

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rulemaking related to foster care placement and services and providing an opportunity for public comment**

The Department of Health and Human Services (Department) hereby proposes to amend Chapter 202, “Foster Care Placement and Services,” Iowa Administrative Code.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 237.3.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 584.

*Purpose and Summary*

This chapter outlines foster care placement and services, including services to foster parents. The proposed amendments to Chapter 202 implement 2023 Iowa Acts, House File 584 which established a Foster Parent Bill of Rights designed to inform foster parents of their rights within the child welfare system.

A Regulatory Analysis, including the proposed rule text, was published on January 10, 2024. A public hearing was held on January 31, 2024. The Department received no public comments. The Administrative Rules Coordinator provided preclearance for publication of this Notice of Intended Action on February 1, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Health and Human Services for a waiver of the discretionary provisions, if any, pursuant to 441—Chapter 6.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department of Health and Human Services no later than 4:30 p.m. on April 12, 2024. Comments should be directed to:

Joe Campos  
Lucas State Office Building  
321 East 12th<sup>th</sup> Street  
Des Moines, Iowa 50319  
Phone: 515.304.0963  
Email: [compliancerules@idph.iowa.gov](mailto:compliancerules@idph.iowa.gov)

*Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

April 9, 2024 11:30 a.m.	Microsoft Teams meeting ID: 227 039 897 635 Passcode: bTZJ9E
April 12, 2024 11:30 a.m.	Microsoft Teams meeting ID: 241 334 884 463 Passcode: C9aN7m

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Health and Human Services and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action proposed:

ITEM 1. Amend rule **202.1(234)** as follows:

**441—202.1(234) Definitions.**

*"Age- or developmentally appropriate activities"* means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

*"Case permanency plan"* shall mean the plan identifying goals, needs, strengths, problems, services, time frames for meeting goals and for delivery of the services to the child and parents, objectives, desired outcomes, and responsibilities of all parties involved and reviewing progress. This includes information describing efforts to retain existing medical and mental health care providers for a child entering or in foster care and activities to evaluate service needs to avoid inappropriate diagnoses of mental illness, other emotional or behavioral disorders, medically fragile conditions, or developmental disabilities.

*"Child"* shall mean the same as defined by Iowa Code section 234.1.

*"Department"* shall mean the Iowa department of human services and includes the local offices of the department.

*"Eligible child"* shall mean a child for whom the court has given guardianship to the department or has transferred legal custody to the department or for whom the department has agreed to provide foster care services on the basis of a signed placement agreement or who has been placed in emergency care for a period of not more than 30 days upon the approval of the director or the director's designee.

*"Facility"* means the personnel, program, plant and equipment of a person or agency providing child foster care.

*"Family Centered Services"* means the same as defined in ~~441-Chapter 172~~ Iowa Code chapter 441-172.

~~*"Family safety, risk, and permanency service"* means a service provided under 441— Chapter 172 that uses strategies and interventions designed to achieve safety and permanency for a child with an open department child welfare case, regardless of the setting in which the child resides.~~

~~“Fictive kin” means the same as defined in Iowa Code Chapter 441—Chapter 172.~~

~~“Foster care” means the same as defined by Iowa Code section 232.2(23).~~

~~shall mean substitute care furnished on a 24-hour-a-day basis to an eligible child in a licensed or approved facility by a person or agency other than the child’s parent or guardian but does not include care provided in a family home through an informal arrangement for a period of 20 days or less. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision, and health care.~~

~~“Kinship caregiver” means a relative or fictive kin means, for this chapter only, a person to whom a child is related by blood, marriage, or adoption, or a person who has a significant, committed, positive relationship with the child, who is caring for a child in foster care, under court-ordered supervision pursuant to Iowa Code chapter 232.~~

~~“Natural parent” shall mean a parent by blood, marriage, or adoption.~~

~~“Person” or “agency” shall mean individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management or control of the department, who are licensed by the department as a foster family home, child caring agency or child placing agency, or approved as a shelter care facility.~~

~~“Reasonable and prudent parent standard” means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encourage the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. For the purposes of this definition, “caregiver” means a foster parent with whom a child in foster care has been placed or a designated official for a child care institution (including group homes, residential treatment, shelters, or other congregate care settings) in which a child in foster care has been placed.~~

~~“Relative” means an individual related to a child within the fourth degree of consanguinity or affinity, by marriage, or through adoption.~~

~~“Resource family” means an individual person or married couple who is licensed to provide foster family care or approved for adoption.~~

~~“Safety-related information” means information that indicates whether the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse.~~

~~“Service area manager” shall mean the department employee responsible for managing department offices and personnel within the service area and for implementing policies and procedures of the department.~~

~~“Social history” or “child study” means a written description of the child that includes strengths and needs; medical, mental, social, educational, placement and court history; and the child’s relationships with the birth family and significant others.~~

~~This rule is intended to implement Iowa Code section 234.6(6) “b.”~~

Item 2. Amend subrule **202.4(4)** as follows:

~~**202.4(4)** If the child cannot be placed with a relative or a suitable person who has a kinship bond with the child, foster family care shall be used for a child unless the child has problems which require specialized services that cannot be provided in a family setting. Reasons for using a more restrictive placement shall be documented in the child’s case permanency plan.]~~

Item 3. Amend subrule 202.5(2) as follows:

~~**202.5(2)** Before placement, the ~~worker~~ department shall provide the facility with general information regarding the child, including a description of the child’s medical needs, behavioral patterns including safety-related information, educational plans, and permanency goal. The department or the department’s agent may share otherwise confidential information about a child with a licensed resource parent(s) being considered as a possible placement for the child to the extent such disclosure is relevant to the placement decision and the proper care of the child. This may also include facilitating the sharing of contact information of the previous licensed~~

resource parent(s) with the potential licensed resource parent(s) in an effort to support the continuity of care for a child. Safety-related information shall be withheld only if:

- a. Withholding the information is ordered by the court; or
- b. The department or the agency developing the service plan determines that providing the information would be detrimental to the child or to the family with whom the child is living or pose a risk to the safety of the licensed resource parent(s).

Item 4. Amend subparagraph **202.6(1)“a”(12)** as follows:

(12) If the child is a Native American-Indian, the identification of the child’s tribe and tribal social service agency including telephone number and contact person.

Item 5. Amend rule **202.10** as follows:

**202.10(1)** Availability of social service staff on a 24-hour basis in case of emergency. **202.10(2)** Conferences to develop in-depth planning regarding family visits, expectations of the department, future objectives and time frames, use of resources, and termination of placements. The department or the department’s agent shall consider the needs and scheduling demands of a child, the child's parents, the child's siblings, and the resource parent(s) caring for the child when scheduling supervised or any other visitation between the child and the child's siblings, family members, or fictive kin. The department shall not require a resource parent(s) to conduct or be present during supervised visits scheduled.

**202.10(23)** Visitation by the service worker at least monthly regardless of the duration of the placements.

202.10(34) The department shall notify the resource parent(s) of any appropriate meetings relating to the case permanency plan of a child that are known to the department, including individualized education program meetings and/or any medical appointments required or scheduled.

**202.10(54)** Making available all known pertinent information needed for the care of the child with a communicable disease, including HIV status, safety-related information, and special confidentiality requirements.

a. Before releasing specific information about a communicable disease HIV, the department shall use a Communicable Diseases General Agreement, to obtain a release from the child or the child’s parent or guardian, or a court order permitting the release of the information. The person receiving this information shall complete Form 470-3227, Receipt of HIV-Related Information, to document understanding of the confidentiality of this knowledge.

b. Safety-related information shall be withheld only if:

- (1) Withholding the information is ordered by the court; or
- (2) The department or the agency developing the service plan determines that providing the information would be detrimental to the child or to the family with whom the child is living.

c. When continued breastfeeding of the child is determined to be in the best interest of the child, the service worker and the foster parents shall make reasonable efforts to support the continued breastfeeding of the child by the mother.

202.10 (56) The department shall notify a resource parent(s) of any change in law or regulation that is known to the department that would have a substantive impact on the resource parent(s)’s obligations and responsibilities relating to family foster care.

202.10 (67) The department shall provide the resource parent(s) with a written report that details the conclusions of any investigation conducted by the department that may affect a resource parent(s)’s ability to provide family foster care.

202.10 (78) The department shall maintain a process to allow a resource parent(s) to file complaints with the department electronically.

This rule is intended to implement Iowa Code section 234.6(6)“b.”

Item 6. Amend subrule **202.11(5)** as follows:

**202.11(5)** Throughout the provision of care, the foster care provider shall actively ensure that the child stays connected to the child’s kin, culture, and community as documented in the child’s case permanency plan. A resource parent(s) shall be allowed to provide family foster care, according to the resource parent(s)’s own culture and beliefs, if such resource parent(s) does not actively discourage a child to disregard the child’s own culture and beliefs and a biological parent whose parental rights have not been terminated or a legal guardian for the child does not object to the practice or activity that is consistent with the resource parent(s)’s own culture and beliefs.

Item 7. Amend rule **202.13** as follows:

**441—202.13(234) Removal of the child.**

**202.13(1)** When the department plans to remove a child from a facility or foster home, the facility or foster home shall be informed in writing of the date of the removal, the reason for the removal, the recourse available to the facility or foster home, if any, and that the chapter 17A contested case proceeding is not applicable to the removal. The department shall inform the facility or foster home ten days in advance of the removal, except that the facility or foster home may be informed less than ten days prior to the removal in the following instances:

- a. When the parent or guardian removes the child from voluntary placement.
- b. When the court orders removal of a child from placement.
- c. When there is evidence of neglect or physical or sexual abuse.

**202.13(2)** The department may remove a child from a facility or foster ~~when~~ home when any of the following conditions exist:

- a. There is evidence of abuse, neglect, or exploitation of the child.
- b. The child needs a specialized service that the facility does not offer.
- c. The child is unable to benefit from the placement as evidenced by lack of progress of the child.
- d. There is evidence the facility is unable to provide the care needed by the child and fulfill its responsibilities under the case plan.
- e. There is lack of cooperation of the facility or foster home with the department.

**202.13(3)** If a foster family objects in writing within seven days from the date that the department furnishes notice of plans to remove the child, the service area manager or designee shall grant a conference to the foster family to determine whether the removal is in the child’s best interest.

a. This conference shall not be construed to be a contested case under the Iowa administrative procedure Act, Iowa Code chapter 17A.

b. The conference shall be provided before the child is removed except in instances listed in 202.13(1) “a” to “c.” The service area manager or designee shall review the propriety of the removal and explain the decision to the foster family.

c. The service area manager or designee, on finding that the removal is not in the child’s best interests, may overrule the removal decision unless a court order or parental decision prevents the department from doing so.

**202.13(4)** When the facility or foster home requests a child be removed from its care, it shall give a minimum of ten days’ notice to the department so planning may be made on behalf of the child.

a. This does not apply to a situation where the health or safety of the child or another person in the foster home is threatened by the child’s presence in the child’s current placement home.

This rule is intended to implement Iowa Code section 234.6(6) “b.”

Item 8. Amend rule **202.15** as follows:

**441—202.15(234) Case permanency plan.**

**202.15(1)** The department worker shall ensure that a case permanency plan is developed for each child who is placed in foster care if the department has agreed to provide foster care through a voluntary placement

agreement, if a court has transferred custody or guardianship to the department for the purpose of foster care, or if a court has placed the child in foster care and ordered the department to supervise the placement.

**202.15(2)** The department worker shall develop the case permanency plan with the child's parents, unless the child's parents are unwilling to participate in the plan's development, and with the child, unless the child is unable or unwilling to participate. For a child 14 years of age or older in foster care, the case permanency plan must be developed in consultation with the child. The child may choose up to two members of the case planning team who are not the child's foster parent or caseworker. The department may reject an individual selected by a child at any time if the department has good cause to believe the individual would not act in the best interests of the child. One individual selected by the child to be a member of a child's case planning team may be designated to be the child's advisor and, as necessary, advocate with respect to the use of the reasonable and prudent parent standard.

**202.15 (3)** The department shall consider information regarding medical appointments, treatment needs, educational progress and services from a resource parent(s) when developing or modifying a child's case permanency plan and in the coordination of care and decisions related to services and care necessary for the child. The information the department receives from resource parent(s) will be reviewed and considered as decisions about the child's progress and needs are made.

**202.15(43)** The department worker shall be responsible for ensuring the development of the case permanency plan within the time frames specified in rule 441—130.7(234). In all cases, the case permanency plan shall be completed within 60 days of the date the child entered foster care.

**202.15(54)** Copies of the initial and subsequent case permanency plans shall be provided to the child, the child's parents, and the foster care provider. Copies shall also be provided to the following, if involved in services to the child: the juvenile court officer, the judge, the child's attorney, the child's guardian ad litem, the child's guardian, the child's custodian, the child's court-appointed special advocate, the parents' attorneys, the county attorney, the state foster care review board, and any other interested parties identified in the plan.

**202.15(65)** The initial and subsequent case permanency plans shall be completed on the forms specified in rule 441—130.7(234).

**202.15(76)** Rescinded IAB 4/28/04, effective 6/2/04.