

Senate File 2304 - Enrolled

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AN ACT

RELATING TO STANDARDS FOR AND CERTIFICATION AND INSPECTION OF
CHILDREN'S RESIDENTIAL FACILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 237C.1 Definitions.

As used in this chapter, unless the context otherwise
requires:

1. "*Administrator*" means the administrator of that division
of the department designated by the director of human services
to administer this chapter or the administrator's designee.

2. "*Child*" or "*children*" means an individual or individuals
under eighteen years of age.

3. "*Children's residential facility*" means a private
facility designed to serve children who have been voluntarily
placed for reasons other than an exclusively recreational
activity outside of their home by a parent or legal guardian

and who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency, that provides twenty-four hour care, including food, lodging, supervision, education, or other care on a full-time basis by a person other than a relative or guardian of the child, but does not include an entity providing any of the following:

a. Care furnished by an individual who receives the child of a personal friend as an occasional and personal guest in the individual's home, free of charge and not as a business.

b. Care furnished by an individual with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.

c. Child care furnished by a child care facility as defined in section 237A.1.

d. Care furnished in a hospital licensed under chapter 135B or care furnished in a health care facility as defined in section 135C.1.

e. Care furnished by a juvenile detention home or juvenile shelter care home approved under section 232.142.

f. Care furnished by a child foster care facility licensed under chapter 237.

g. Care furnished by an institution listed in section 218.1.

h. Care furnished by a facility licensed under chapter 125.

i. Care furnished by a psychiatric medical institution for children licensed under chapter 135H.

4. "*Department*" means the department of human services.

Sec. 2. NEW SECTION. 237C.2 Purpose.

It is the policy of this state to provide appropriate protection for children who are separated from the direct personal care of their parents, relatives, or guardians and, therefore, the purpose of this chapter is to provide for the development, establishment, and enforcement of standards relating to the certification of children's residential facilities.

Sec. 3. NEW SECTION. 237C.3 Certification standards — consultation with other agencies.

1. The department of human services shall consult with the department of education, the department of inspections

and appeals, the department of public health, the state fire marshal, and other agencies as determined by the department of human services to establish certification standards for children's residential facilities in accordance with this chapter.

2. Standards established by the department under this chapter shall at a minimum address the basic health and educational needs of children; protection of children from mistreatment, abuse, and neglect; background and records checks of persons providing care to children in facilities certified under this chapter; the use of seclusion, restraint, or other restrictive interventions; health; safety; emergency; and the physical premises on which care is provided by a children's residential facility. The background check requirements shall be substantially equivalent to those applied under chapter 237 for a child foster care facility provider.

3. Standards established by the department under this chapter shall not regulate religious education curricula at children's residential facilities.

Sec. 4. NEW SECTION. 237C.4 Rules and standards — requirements.

1. Except as otherwise provided in this section, the department shall adopt rules pursuant to chapter 17A to administer this chapter.

2. Before the administrator issues or reissues a certificate of approval to a children's residential facility under section 237C.6, the facility shall comply with standards adopted by the state fire marshal under chapter 100.

3. Rules governing sanitation, water, and waste disposal standards for children's residential facilities shall be adopted by the department of human services in consultation with the director of public health.

4. Rules governing educational programs and education services provided by children's residential facilities shall be adopted by the state board of education pursuant to section 282.34.

5. In the case of a conflict between rules and standards adopted pursuant to subsections 2 and 3 and local rules and standards, the more stringent requirement applies.

6. Rules adopted under this section shall not regulate religious education curricula at children's residential facilities.

7. Prior to establishing, proposing, adopting, or modifying a standard or rule under section 237C.3, this section, or section 282.34, the department of human services or the department of education, as applicable, shall, at a minimum, do all of the following:

a. Publish the entire text of the proposed standard, rule, or modification on its internet site.

b. Make every reasonable effort to notify the children's residential facilities in this state of the proposed standard, rule, or modification.

c. Allow and invite any and all persons interested in the proposed standard, rule, or modification to submit written data, facts, opinions, comments, and arguments, which information shall be made publicly available and shall be filed with and maintained by the applicable department for at least five years from the date of submission to the applicable department.

Sec. 5. NEW SECTION. 237C.5 Certificate of approval — certification required.

A person shall not operate a children's residential facility without a certificate of approval to operate issued by the administrator under this chapter.

Sec. 6. NEW SECTION. 237C.6 Certificate application and issuance — denial, suspension, or revocation.

1. A person shall apply for a certificate to operate a children's residential facility by completing and submitting to the administrator an application in a form and format approved by the administrator. The administrator shall issue or reissue a certificate of approval if the administrator determines that the applicant is or upon commencing operation will provide children's residential facility services in compliance with this chapter. A certificate of approval is valid for up to one year from the date of issuance for the period determined by the administrator in accordance with administrative rules providing criteria for making the determination.

2. The certificate of approval shall state on its face the

name of the holder of the certificate, the particular premises for which the certificate is issued, and the number of children who may be cared for by the children's residential facility on the premises at one time under the certificate of occupancy issued by the state fire marshal or the state fire marshal's designee. The certificate of approval shall be posted in a conspicuous place in the children's residential facility.

3. The administrator may deny an application for issuance or reissuance of a certificate of approval or suspend or revoke a certificate of approval if the applicant or certificate holder, as applicable, fails to comply with this chapter or the rules adopted pursuant to this chapter or knowingly makes a false statement concerning a material fact or conceals a material fact on the application for the issuance or reissuance of a certificate of approval or in a report regarding operation of the children's residential facility submitted to the administrator. All operations of a children's residential facility shall cease during a period of suspension or revocation. The administrator shall suspend or revoke a certificate of approval of a children's residential facility that fails to comply with section 282.34.

Sec. 7. NEW SECTION. 237C.7 Restricted use of facility.

A children's residential facility shall operate only in a building or on premises designated in the certificate of approval.

Sec. 8. NEW SECTION. 237C.8 Reports and inspections.

The administrator may require submission of reports by a certificate of approval holder and shall cause at least one annual unannounced inspection of a children's residential facility to assess compliance with applicable requirements and standards. The inspections shall be conducted by the department of inspections and appeals in addition to initial, renewal, and other inspections that result from complaints or self-reported incidents. The department of inspections and appeals and the department of human services may examine records of a children's residential facility and may inquire into matters concerning the children's residential facility and its employees, volunteers, and subcontractors relating to requirements and standards for children's residential

facilities under this chapter.

Sec. 9. NEW SECTION. 237C.9 Injunctive relief — civil action.

1. A person who establishes, conducts, manages, or operates a children's residential facility without a certificate of approval required pursuant to this chapter, or a children's residential facility with a certificate of approval that is not operating in compliance with rules adopted pursuant to this chapter or section 282.34, may be restrained by temporary or permanent injunction from providing children's residential facility services or from other involvement with child care. The action may be instituted by the state or a county attorney.

2. The parent or legal guardian of a child who is placed in a children's residential facility, the state, the department of education, or the school district in which the children's residential facility is located, may bring a civil action seeking relief from conduct constituting a violation of this chapter or section 282.34 or to prevent, restrain, or remedy such violation. A civil action brought by the department of education under this subsection shall be limited to seeking relief from conduct constituting a violation of section 282.34. Multiple petitioners may join in a single action under this subsection.

3. If successful in obtaining injunctive relief under this section, the petitioner shall be awarded reasonable attorney fees and court costs.

Sec. 10. NEW SECTION. 237C.10 Notice and hearings — judicial review.

The procedure governing notice and hearing to deny an application or suspend or revoke a certificate of approval shall be in accordance with rules adopted by the department.

Sec. 11. NEW SECTION. 282.34 Educational programs for children's residential facilities.

1. A children's residential facility operating under a certificate of approval issued under chapter 237C shall do all of the following:

a. Provide an educational program and appropriate education services to children residing in the children's residential facility by contracting with the school district in which

the children's residential facility is located, contracting with an accredited nonpublic school, or becoming accredited as a nonpublic school through the standards and accreditation process described in section 256.11 and adopted by rule by the state board of education.

b. Display prominently in all of its major publications and on its internet site a notice accurately describing the educational program and educational services provided by the children's residential facility.

c. Include in any promotional, advertising, or marketing materials regarding the children's residential facility available in print, broadcast, or via the internet or by any other means all fees charged by the children's residential facility for the services offered or provided by the children's residential facility and its refund policy for the return of refundable portions of any fees. This paragraph shall not apply to sponsorship by a children's residential facility of public radio or public television broadcasts.

2. The state board of education shall adopt by rule pursuant to chapter 17A standards for the following:

a. Educational programs and appropriate educational services provided under this section.

b. Contracts between children's residential facilities and school districts or accredited nonpublic schools.

c. Notices displayed in accordance with subsection 1, paragraph "b".

3. The department of education shall comply with the requirements of section 237C.4, subsection 7, regarding standards, rules, and modifications, and the responsibilities set forth for publication, notification, and receipt and maintenance of information filed with the department.

4. A contract that fails to comply with any of the requirements of subsection 1, or with standards adopted by the state board of education under subsection 2, is void.

5. Rules adopted under this section shall not regulate religious education curricula at children's residential facilities.

Sec. 12. REPEAL. Chapter 237B, Code 2016, is repealed.

Sec. 13. REPORT REQUIREMENT. By January 1, 2017, the

department of human services and the department of education shall each submit a report to the general assembly concerning their progress in adopting rules as appropriate under sections 237C.4 and 282.34, as enacted by this Act.

PAM JOCHUM
President of the Senate

LINDA UPMEYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2304, Eighty-sixth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2016

TERRY E. BRANSTAD
Governor