARC 8903B, IAB 6/30/10, effective 7/1/10]

[Filed ARC 2885C (Notice ARC 2771C, IAB 10/12/16), IAB 1/4/17, effective 3/1/17]

[Filed ARC 3442C (Notice ARC 3260C, IAB 8/16/17), IAB 11/8/17, effective 1/1/18]