

## Council on Human Services

THURSDAY, MARCH 9, 2023

10 A.M. – 11:30 A.M.

[CLICK TO JOIN ZOOM MEETING](#)

Join by Phone: 1-551-285-1373

Meeting ID: 1611885061 Passcode: 754052

### AGENDA

10:00 a.m.            **Call to Order**

10:05 a.m.            **Approval of February 9, 2023, meeting minutes**

10:05 a.m.            **Rules**

**R-1. Amendments to Chapter 73, “Managed Care,” Iowa Administrative Code. (Align rules with current practice and Iowa Code).**

For ease of review we have rescinded and replaced the entire chapter. Changes include updating definitions to include terms to managed care plans, managed care organizations and prepaid ambulatory health plans. In addition, revisions add correct terminology, update federal and state citations and regulations and align federal and contract provisions. This review is part of the department’s five-year rules review process.

**R-2. Amendments to Chapter 108, “Licensing and Regulation of Child Placing Agencies,” Iowa Administrative Code. (Aligns rules with current practice and Iowa Code)**

Chapter 108 establishes licensing procedures for all child-placing agencies. The rules review removed outdated form names, added information on documents that must be submitted when requesting a record check and clarified the process for record check evaluations. Cross-references to rules regarding notices and appeal rights were also updated. Qualifications for caseworkers were updated. Rules are clarified when mandatory child abuse reporter training is required for foster parents. This review is part of the department’s five-year rules review process.

**R-3. Amendments to Chapter 113, “Licensing and Regulation of Foster Family Homes,” (Aligns rules with current practice and Iowa Code).**

Chapter 113 provides the administrative rules for the licensing and regulation of foster family homes. New definitions for “kin” and “fictive kin” were added due to an increase of kin and fictive kin becoming licensed foster parents and to align with the Code of Iowa chapter 232. Definitions of “child” and “children” were updated. Communicable disease language was added to replace HIV language. Changes to whooping cough vaccine requirements are updated to allow religious exemptions. This review is part of the department’s five-year rules review process.

**R-4 Amendments to Chapter 114, “Licensing and Regulation of Group Care,” (Align rules with current practice and the Iowa Code).**

Chapter 114 outlines the basic licensing standards for all group living foster care facilities and contains the basic licensing standards applicable to community residential facilities for children. Amendments updated definitions defined in the Iowa Code and provided additional clarity. Qualifications are amended to provide further information on related human service fields and experience in social work or experience in the delivery of human services in a public or private agency as additional ways to qualify as a caseworker. Rules were updated to provide information on the record check process. This review is part of the department’s five-year rules review process.

**R-5. Amendments to Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities,” Iowa Administrative Code. (Align rules with current practice and the Iowa Code).**

Chapter 115 outlines the licensing and regulation standards for comprehensive regulations of residential care facilities for children. Changes included updating language to add additional contact time requirements with caseworkers per provider requests. Chemical restraint language was removed. Expanded documentation requirements regarding the use of the control room was updated to align with other chapters. This review is part of the department’s five-year rules review process.

**R-6. Amendments to Chapter 156, “Payments for Foster Care,” Iowa Administrative Code. (Align rules with current practice the Iowa Code and federal regulations)**

Chapter 156 outlines the process for payments for foster care. References to difficulty of care payments for therapeutic foster care were removed. The rate was updated for kinship caregiver payments to match what has previously been approved in the budget. Rates paid for clothing allowances and when they can be issued were also updated. Runaway and family visits were added as allowable reserve bed payment types under shelter care. The rate setting methodology for shelter care was changed to reflect the rates are set in the contracts. This review is part of the department’s five-year rules review process.

**R-7. Amendments to Chapter 170, “Child Care Assistance,” Iowa Administrative Code. (Align rules with current practice, the Iowa Code and federal regulations).**

Chapter 170 was reviewed as part of the Department’s five-year rules review. The rule making removed all reference to the term “relatives” as this term has no standing in the child care assistance program. The rule making included language relating to foster care child eligibility for child care assistance to reflect a current policy. Definitions are updated to be consistent across programs. A reference to Iowa’s Food Assistance Program was being updated to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.

**R-8. Amendments to Chapter 176, “ Dependent Adult Abuse,” Iowa Administrative Code. (Align rules with current practice the Iowa Code and federal regulations)**

Chapter 176 was reviewed as part of the Department’s five year rules review. Definitions were updated to align with the Code of Iowa and provide consistency. The word “dependent” was added to adult abuse to ensure dependent abuse is correctly identified. The rules clarify the relationships of all parties involved in the assessment process.

**The following amendments to the administrative rules are presented as Emergency rules.**

**EA-I. Amendments to chapter 170, “Child Care Assistance,” Iowa Administrative Code. (Implement child care priorities).**

The Department is proposing to file emergency rules that will assist more families in accessing child care assistance and provide higher payment rates for child care providers. Income eligibility levels are being increased from 145% to 155% of federal poverty levels based on family size. The maximum provider rate ceiling is being increased to allow providers to receive higher payment rates. These rules will go to the Administrative Rules Review Committee’s (ARRC) March 13, 2023, to be reviewed for an emergency adoption to waive the filing and notice requirements. The rules will also be filed as regular rules to allow the public an opportunity to provide comments. The Governor’s office has waived the red-tape review on these rules so they move forward.

**The following amendments to the administrative rules are presented as Noticed rules.**

**N-I Amendments to chapter 170, “Child Care Assistance,” Iowa Administrative Code. (Implement child care priorities). These are the noticed version of the rules referred to in rule EA-I. Please refer to EA-I for the complete listing.**

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|-------------------|---|
| <b>10:30 a.m.</b> | <b>Facilities Update</b> – Division Director of State Operated Facilities Cory Turner   |
| <b>10:50 a.m.</b> | <b>Behavioral Health and Disability Services Update</b> – Division Director of Behavioral Health and Disability Services Marissa Eyanson and Medicaid Director Liz Matney |
| <b>11:10 a.m.</b> | <b>Directors Report</b> – HHS Director Kelly Garcia   |
| <b>11:25 a.m.</b> | <b>Council Update</b>   |
| <b>11:30 a.m.</b> | <b>Adjourn</b>  |

**This meeting is accessible to persons with disabilities. (If you have special needs, please contact the Department of Human Services (515) 281-5452 two days prior to the meeting.) Note: Times listed on agenda for specific items are approximate and may vary depending on the length of discussion for preceding items. Please plan accordingly.**

## HUMAN SERVICES DEPARTMENT[441]

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

### Adopted and Filed

Rule making related to managed care.

The Human Services Department hereby rescinds and adopts new Chapter 73, “Managed Care,” Iowa Administrative Code.

### Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

### State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

### Purpose and Summary

Chapter 73 was reviewed as part of the Department’s five-year review of rules. For ease of review and adoption, the Department rescinded and replaced the entire chapter. Changes included updates to the definitions to include the terms “managed care plan,” “managed care organizations” and “prepaid ambulatory health plan.” In addition, revisions added correct terminology, updated federal and state citations and regulations and aligned federal and contract provisions. Changes include using the term “dental wellness plan” when the provision applies to prepaid ambulatory health plans. The spelling for the Hawki program was also updated.

### Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as ARC 6808C.

The Department received one comment regarding rule 73.2(249A).

#### Commenter Response

Under 441-73.2(2) a managed care plan (MCP) is required to attain and maintain accreditation by NCQA or URAC. As a nationally recognized accreditor of health plans, the Accreditation Association for Ambulatory Health Care, Inc. (AAHC) respectfully requests the Department’s consideration of including AAHC as an approved accreditation organization within the rule.

AAHC is a private and independent 501(c)(3) non-profit accreditation organization formed in 1979 and is a recognized health plan accreditor through several federal and state agency regulatory agencies. Currently more than 30 health plans are committed to excellence through AAHC accreditation.

#### Department Response

Currently our contracts with the managed care organizations require NCQA accreditation. At this time we don’t feel it necessary to add another accreditation to the administrative rules when it is not required under the managed care contract. We are currently looking to streamline our rules and eliminate requirements that are not required in contract or administrative code. If we change the accreditation

requirements for the managed care contract we will revisit this rule. We appreciate the background information on AAAHC.

No changes from the Notice have been made.

#### **Adoption of Rule Making**

This rule making was adopted by the Council on Human Services on March 9, 2023.

#### **Fiscal Impact**

This rule making has no fiscal impact to the State of Iowa.

#### **Jobs Impact**

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

#### **Waivers**

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any pursuant to 441\_1.8(17A, 217).

#### **Review by Administrative Rules Review Committee**

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).

#### **Effective Date**

This rule making will become effective on July 1, 2023.

The following rule-making action is adopted:

Please see attached.

ADOPTED AND FILED CHAPTER 73

The following rule-making action is adopted:

Rescind 441—Chapter 73 and adopt the following **new** chapter in lieu thereof:

TITLE VIII  
MEDICAL ASSISTANCE  
CHAPTER 73  
MANAGED CARE

PREAMBLE

This chapter provides that most Iowa medical assistance program benefits will be provided through managed care. Notwithstanding any provisions of 441—Chapters 74 through 91, program benefits shall be provided through managed care as provided in this chapter. The program benefits provided through managed care will be paid for by the managed care plan participating in the program pursuant to this chapter, subject to the conditions, procedures, and payment rates or methodologies established by the managed care plan, consistent with this chapter and with the contract between the department and the managed care plan.

Implementation of managed care pursuant to this chapter is subject to approval by the Secretary of the United States Department of Health and Human Services (Secretary) of any Iowa state plan amendments and any waivers of the requirements of Title XIX of the Social Security Act that are required to allow for federal funding. This chapter shall be construed to comply with all requirements for federal funding under Title XIX of the Social Security Act or under the terms of any applicable waiver granted by the Secretary. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XIX or the terms of any applicable waiver, the requirements under Title XIX or the terms of the waiver shall prevail.

**441—73.1(249A) Definitions.**

*“Behavioral health services”* means mental health and substance use disorder treatment services.

*“Capitated payment”* means a monthly payment to the MCP on behalf of each enrollee for the provision of health or dental services under the contract. Payment is made regardless of whether the enrollee receives services during the month.

*“Choice counseling”* means the provision of unbiased information on MCPs or provider options and answers to related questions and access to personalized assistance to help members understand the materials provided by the MCPs or the state, to answer questions about each of the options available, and to facilitate enrollment with an MCP.

*“Claim”* means a formal request for payment for benefits received or services rendered.

*“Clean claim”* means a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment of the claim. “Clean claim” does not include a claim from a provider that is under investigation for fraud or abuse or a claim under review for medical necessity.

*“CMS”* means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

*“Code of Federal Regulations”* or *“CFR”* means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

*“Community-based case management”* means a collaborative process of planning, facilitation, and advocacy for options and services to meet an enrollee’s needs through communication and available resources to promote high-quality, cost-effective outcomes.

*“Contract”* means a contract between the department and an MCP. These contracts shall meet all

applicable requirements of state and federal law, including the requirements of 42 CFR 434 as amended to July 19, 2022.

“*Covered services*” means physical health, behavioral health, dental, and long-term care services set forth in rule 441—73.5(249A).

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

“*Discharge planning*” means the process, which begins at admission, of determining a continued need for treatment services and of developing a plan to address ongoing needs.

“*Electronic visit verification system*” means, with respect to personal care services or home health care services described in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

“*Emergency medical condition*” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, for a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
2. Serious impairment to bodily functions;
3. Serious dysfunction of any bodily organ or part.

“*Emergency services*” means covered inpatient and outpatient services that are as follows:

1. Furnished by a provider that is qualified to furnish these services.
2. Needed to evaluate or stabilize an emergency medical condition.

“*EMTALA*” means the Emergency Medical Treatment and Active Labor Act.

“*Enrollee*” means a hawki, Iowa health and wellness plan, dental wellness plan or Medicaid member who is eligible for MCP enrollment and has been enrolled with an MCP as defined in subrule 73.3(2).

“*Enrollment broker*” means the entity the department uses to enroll persons in an MCP. The enrollment broker must be conflict-free and meet all applicable requirements of state and federal law, including 42 CFR 438.10 as amended to July 19, 2022.

“*Hawki program*” means the healthy and well kids in Iowa program as set forth in 441—Chapter 86, the Iowa program to provide health care coverage for uninsured children of eligible families as authorized by Title XXI of the federal Social Security Act.

“*HIPP*” means the health insurance premium payment program.

“*Home- and community-based services*” or “*HCBS*” means services that are provided as an alternative to long-term care institutional services in a nursing facility or an intermediate care facility for persons with an intellectual disability (ICF/ID) or to delay or prevent placement in a nursing facility or ICF/ID.

“*Incident reporting*” means the reporting of critical events or incidents deemed sufficiently serious to warrant near-term review and follow-up by an appropriate authority. Such incidents may include but are not limited to:

1. Abuse and neglect;
2. The unauthorized use of restraint, seclusion or restrictive interventions;
3. Serious injuries that require medical intervention or result in hospitalization, or both;
4. Criminal victimization;
5. Death;
6. Financial exploitation;
7. Medication errors; and
8. Other incidents or events that involve harm or risk of harm to a participant.

“*Insolvency*” means a financial condition that exists when an entity is unable to pay its debts as they become due in the usual course of business or when the liabilities of the entity exceed its assets.

*“Iowa health and wellness plan”* means the medical assistance program set forth in 441—Chapter 74.

*“Level of care”* means an evaluation to determine and establish an individual’s need for the level of care provided in a hospital, a nursing facility, or an ICF/ID within the near future.

*“Long-term care (LTC)”* or *“long-term services and supports (LTSS)”* means the services of a nursing facility (NF), an intermediate care facility for persons with an intellectual disability (ICF/ID), state resource centers or services funded through Section 1915(c) home- and community-based services waivers, Section 1915(i) state plan home- and community-based habilitation program and the PACE program.

*“Managed care organization”* or *“MCO”* means an entity that (1) is under contract with the department to provide services to Medicaid recipients and (2) meets the definition of “health maintenance organization” in Iowa Code section 514B.1.

*“Managed care plan”* or *“MCP”* refers to managed care organizations (MCOs) and prepaid ambulatory health plans (PAHPs).

*“Mandatory enrollment”* means mandatory participation in a managed care plan as specified in subrule 73.3(2).

*“Medical loss ratio”* or *“MLR”* means the percentage of capitation payments that is used to pay medical or dental expenses.

*“Medically necessary services”* means those covered services that are, under the terms and conditions of the contract, determined through MCP utilization management to be:

1. Appropriate and necessary for the symptoms, diagnosis or treatment of the condition of the member.
2. Provided for the diagnosis or direct care and treatment of the condition of the member to enable the member to make reasonable progress in treatment.
3. Within standards of professional practice and given at the appropriate time and in the appropriate setting.
4. Not primarily for the convenience of the member, the member’s physician or other provider; and
5. The most appropriate level of covered services that can safely be provided.

*“Medical records”* means all medical, dental, behavioral health, and long-term care histories; records, reports and summaries; diagnoses; prognoses; record of treatment and medication ordered and given; X-ray and radiology interpretations; physical therapy charts and notes; lab reports; other individualized medical, behavioral health, and long-term care documentation in written or electronic format; and analyses of such information.

*“Member”* means any person determined by the department to be eligible for the hawki program, the Iowa health and wellness plan, the dental wellness plan, or the Medicaid program.

*“Money Follows the Person (MFP) Rebalancing Demonstration Grant”* means a federal grant that will assist Iowa in transitioning individuals from a nursing facility or ICF/ID into the community and in rebalancing long-term care expenditures.

*“Needs-based eligibility”* means an evaluation to determine and establish an individual’s need for habilitation services.

*“Network”* or *“provider network”* means a group of participating health or dental care providers (both individual and group practitioners) linked through contractual arrangements to the MCP to supply a range of health or dental care services.

*“Out-of-network provider”* means any provider that is not directly or indirectly employed by or does not have a provider agreement with the MCP or any of its subcontractors pursuant to the contract between the department and the MCP.

*“PACE”* means the program for all-inclusive care for the elderly.

*“Participating providers”* means the providers of covered physical health, behavioral health, dental, and long-term care services that have contracted with a managed care plan.

*“Passive enrollment process”* means the process by which the department assigns a member to a



managed care plan and which, in accordance with 42 CFR 438.54 as amended to July 19, 2022, seeks to preserve existing provider-member relationships and relationships with providers that have traditionally served Medicaid members, if possible. In the absence of existing relationships, the process ensures that members are equally distributed among all available managed care plans.

“*Prepaid ambulatory health plan*” or “*PAHP*” has the meaning set forth in 42 CFR 438.2 as amended to July 19, 2022.

“*Prior authorization*” means the process of obtaining prior approval as to the appropriateness of a service or medication. Prior authorization does not guarantee coverage.

“*Warm transfer*” means a telecommunications mechanism in which the person answering the call facilitates transfer to a third party, announces the caller and issue and remains engaged as necessary to provide assistance.

#### **441—73.2(249A) Contracts with a managed care plan (MCP).**

**73.2(1)** The department may enter into a contract with an MCP licensed under the provisions of insurance division rules set forth in 191—Chapter 40 for the scope of services as described in rule 441—73.6(249A).

**73.2(2)** The department shall determine that the MCP meets the following requirements:

*a.* The MCP shall make available the services it provides to enrollees as established in the contract.

*b.* The MCP shall provide satisfaction to the department against the risk of insolvency and ensure that neither Medicaid members nor the state shall be responsible for the MCP’s debts if the MCP becomes insolvent. The MCP shall comply with insurance division provisions set forth in rule 191—40.12(514B) regarding net worth and rule 191—40.14(514B) containing reporting requirements.

*c.* The MCP shall attain and maintain accreditation by the National Committee for Quality Assurance (NCQA) or URAC (formerly known as the Utilization Review Accreditation Commission).

**73.2(3)** If not already accredited, the MCP must demonstrate it has initiated the accreditation process as of the contract effective date and must achieve accreditation at the earliest date allowed by NCQA or URAC. Prior to the contract effective date, the MCP must be licensed and in good standing in the state of Iowa as a health maintenance organization in accordance with insurance division rules set forth in 191—Chapter 40.

**73.2(4)** The contract shall meet the following minimum requirements. The contract shall:

- a.* Be in writing.
- b.* Specify the duration of the contract period.
- c.* List the services that must be covered.
- d.* Describe service access and provide access information.
- e.* List conditions for nonrenewal, termination, suspension, and modification.
- f.* Specify the method and rate of reimbursement.
- g.* Provide for disclosure of ownership and subcontracted relationships.
- h.* Specify that all subcontracts shall be in writing, shall comply with the provisions of the contract between the department and the MCP, and shall include any general requirements of the contract that are appropriate to the service or activity covered by the subcontract.
  - i.* Specify appeal and grievance rights.
  - j.* Specify all operational and service delivery expectations.
  - k.* Specify reporting requirements.
  - l.* Specify requirements for utilization management and quality improvement.
  - m.* Specify requirements for program integrity.
  - n.* Specify termination requirements and assessment of penalties.
  - o.* Require MCP and the fee-for-service Medicaid program to utilize a uniform prior authorization process.

The process will include forms, information requirements, and time frames.

**441—73.3(249A) Enrollment.**

**73.3(1) Enrollment area.** The coverage area for enrollment shall be statewide.

**73.3(2) Members subject to enrollment.** All hawki program, Iowa health and wellness plan, and dental wellness plan members shall be subject to mandatory enrollment in an MCP. All Medicaid members, with the exception of the following, shall be subject to mandatory enrollment in an MCP:

- a. Members who are medically needy as described at 441—Chapter 75.
- b. Individuals eligible only for emergency medical services because the individuals do not meet citizenship or alienage requirements, pursuant to 441—Chapter 75.
- c. Persons who are currently presumptively eligible as defined in 441—Chapter 75.
- d. Persons eligible for the program of all-inclusive care for the elderly (PACE) who voluntarily elect PACE coverage as described in Division II of 441—Chapter 88.
- e. Persons enrolled in the health insurance premium payment program (HIPP) pursuant to 441—Chapter 75.
- f. Persons eligible only for the Medicare savings program as described in 441—Chapters 75 and 76.
- g. American Indian and Alaska Native populations who are exempt from mandatory enrollment pursuant to 42 CFR 438.50(d)(2) but who may enroll voluntarily.
- h. Persons who have a Medicaid eligibility period that is retroactive as described in 441—Chapter 76.
- i. Persons who are inmates of a public institution and ineligible for Medicaid benefits as described in 441—Chapter 75.
- j. Persons residing in the Iowa Veterans Home as described in rule 801—10.1(35D).
- k. Effective July 1, 2017, persons who are eligible only for the family planning waiver as described in 441—Chapter 75.

**73.3(3) Enrollment process.** The department shall notify members who must be enrolled in an MCP of enrollment and the effective date of enrollment. The department will implement an enrollment process in accordance with federal funding requirements, including 42 CFR 438 as amended to July 19, 2022.

a. *General.* Members may receive MCP choice counseling from the enrollment broker. The enrollment broker will provide information about individual MCP benefit structures, services and network providers, as well as information about other Medicaid programs as requested by the Medicaid member to assist the member in making an informed selection.

b. *Passive assignment.* Effective no earlier than the first day of the month of the member's application to Medicaid, the member shall be assigned to an MCP using the department's passive enrollment process and offered the opportunity to choose from the available MCPs within a time frame specified in the passive assignment letter.

c. *Request to change enrollment.* An enrollee may, within 90 days of initial enrollment, request to change enrollment from one MCP and enroll in another MCP. The request may be made on a form designated by the department, in writing, or by telephone call to the enrollment broker's toll-free member telephone line. Enrollment changes are effective no later than the first day of the second month beginning after the date on which the enrollment broker receives the enrollee's written or verbal request.

d. *Ongoing enrollment.* Enrollees shall remain enrolled with the chosen MCP for a total of 12 months.

e. *Enrollment cycle.* Prior to the end of the enrollee's annual enrollment period, the enrollee shall be notified of the option to maintain enrollment with the current MCP or to enroll with a different MCP.

**73.3(4) Benefit reimbursement prior to enrollment.**

a. Prior to the effective date of MCP enrollment, except as provided in paragraph 73.3(4) "b," the department shall reimburse providers for covered program benefits pursuant to 441—Chapters 74 to 91, as applicable for eligible members.

b. The MCP shall be responsible for covering newly retroactive Medicaid eligibility periods prior to the effective date of enrollment for babies born to Medicaid-enrolled women who are retroactively eligible to the month of birth.

**441—73.4(249A) Disenrollment process.**

**73.4(1) *Enrollee-requested disenrollment.*** An enrollee may request disenrollment with an MCP as follows:

a. During the first 90 days following the date of the enrollee’s initial enrollment with the MCP, the enrollee may request disenrollment, for any reason, in writing or by a telephone call to the enrollment broker’s toll-free member telephone line.

b. After the 90 days following the date of the enrollee’s enrollment with the MCP, when an enrollee is requesting disenrollment due to good cause, the enrollee member shall first make a verbal or written filing of the issue through the MCP’s grievance system. If the member does not experience resolution, the MCP shall direct the member to the enrollment broker. The enrolled member may request disenrollment in writing or by a telephone call to the enrollment broker’s toll-free member telephone line and must request a good-cause change for enrollment. Good-cause changes include the following:

(1) The MCP does not, because of moral or religious objections, cover the service the member seeks.

(2) The member needs related services to be performed at the same time, not all related services are available within the network, and the member’s primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk.

(3) Other reasons, including but not limited to poor quality of care, lack of access to services covered under the contract, lack of access to providers experienced in dealing with the member’s health or dental care needs, or eligibility and choice to participate in a program not available in managed care (for example, PACE).

c. The final decision for disenrollment shall be determined by the department.

**73.4(2) *Disenrollment by department.*** Disenrollment will occur when:

a. The contract between the department and the MCP is terminated.

b. The enrollee becomes ineligible for Medicaid, the hawki program, the Iowa health and wellness plan, or the dental wellness plan. If the enrollee becomes ineligible and is later reinstated to these programs, enrollment in the MCP will also be reinstated.

c. The enrollee transfers to an eligibility group excluded from managed care plan enrollment. “Enrollee” is defined in rule 441—73.1(249A).

d. The department has determined that participation in the HIPP program as described in 441—Chapter 75 is more cost-effective than enrollment in managed health care.

e. The enrollee dies.

f. The enrollee has changed residence to another state.

**73.4(3) *Managed care plan-requested disenrollment.*** An MCP shall not disenroll an enrollee or encourage an enrollee to disenroll for any reason, including the enrollee’s health or dental care needs or change in health or dental care status or because of the enrollee’s utilization of medical services, diminished capacity, or uncooperative or disruptive behavior resulting from the enrollee’s special needs (except when the enrollee’s continued enrollment seriously impairs the MCP’s ability to furnish services to either this particular enrollee or other enrollees). In instances where the exception applies, the MCP shall provide evidence to the department that continued enrollment of an enrollee seriously impairs the MCP’s ability to furnish services to either this particular enrollee or other enrollees. The MCP shall have methods by which the department is assured that disenrollment is not requested for another reason.

**73.4(4) *Disenrollment effective date.***

a. The effective date of a department-approved disenrollment shall be no later than the first day of the second calendar month beginning after the month in which:

(1) The enrollee requests disenrollment pursuant to subrule 73.4(1);

- (2) The department notifies the enrollee and MCP of disenrollment pursuant to subrule 73.4(2); or
- (3) The MCP requests disenrollment pursuant to subrule 73.4(3).

b. The enrollee shall remain enrolled in the MCP and the MCP will be responsible for services covered under the contract until the effective date of disenrollment unless the enrollee is in an inpatient setting at the time of disenrollment. If the enrollee is in an inpatient setting at the time of disenrollment, the managed care organization shall be responsible for the inpatient services for 60 days or until the enrollee is discharged.

**441—73.5(249A) MCP covered services.**

**73.5(1) Required services—MCOs.** A managed care organization shall provide:

a. For enrollees other than Iowa health and wellness plan enrollees and hawki program enrollees, services as set forth in 441—Chapters 78, 81, 82, 83, 84, 85, and 87, with the exception of the following:

- (1) Area education agency services.
  - (2) Dental services not provided in an outpatient hospital setting.
  - (3) Infant and toddler program services.
  - (4) Local education agency services.
  - (5) State of Iowa Veterans Home services.
  - (6) Money Follows the Person Grant-funded services.
- b. Services as set forth in 441—Chapter 74 for Iowa health and wellness plan enrollees.

c. Services as set forth in 441—Chapter 86 for hawki program enrollees.

**73.5(2) Community-based case management service.** The managed care organization is required to provide services that meet requirements specified in the contract and in 441—Chapter 90.

**73.5(3) Health home services.** The managed care organization is required to provide services that meet the requirements specified in 441—Chapter 78 and as specified in the contract.

**73.5(4) Value-added services.** A managed care organization may develop optional services and supports to address the needs of enrollees. These services and supports shall be implemented only after approval by the department.

**73.5(5) Required services—PAHPs.** A PAHP shall provide services to enrollees under the contract with the state agency and on the bases of prepaid capitation payments or other payment arrangements that do not use state plan payment rates. PAHPs shall provide:

a. For enrollees other than Iowa health and wellness plan enrollees and hawki program enrollees, services as set forth in 441—Chapter 73, 74, 78, and 88 with the exception of the following:

- (1) Area education agency services.
- (2) Inpatient hospital or institutional services.
- (3) Advance directive requirements in dental nonclinical services such as transportation.
- (4) Long-term care (skilled nursing facilities, intermediate care facilities, residential care facilities, state resource centers, or intermediate care facilities for persons with an intellectual disability).
- (5) Inpatient psychiatric care provided at the state-administered mental health institutes.
- (6) Services provided at specialized adolescent psychiatric facilities.
- (7) Day treatment and partial hospitalization services for persons aged 20 or under.
- (8) Enhanced services provided to certain eligible recipients.

b. Services as set forth in 441—Chapter 74 for Iowa health and wellness plan enrollees.

c. Services as set forth in 441—Chapter 86 for hawki program enrollees.

**441—73.6(249A) Amount, duration and scope of services.**

**73.6(1)** The MCP shall provide, at a minimum, all benefits and services deemed medically necessary that are covered under the contract with the department. In accordance with federal funding requirements, including 42 CFR 438.210(a)(3) as amended to July 19, 2022, the MCP shall furnish covered services in an amount, duration and scope reasonably expected to achieve the purpose for which the services are furnished. The MCP shall not arbitrarily deny or reduce the amount, duration

and scope of a required service solely because of diagnosis, type of illness, or condition of the enrollee. With the exception of court-ordered services, the managed care organization shall require as a condition of payment managed care organization approval of admissions to a nursing facility, an intermediate care facility for persons with an intellectual disability, a psychiatric medical institution for children, and a mental health institute. Managed care organizations shall also require managed care organization approval of out-of-state placements as a condition of payment.

**73.6(2)** The MCP may place appropriate limits on services on the basis of medical necessity criteria for the purpose of utilization management, provided the services can reasonably be expected to achieve their purpose in accordance with the contract. The MCP shall not:

*a.* Avoid costs for services covered in the contract by referring members to publicly supported health or dental care resources.

*b.* Deny reimbursement of covered services based on the presence of a preexisting condition.

**73.6(3)** The MCP shall allow each enrollee to choose a health or dental professional, to the extent possible and appropriate, within the MCP's provider network. The MCP shall ensure compliance with the Americans with Disabilities Act (ADA) in the delivery and approval of all services.

#### **441—73.7(249A) Emergency services.**

**73.7(1)** Emergency services shall be available 24 hours a day, seven days a week.

**73.7(2)** In accordance with federal funding requirements, including 42 CFR 438.114 as amended to July 19, 2022, the MCP shall:

*a.* Cover emergency services without the need for prior authorization and shall not limit reimbursement to network providers.

*b.* Cover and pay for emergency services regardless of whether the provider that furnishes the services is enrolled with Iowa Medicaid or has a contract with the MCP.

*c.* Pay noncontracted providers for emergency services the amount that would have been paid if the service had been provided under the state's fee-for-service Medicaid program.

*d.* Cover the medical screening examination, as described by EMTALA, provided to a member who presents to an emergency department with an emergency medical condition. This requirement applies to managed care organizations only.

**73.7(3)** The MCP shall not deny payment for:

*a.* Treatment obtained when an enrollee has an emergency medical condition.

*b.* Treatment obtained when a representative of the MCP instructs the enrollee to seek emergency medical services.

#### **441—73.8(249A) Access to service.**

**73.8(1)** The MCP shall ensure enrollees have access to services as specified in the contract. In general, the MCP shall provide available, accessible, and adequate numbers of institutional facilities, service locations, and service sites and professional, allied, and paramedical personnel for the provision of covered services, including all emergency services, on a 24-hours-a-day, seven-days-a-week basis. At a minimum, access to services shall comply with the standards described in the contract. For areas of the state where provider availability is insufficient to meet these standards, for example, in health or dental professional shortage areas and medically underserved areas, the access standards shall meet the usual and customary standards for the community. Exceptions to the requirements contained in this rule shall be justified and documented to the state on the basis of community standards. All other services not specified in this rule shall meet the usual and customary standards for the community.

**73.8(2)** Choice of providers. An enrollee shall use the MCP's provider network unless the MCP has authorized a referral to a nonparticipating provider for provision of a service or treatment plan or as specified for provision of emergency services set forth in rule 441—73.7(249A). In accordance with federal funding requirements, including 42 CFR 431.51(b)(2) as amended to July 19, 2022, the managed care organization shall allow enrollees freedom of choice of providers of any department-enrolled family planning service provider including those providers who are not in the

MCP network.

**73.8(3)** Continuity of care. The MCP shall have policies and procedures that provide for the continuity of care of treatment to ensure that a new enrollee's existing services are honored as required in the contract.

**73.8(4)** Adequate service referral support and after-hours call-in coverage. The MCP shall ensure enrollee access to service information and medical coverage 24 hours a day, 7 days a week, 365 days a year.

*a. Member helpline.* The MCP shall maintain a dedicated toll-free member services helpline as established in the contract to handle a variety of member inquiries and to provide warm transfer of enrollees to outside entities, such as provider offices, and to internal MCP departments, such as care coordinators.

*b. Nurse call line.* The managed care organization shall operate a toll-free nurse call line that provides nurse triage telephone services for members to receive medical advice 24 hours a day, seven days a week from trained medical professionals.

**73.8(5)** An enrollee's primary care provider shall be responsible for providing preventative and primary health or dental care to the enrollee; for initiating referrals for specialist care, where appropriate; and for maintaining the continuity of patient care. Primary care providers may be physicians, advanced registered nurse practitioners, or physician assistants, licensed and practicing in accordance with state law.

**441—73.9(249A) Incident reporting.**

**73.9(1)** The managed care organization shall develop and implement a critical incident reporting and management system for participating providers in accordance with the department requirements for reporting incidents for Section 1915(c) HCBS waivers, for the Section 1915(i) habilitation program, and as required for licensure of programs through the department of inspections and appeals.

**73.9(2)** The managed care organization shall develop and implement policies and procedures, subject to department review and approval, to:

- a.* Address and respond to incidents;
- b.* Report incidents to the appropriate entities in accordance with required time frames; and
- c.* Track and analyze incidents.

**441—73.10(249A) Discharge planning.** The managed care organization shall establish policies and procedures, subject to approval by the department, that protect an individual from involuntary discharge that may lead to placement in an inappropriate or more restrictive setting. The managed care organization shall facilitate a seamless transition whenever a member transitions between facilities or residences.

**441—73.11(249A) Level of care assessment and annual reviews.** The managed care organization shall establish policies and procedures to ensure the implementation of level of care and needs-based eligibility assessments and reassessments as required in the contract and consistent with the department's level of care and needs-based eligibility assessment process and the requirements provided in 441—Chapters 75, 78, 81, 82, 83, and 85. Waiver level of care determinations must be consistent with those made for the appropriate institutional level of care under the state plan.

**73.11(1)** Initial level of care assessment. Managed care organizations are responsible for conducting level of care and needs-based eligibility assessments for a current enrollee who requires a level of care or a needs-based eligibility assessment. The managed care organization shall perform the assessment using department-approved assessment tools. The results of the assessment shall be submitted to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

**73.11(2)** Annual continued stay reviews, continued care reviews and redeterminations. When an enrollee requires a continued stay review, a continued care review or a redetermination, the managed care organization shall use department-approved assessment tools. If the managed care organization

becomes aware that the enrollee's functional or medical status has changed in a way that may affect the enrollee's level of care or needs-based eligibility, the managed care organization shall submit the assessment findings to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

**73.11(3)** At any time, if the managed care organization becomes aware that the enrollee's functional or medical status has changed in a way that may affect level of care or needs-based eligibility, the managed care organization shall conduct a level of care or needs-based assessment using the department-approved tools and submit the assessment to the Iowa Medicaid medical services unit for determination of level of care or needs-based eligibility.

**441—73.12(249A) Appeal of MCP actions.** The MCPs shall have written appeal policies and procedures for an enrollee, or an enrollee's authorized representative, to appeal an MCP action. The policies must address contractual requirements and federal funding requirements, including 42 CFR 438, Subpart F, as amended to July 19, 2022.

**73.12(1) MCP appealable actions.** MCP actions that may be appealed include:

- a. Denial or limited authorization of a requested service, including the type or level of service.
- b. Reduction, suspension, or termination of a previously authorized service.
- c. Denial, in whole or in part, of payment of service.
- d. Failure to provide services in a timely manner as described by the department.
- e. Failure to act within the required time frames set forth in federal funding requirements, including 42 CFR 438.408(b) as amended July 19, 2022.
- f. For a resident of a rural area who has only one appropriate provider of a needed service, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside of the MCO's network.

g. The denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

**73.12(2) Appeal process.** The MCP appeal process shall be approved by the department and shall:

- a. Allow for the appeal request to be submitted in writing or verbally.
- b. Require acknowledgment of the receipt of a request for an appeal within three working days.
- c. Allow for participation by the enrollee and the provider.
- d. Provide for resolution of nonexpedited appeals to be concluded within 30 calendar days of receipt of the request unless an extension is requested.
- e. Provide for resolution of expedited appeals where the standard time period could seriously jeopardize the member's health or ability to maintain or regain maximum function to be within 72 hours of receipt of the notice pursuant to federal funding requirements, including 42 CFR 438.402 as amended to July 19, 2022.
- f. Ensure that the review will be made by qualified professionals who were not involved with the original action.
- g. Ensure issuance of a notice of decision for each appeal. These notices shall contain the member's appeal rights with the department and shall contain an adequate explanation of the action taken and the reason for the decision.

**441—73.13(249A) Appeal to department.** If the enrollee is not satisfied with the final decision rendered by the MCP through the managed care plan's appeal process, the enrollee may appeal an action in accordance with the appeal process available to all persons receiving Medicaid-funded services as set forth in 441—Chapter 7.

**441—73.14(249A) Continuation of benefits.** The MCP shall be required to continue the member's benefits during the appeal in accordance with federal funding requirements, including 42 CFR 438.420 as amended to July 19, 2022.

**73.14(1)** If the benefits are continued or reinstated while the appeal is pending, the benefits must be continued until one of the following occurs:

- a. The enrollee withdraws the appeal request;
- b. Ten days pass after the MCP mailed the notice providing the resolution of the appeal against the enrollee, unless the enrollee, within the ten-day time frame, has requested a state fair hearing with continuation of benefits until a state fair hearing decision is reached; or
- c. The time period or service limits of a previously authorized service have been met.

**73.14(2)** If the final resolution of the appeal is adverse to the enrollee, that is, it upholds the MCP's action, the MCP may recover the cost of the services furnished to the enrollee while the appeal is pending, to the extent that services were furnished solely because of the requirements to maintain benefits during the appeal.

**73.14(3)** If the MCP or state fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCP must authorize and provide the disputed services promptly and as expeditiously as the member's health or dental condition requires. If the MCP or the state fair hearing officer reverses a decision to deny authorization of services and the enrollee received the disputed services while the appeal was pending, the MCP must pay for these services.

**441—73.15(249A) Grievances.** The MCP shall have policies and procedures for review of any nonclinical incidents, nonclinical complaints, or nonclinical concerns. Grievances may be communicated verbally or in writing and require that the review be conducted by someone other than the person or persons involved in the grievance. All policies related to the review of grievances shall be approved by the department prior to implementation.

**441—73.16(249A) Written record.** All MCP enrollee appeals and grievances shall be logged and reported to the department. The log shall include the status and resolution of all appeals and grievances.

**441—73.17(249A) Information concerning procedures relating to the review of MCP decisions and actions.** The MCP's written procedures for the review of MCP's decisions and actions shall be provided to each new enrollee, to participating providers in a provider manual, and to nonparticipating providers upon request.

**441—73.18(249A) Records and reports.**

**73.18(1) Records system.** The MCPs shall document and maintain clinical and fiscal records in accordance with federal and state requirements, including 441—Chapter 79 and 42 CFR 456 as amended to July 19, 2022, throughout the course of the contract. The records system shall:

- a. Identify transactions with or on behalf of each enrollee by the state identification number assigned to the enrollee by the department.
- b. Provide a rationale for, and documentation of, decisions made by the MCP based upon medical necessity.
- c. Permit effective professional review for medical audit processes.
- d. Facilitate an adequate system for monitoring treatment reimbursed by the managed care organization including follow up of the implementation of discharge plans and referral to other providers.

**73.18(2) Content of individual treatment record.** The MCP shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical, dental, or service record for each enrolled member including documentation of all services provided to each enrollee in compliance with the contract and provisions of 441—Chapter 79 and pursuant to federal funding requirements, including 42 CFR 456 as amended to July 19, 2022. Beginning January 1, 2021, the managed care organization shall require use of an electronic visit verification system for personal care services.

**73.18(3) Confidentiality of health care, mental health care, and substance abuse information.** The MCP shall protect and maintain the confidentiality of health care, mental health care, dental care and



substance abuse information by implementing policies for staff and through contract terms with participating providers. The policies must comply with applicable state and federal laws.

**441—73.19(249A) Audits.** The department or its designee and the U.S. Department of Health and Human Services (HHS) may evaluate through inspections or other means the quality, appropriateness, and timeliness of services performed by the MCP. The department or HHS may audit and inspect any records of an MCP, or the subcontractor of the MCP, that pertain to services performed and the determination of amounts paid under the contract. These records will be made available at times, at places, and in a manner as authorized representatives of the department, its designee or HHS may request.

**441—73.20(249A) Marketing.** MCP marketing activities and materials shall comply with applicable laws and regulations regarding marketing by the MCP and contract terms. The department shall approve all marketing materials, which must comply with federal funding requirements, including 42 CFR 438.10 and 42 CFR 438.104 as amended to July 19, 2022.

**441—73.21(249A) Enrollee education.**

**73.21(1) Use of services.** The MCP shall provide written information to all enrollees on the use of services the MCP is responsible to arrange, monitor, and reimburse. Information must include the array of services covered; how to access covered services; the providers participating; an explanation of the process for the review of MCP decisions and actions, including the enrollee's right to a fair hearing under 441—Chapter 7 and how to access that fair hearing process; provision of after-hours and emergency care; procedures for notifying enrollees of a change in benefits or office sites; how to request a change in providers; a statement of consumer rights and responsibilities; out-of-area use of service information; availability of toll-free telephone information and crisis assistance; and the appropriate use of the referral system.

**73.21(2) Outreach to members with special needs.** The MCP shall provide enhanced outreach to members with special needs including, but not limited to, persons with a psychiatric disability, an intellectual disability or other cognitive impairments; illiterate persons; non-English-speaking persons; and persons with visual impairments or who are deaf or hard of hearing.

**73.21(3) Patient rights and responsibilities.** The MCP shall have in effect a written statement of patient rights and responsibilities that is available upon request as well as issued to all new enrollees. This statement shall be part of the packet of enrollment information provided to all new enrollees.

**441—73.22(249A) Payment to the MCP.**

**73.22(1) Capitation rate.** In consideration for all services rendered by an MCP under a contract with the department, the MCP will receive a payment each month for each enrolled member. The monthly reimbursement may be reduced by amounts withheld for pay-for-performance components of the contract. The withheld amounts will be distributed based on the terms described in the managed care contract. Additionally, the department will make an allowance for obligations resulting from Section 9010 of the Patient Protection and Affordable Care Act, the health insurance providers fee. This capitation rate, inclusive of the amounts withheld and the health insurance providers fee, represents the total obligation of the department with respect to the costs of medical care and services provided to enrolled members under the contract except as otherwise designated in the contract rate. Pay-for-performance terms will allow for incentive reimbursement if the MCP meets metrics described in the MCP contract.

**73.22(2) Determination of rate.** The actuarially sound capitation rate will be determined according to the terms of federal funding requirements, including 42 CFR 438.6 as amended to July 19, 2022, Actuarial Standards of Practice 49, and other related CMS regulations and generally accepted actuarial principles and practices.

**73.22(3) Third-party liability.** If an enrolled member has health insurance coverage or a responsible party other than the Medicaid program available for payment of medical or dental

expenses, it is the right and responsibility of MCP to investigate these third-party resources and attempt to obtain payment.

*a.* The MCP shall have a time limit to attempt to collect from third-party resources. The time limit shall be determined by the department.

*b.* The MCP shall retain all funds collected from third-party resources during the time limit.

*c.* A complete record of all third-party collections must be maintained and made available to the department on request.

*d.* In the event that the MCP no longer contracts with the department, the department has the right to seek recovery of any third-party collections not collected by the time the contract ends and retain the funds. This includes but is not limited to subrogation cases.

*e.* The department has the right to retain all funds collected from third-party resources after the MCP time limit.

**73.22(4) *Medical loss ratio.*** The MCP shall report the experienced medical loss ratio for each contract rate period. In the event that the medical loss ratio falls below the department-designated target, the department shall recoup excess capitation paid to the MCP.

**441—73.23(249A) Claims payment by the MCP.**

**73.23(1)** The managed care organizations shall pay or deny:

*a.* Ninety percent of all clean claims within 30 calendar days of receipt,

*b.* Ninety-nine point five percent of all clean claims within 90 calendar days of receipt, and

*c.* Ninety-five percent of all claims within 45 calendar days of receipt.

**73.23(2)** The PAHP shall pay or deny:

*a.* Ninety percent of all clean claims within 14 calendar days of receipt,

*b.* Ninety-nine percent of all clean claims within 90 calendar days of receipt, and

*c.* Ninety-five percent of all claims within 21 calendar days of receipt.

**73.23(3)** Managed care limits on payment responsibility for services.

*a.* The MCP is not required to reimburse providers for the provision of services that do not meet the criteria of medical necessity.

*b.* The MCP has the right to require prior authorization of covered services and to deny reimbursement to providers that do not comply with such requirements.

*c.* Payment responsibilities for emergency room services are as provided in rule 441—73.7(249A).

**73.23(4)** Payment to nonparticipating providers. In reimbursing nonparticipating providers, the managed care organization is obligated to pay 80 percent of the payment to participating providers.

**441—73.24(249A) Quality assurance.** The MCP shall have in effect an internal quality assurance and performance improvement system that meets the requirements of any or all applicable state and federal laws.

**441—73.25(249A) Certifications and program integrity.** The MCP shall develop and implement policies, procedures and a mandatory compliance plan to ensure compliance with the contract requirements for certification, program integrity and prohibited affiliations. The MCP shall cooperate and collaborate with the department on all program integrity activities. The MCP shall comply with state and federal laws pertaining to these requirements, including 42 CFR 438.608 and 42 CFR 455 as amended to July 19, 2022.

These rules are intended to implement Iowa Code section 249A.4.



Iowa Department of Human Services
Information on Proposed Rules

Table with 3 columns: Name of Program Specialist (Joanne Bush), Telephone Number (515-322-7982), Email Address (jbush@dhs.state.ia.us)

1. Give a brief purpose and summary of the rulemaking:

The following changes and updates have been made to the proposed draft:

- 1. 441-73.1(249A) Definitions – update definitions to include the term PAHP and MCP:
- “Managed care plan” or “MCP” refers to managed care organizations (MCOs) and prepaid ambulatory health plans (PAHPs).
- Clarification to include PAHP (Prepaid ambulatory Health Plan) for dental managed care provisions.
- Correct the spelling for Hawki program
2. 441—73.2(249A) language clean up, add correct terminology, confirm federal citations, update to align with federal and contract provisions:
- Use the term MCP when the provision applies to MCOs and PAHPs. MCO when the provision applies to MCOs only. PAHP when the provision applies to PAHP only.
- Add ‘dental’ when a provision applies to both medical and dental manage care provisions
- Confirm Federal citations and references.
3. 441—73.3(249A) Enrollment, 441—73.4(249A) Disenrollment process, 441—73.5(249A) Covered services, 441—73.6(249A) Amount, duration and scope of services, 441—73.7(249A) Emergency services, 441—73.8(249A) Access to service, 441—73.12(249A) Appeal of managed care, 441—73.13(249A) Appeal to department, 441—73.14(249A) Continuation of benefits, 441—73.15(249A) Grievances, 441—73.17(249A) Information concerning procedures relating to the review of managed care plan decisions and actions, 441—73.18(249A) Records and reports, 441—73.19(249A) Audits, 441—73.20(249A) Marketing, 441—73.21(249A) Enrollee education, 441—73.22(249A) Payment to the managed care plan, 441—73.23(249A) Claims payment by the managed care plan, 441—73.24(249A) Quality assurance, 441—73.25(249A) Certifications and program integrity, language clean up, add correct terminology, confirm federal citations, update to align with federal and contract requirements:
- Use the term Dental Wellness Plan when the provision applies to PAHP.
- Correct the spelling for Hawki program
- Confirm Federal and State citations and references.
- Update language to comply with federal regulations (e.g., timely payment – claims processing)
- Use the term MCP when the provision applies to MCOs and PAHPs
- Add ‘dental’ when a provision applies to both medical and dental manage care provisions

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

249A

3. Describe who this rulemaking will positively or adversely impact.

Adding Prepaid Ambulatory Health Plan (PAHP - Dental) to Chapter 73.

Defining Manage Care Plan (MCP) and clarification to include Managed Care Organization and PAHP.

4. Does this rule contain a waiver provision? If not, why?

No, because under 441 rule 1.8 we have a separate rule to address individual waiver requests.

5. What are the likely areas of public comment?

None, because this rule review is just updating definitions, confirming federal and state provision, and incorporating PAHPs under Chapter 73.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact on jobs.



# Administrative Rule Fiscal Impact Statement

Date: July 20, 2022

**Agency:** Human Services

**IAC citation:** 441 IAC 73

**Agency contact:** Joanne Bush

**Summary of the rule:**

Rules are updated to add Prepaid Ambulatory Health Plan (PAHP - Dental) to Chapter 73. and to define Manage Care Plan (MCP) to include Managed Care Organization and PAHP.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The purpose of this rule is to update Chapter 73 definitions, update terminology to include Managed care plan or MCP which refers to managed care organizations (MCO's) and prepaid ambulatory health plans (PAHP's), include prepaid ambulatory health plans PAHP for dental managed care provisions (revised from Chp. 88 to be included in this chapter), and makes technical corrections. This rule also uses the term Dental Wellness Plan when the provision applies to PAHP, and updates language to comply with state and federal regulations. This rule reflects current policy; there is no expected fiscal impact. Any expenditures will be absorbed within the Medicaid appropriation.

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 23)</u>	<u>Year 2 (FY 24)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	<u>0.00</u>	<u>0.00</u>
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	<u>0.00</u>	<u>0.00</u>
<b>NET IMPACT</b>	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Section 249A

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

There is no fiscal impact.

**Fiscal impact to persons affected by the rule:**

There is no fiscal impact expected to persons affected by the rule.

**Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):**

There is no fiscal impact to counties or other local governments.

Agency representative preparing estimate: Soraya Miller

JH 8/1/2022

Telephone number:

515-281-6017

## HUMAN SERVICES DEPARTMENT[441]

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

**Adopted and Filed**

**Rule making related to child placing agencies.**

**The Human Services Department hereby amends Chapter 108, "Licensing And Regulation Of Child-Placing Agencies," Iowa Administrative Code.**

**Legal Authority for Rule Making**

**This rule making is adopted under the authority provided in Iowa Code section 237.3.**

**State or Federal Law Implemented**

**This rule making implements, in whole or in part, Iowa Code section 237.3.**

**Purpose and Summary**

**The rules in Chapter 108 were reviewed as part of the Department's five-year rules review. This rule making establishes licensing procedures for all child-placing agencies.**

**The rules review resulted in the following changes:**

- **Remove outdated form names.**
- **Add form numbers for documents that must be submitted by a requested entity when submitting a request for a record check evaluation.**
- **Clarify that record check evaluations for child-placing agency staff will include a review of an individual's founded dependent adult abuse report in addition to the individual's criminal conviction record or a founded child abuse report.**
- **Add that the Department will consider the likelihood that a person will commit a crime or founded abuse again when conducting a record check evaluation in accordance with the Iowa Code.**
- **Provide cross-references to rules regarding notices and appeal rights.**
- **Modify qualifications for caseworkers.**
- **Clarify when foster parents shall obtain child abuse mandatory reporter training.**
- **Add a requirement that child-placing agencies shall provide hygiene items for youth.**

**Public Comment and Changes to Rule Making**

**Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as ARC 6809C.**

**The Department received one comment from a provider that is in charge of licensing staff for their organization. She provided the same comments for chapters 108 and 156.**

### **Commenter's Response.**

**The commenter stated that she recognized that there is a shortage of qualified applicants under the current regulations. She further stated that with the proposed changes relating to caseworker qualifications in chapters 108 and 156 there will be a stronger likelihood that qualified applicants will be applying for RTSS caseworker positions and the frequency of requesting an exception to policy will decline. However, she was concerned as to how the change in caseworker qualifications will impact the Council of Accreditation (COA) requirements. The commenter noted that the COA requirements do exist so that preference still be given to hire caseworkers who meet the COA requirements.**



The commenter wanted to know if in order to maintain accreditation requirements is there some accommodation needed to ensure that when an employee is hired at the lower qualifications listed in this rule filing that the accreditation requirements will not jeopardized. One suggestion would be to develop additional mentoring and supervision with reports signed off by a supervisor who meets the higher qualification requirements.

**Department's Response.**

COA will not withhold any accreditation, but they will offer it up as an area of opportunity to enhance an agency's practice standards. This change in our rules will offer COA an opportunity to review their standards in light of the employment and hiring challenges Iowa providers and contractors are facing. This rule change will be effective July 1, 2023. We appreciate the concern submitted and the Department will monitor to ensure there are no unintended consequences. No changes from the Notice have been made.

**Adoption of Rule Making**

This rule making was adopted by the Council on Human Services on March 9, 2023.

**Fiscal Impact**

This rule making has no fiscal impact to the State of Iowa.

**Jobs Impact**

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

**Waivers**

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441\_1.7(17A,217).

**Review by Administrative Rules Review Committee**

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).

**Effective Date**

This rule making will become effective on July 1, 2023.

The following rule-making action is adopted:

Please see attached.

ADOPTED AND FILED RULES FOR CHAPTER 108

The following rule-making actions are adopted:

ITEM 1. Amend rule ~~441—108.1(238)~~, definition of “Child,” as follows:

~~“Child” shall mean~~ means the same as defined by Iowa Code section 234.1.

ITEM 2. Amend subrule 108.2(2) as follows:

~~108.2(2) Application.~~ An agency or person applying for a license shall complete Form 470-0723; ~~Application for License or Certificate of Approval.~~ The application shall be completed and signed by the administrator or the appropriate officer and submitted to the department.

~~a. to c.~~ No change.

ITEM 3. Amend subrule 108.2(5) as follows:

~~108.2(5) Certificate of license.~~ The department shall issue or renew Form 470-3623; ~~Certificate of License,~~ every three years, without cost, to any child-placing agency which meets the minimum requirements applicable to child-placing agencies as defined by Iowa Code chapter 238 and this chapter. The license shall be posted in a conspicuous place on the licensed premises.

ITEM 4. Amend subrules 108.2(10) and 108.2(11) as follows:

~~108.2(10) Method and content of notice.~~ The notice of denial, revocation, or suspension shall be sent by restricted certified mail ~~and shall include the following:~~ pursuant to 441—Chapter 16.

~~a. A specific description of the condition requiring the suspension, denial or revocation.~~

~~b. The specific laws or rules violated.~~

~~c. The effective date of denial, revocation or suspension.~~

~~108.2(11) Right to appeal.~~ Any agency which disagrees with the department’s licensing decision may appeal to the department in accordance with 441—Chapter 7. The appeal shall be filed ~~within 30 days of receipt on or before the thirtieth day following the date of notice of the licensing decision.~~

ITEM 5. Amend subrule 108.4(1) as follows:

~~108.4(1) Qualifications for all staff.~~ A child-placing agency employee or volunteer shall be emotionally stable and have the experience and education to perform the duties assigned. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has been convicted of a crime involving the mistreatment or exploitation of a child or dependent adult. The agency shall not employ any person or give any person direct volunteer responsibility for a child or access to a child when the child is alone if that person has a record of a criminal conviction or founded child or dependent adult abuse report unless the department has evaluated the crime or abuse and determined that the crime or abuse does not merit prohibition of volunteering or employment. If the child-placing agency is out of state, the agency shall complete that state’s child or dependent adult abuse record check and a criminal record check.

~~a. If a record of criminal conviction or founded child or dependent adult abuse exists, the person shall be offered the opportunity to complete and submit Iowa’s Record Check Evaluation form Form 470-2310.~~

~~b. In its evaluation, the department shall consider:~~

~~(1) to (3) No change.~~

~~(4) The degree of rehabilitation; and~~

~~(5) The likelihood that the person will commit the crime or founded abuse again; and~~

~~(6) The number of crimes or founded abuses committed by the person involved.~~

~~c. The agency shall maintain the following information with respect to each staff person:~~

~~(1) No change.~~

~~(2) A written, signed and dated statement furnished by the staff person which discloses any founded reports of child or dependent adult abuse on the person that may exist prior to the staff person’s providing any care or services to or on behalf of the facility.~~

(3) Documentation that a child or dependent adult abuse record check of the staff person has been completed with the Iowa central abuse registry for any founded reports of child or dependent adult abuse prior to the staff person's providing any care or services directly or indirectly to children under the care of the agency. A copy of the department's evaluation of this child or dependent adult abuse record check shall be kept in the staff record.

ITEM 6. Amend paragraph **108.4(4)“c”** as follows:

c. Graduation from an accredited four-year college or university with a bachelor's degree in a human service field related to social work, psychology, or a related behavioral science or in education and the equivalent of ~~two years~~ one year of full-time experience in social work or experience in the delivery of human services in a public or private agency.

ITEM 7. Amend paragraph **108.6(5)“d”** as follows:

d. Record of founded child or dependent adult abuse reports and the department's evaluation of same.

ITEM 8. Rescind paragraph **108.7(1)“e.”**

ITEM 9. Amend paragraph **108.7(12)“b”** as follows:

b. A child shall have a physical examination at least annually. This shall be performed by a licensed physician, ~~physician's~~ physician assistant or licensed nurse practitioner.

ITEM 10. Amend paragraph **108.8(1)“a”** as follows:

a. Availability of applications. The agency may provide Form 470-0689, ~~Foster Family Home License Application~~, to anyone requesting to be licensed.

ITEM 11. Amend subparagraph **108.8(1)“c”(13)** as follows:

(13)Record checks. The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child or dependent adult abuse reports or criminal convictions or have been placed on the sex offender registry. The licensed child-placing agency shall use Form 470-0643, ~~Request for Child Abuse Information~~, and Form 595-1396, ~~DHS Criminal History Record Check, Form B~~, for this purpose. ~~Each person subject to record checks shall also be fingerprinted for a national criminal history check.~~ The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting. Any criminal or abuse records discovered shall be evaluated according to the procedures in rule 441—113.13(237).

ITEM 12. Amend subrule 108.8(6) as follows:

**108.8(6) Foster family training.** The agency shall ensure that each foster home recommended for foster family license has complied with the training requirements in rule 441—113.8(237).

~~Within six months of~~ Prior to licensure and every three years thereafter, each foster parent shall obtain mandatory reporter training relating to identification and reporting of child abuse.

ITEM 13. Rescind subparagraph **108.9(1)“a”(8)**.

ITEM 14. Amend paragraph **108.9(4)“d”** as follows:

d. *Record checks.* The licensed child-placing agency shall perform record checks for each applicant and for the other persons living in the home of the applicant as follows:

(1) The records of the applicants shall be checked:

1. On the Iowa central abuse registry using ~~the Request for Child Abuse Information form~~ Form 470-0643;

2. By the Iowa division of criminal investigation, using ~~the DHS Criminal History Record Check Form B~~ 595-1396;

3. No change.

4. On the child or dependent adult abuse registry of any state where the applicant has lived during the five years prior to the issuance of the investigative report; and

5. No change.
- (2) The records of persons aged 14 or older living in the home of the applicant shall be checked:
  1. On the Iowa central abuse registry using ~~the Request for Child Abuse Information form Form 470-0643;~~
  2. By the Iowa division of criminal investigation, using ~~the DHS Criminal History Record Check Form B 595-1396;~~ and
  3. No change.
  - (3) Out-of-state child and dependent adult abuse checks and national criminal history checks may be completed on any adult in the home of the applicant if the certified adoption investigator has reason to do so.
  - (4) and (5) No change.

ITEM 15. Amend paragraph **108.9(4)“e”** as follows:

*e. Evaluation of record.* If the applicant or anyone living in the home has record of founded child or dependent adult abuse, a criminal conviction, or placement on the sex offender registry, the applicant shall not be approved to adopt unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval.

- (1) No change.
- (2) The person with the criminal conviction or founded child or dependent adult abuse report shall complete and return ~~the Record Check Evaluation form Form 470-2310~~ within ~~10~~ ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame may result in a written denial of approval for adoption.
- (3) If the applicant, or anyone living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the ~~licensed child-placing agency department’s centralized service area~~. The ~~licensed child-placing agency department’s centralized service area~~ shall notify the applicant of the results of the evaluation.

(4) If the applicant, or any person living in the home of the applicant, has a founded child or dependent adult abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the licensed child-placing agency shall initially conduct the evaluation.

1. If the licensed child-placing agency determines that the abuse or crime does warrant prohibition of approval, the licensed child-placing agency shall notify the applicant of the results of the evaluation in writing. The notice shall contain information on appeal rights pursuant to 441—Chapter 7.

2. If the child-placing agency determines that the applicant should be approved despite the abuse or criminal conviction, the agency shall provide copies of ~~the Record Check Evaluation form Form 470-2310~~ and the written notice to the applicant to the Administrator, Division of Adult, Children and Family Services, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Within 30 days, the administrator shall determine whether the abuse or crime merits prohibition of approval and shall notify the child-placing agency in writing of that decision.

ITEM 16. Amend subparagraph **108.9(4)“g”(4)** as follows:

(4) The applicant or any person residing in the home has a record of founded child or dependent adult abuse, unless an evaluation of the founded child or dependent adult abuse has been made by the department which concluded that the founded child or dependent adult abuse does not merit prohibition of approval.

ITEM 17. Amend subparagraph **108.9(4)“h”(1)** as follows:

(1) The child and dependent adult abuse and criminal history record checks, except for the national criminal history check, shall be repeated. Any abuses or convictions of crimes since the last record check shall be evaluated using the same process.

ITEM 18. Amend subparagraph **108.9(4)“i”(2)** as follows:

(2) When a person aged 14 or older moves into the home, the agency shall perform checks on the Iowa central abuse registry, by the division of criminal investigation, and on the sex offender registry. The record check evaluation process shall be completed if the person has a criminal conviction or founded child or dependent adult abuse report or is on the sex offender registry.

ITEM 19. Amend paragraph **108.9(6)“a”** as follows:

*a. International adoptions preplacement investigation.* Preplacement investigations for the purpose of international adoptions shall meet the requirements of the United States ~~Citizen~~ Citizenship and Immigration Service Services.

ITEM 20. Amend subrule 108.9(9) as follows:

**108.9(9) Right to appeal.** An adoptive applicant or an adoptive family may appeal an adverse decision made by a licensed agency pursuant to 441—Chapter 7. The appeal shall be filed with the department within 30 days of the notice of decision to the applicant or family by the licensed agency.

ITEM 21. Amend paragraph **108.10(3)“c”** as follows:

*c.* Supervision to assist the child in developing the needed structure to live in this setting and in locating and using other needed services. Supervision shall include guidance, oversight, and behavior monitoring.

(1) to (3) No change.

(4) The agency shall provide ~~a means for children in a scattered site setting to contact agency personnel 24 hours a day, seven days a week~~ personal care items for youth, and these items shall reflect the individual, cultural, racial, and ethnic needs of the youth living in the agency’s program.

(5) The agency shall ~~ensure that each child has access to and is receiving necessary medical care~~ provide a means for children in a scattered site setting to contact agency personnel 24 hours per day, seven days per week.

(6) The agency shall ensure that each child has access to and is receiving necessary medical care.



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Nancy Swanson	Telephone Number 515-281-6379	Email Address nswanso@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 108 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made.

- Caseworker qualifications modified
- Clarification on foster family training timeline
- Requirement of providing hygiene items for youth added

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, DHS staff, foster care youth and DHS contractors.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



# Administrative Rule Fiscal Impact Statement

Date: October 19, 2022

**Agency:** Human Services

**IAC citation:** 441 IAC 108

**Agency contact:** Nancy Swanson

**Summary of the rule:**

The rules in Chapter 108 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made: Caseworker qualifications modified, Clarification on foster family training timeline, requirement of providing hygiene items for youth added.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

There is no fiscal impact to the state. The rule change clarified the states foster family training timeline by removing the option to complete training within six months to ensuring training was concluded prior to licensure. The rule also added a requirement of providing hygiene items for youth based on their cultural, racial, and ethnic backgrounds. We do not believe any of these changes to have a fiscal impact.

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	0.00	0.00

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

No fiscal impact is expected.

***Fiscal impact to persons affected by the rule:***

No fiscal impact is expected.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***

No fiscal impact is expected.

Agency representative preparing estimate: David O. Philmon, Jr.

JH 10/20/2022, JB 10/20/22

Telephone number:

404-345-1088



## HUMAN SERVICES DEPARTMENT[441]

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

### Adopted and Filed

Rule making related to licensing and regulation of foster family homes.

The Human Services Department hereby amends Chapter 113, "Licensing And Regulation Of Foster Family Homes," Iowa Administrative Code.

### Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 237.3.

### State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.3.

### Purpose and Summary

Chapter 113 was reviewed as part of the Department's five-year rules review. Chapter 113 provides the administrative rules for the licensing and regulation of foster family homes.

The rules review resulted in the following changes:

- New definitions for "kin" and "fictive kin" are added due to an increase in kin and fictive kin becoming licensed foster parents and to align with Iowa Code chapter 237.
- The definition of "child or children" is updated to mean the child or children who are in foster care for the purpose of this chapter only.
- "Foster" is removed from each reference to "foster child" as placement also includes relative/fictive kin placements and it can be confusing if the term "foster care" is used.
- Communicable disease language is added to replace HIV language.
- Whooping cough vaccine requirements are updated to allow religious exemptions.

### Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as ARC 6836C.

No public comments were received.

No changes from the Notice have been made.

### Adoption of Rule Making

This rule making was adopted by the Council on Human Services on March 9, 2023.

### Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

### **Jobs Impact**

**After analysis and review of this rule making, no impact on jobs has been found.**

### **Waivers**

**Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441\_1.8(17A, 217)**

### **Review by Administrative Rules Review Committee**

**The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).**

### **Effective Date**

**This rule making will become effective on June 1, 2023.**

**The following rule-making action is adopted:**

**Please see attached.**

## ADOPTED AND FILED RULES CHAPTER 113

The following rules are adopted:

ITEM 1. Adopt the following **new** definitions of “Child or children,” “Fictive kin,” “Kinship care,” “Kinship caregiver,” “Relative,” “Variance” and “Waiver” in rule **441—113.2(237)**:

“*Child or children*” means the child or children who are in foster care for the purpose of this chapter only.

“*Fictive kin*” means an adult person who is not a relative of a child but who has an emotionally significant positive relationship with a child or the child’s family.

“*Kinship care*” means the care of a child by a relative or fictive kin providing full-time nurturing and protection.

“*Kinship caregiver*” means a relative or fictive kin providing care for a child.

“*Relative*” means an individual related to the child within the fourth degree of consanguinity or affinity, by marriage, or through adoption. “Relative” includes the parent of a sibling of the child if the sibling’s parent’s parental rights were not previously terminated in relation to the child.

“*Variance*” means meeting a licensing standard through alternative means.

“*Waiver*” means waiving the licensing standard entirely. A waiver may only be granted for non-safety licensing standards for a kinship caregiver.

ITEM 2. Amend rule **441—113.2(237)**, definitions of “Corporal punishment,” “Foster family home” and “Reasonable and prudent parent standard,” as follows:

“*Corporal punishment*” means the intentional physical punishment of ~~a foster child~~ the child(ren).

“*Foster family home*” means a home in which an individual person or persons or a married couple who wishes to provide or is providing, for a period exceeding 24 consecutive hours, board, room, and care for ~~a child~~ the child(ren) in a single family living unit.

“*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~~ the child(ren) while at the same time encourage the emotional and developmental growth of the ~~child~~ child(ren), that a caregiver shall use when determining whether to allow ~~a child~~ the child(ren) 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~~ the child(ren) in foster care ~~has~~ have 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~~ the child(ren) in foster care ~~has~~ have been placed.

ITEM 3. Amend paragraphs **113.3(1)“a”** to **“d”** as follows:

a. Form 595-1396, ~~DHS Criminal History Record Check~~, for each person living in the home who is 14 years of age or older, as required by rule 441—113.13(237).

b. Form 470-0720, ~~Physician’s Report for Foster and Adoptive Parents~~, to satisfy the requirements of rule 441—113.11(237).

c. Form 470-0693, ~~Foster Care Private Water Supply Survey~~, if applicable.

d. Form 470-4657, ~~Floor Plan~~ 470-5097. The applicant or the recruitment and retention provider shall complete a drawing of the floor plan of the family’s home.

ITEM 4. Amend subrules 113.3(4) and 113.3(5) as follows:

**113.3(4) Home study.** The worker for the recruitment and retention contractor shall complete a family home study.

*a. Process.* Information for the home study is gathered primarily through the required preservice training as described in rule 441—117.1(237). Tribal agencies may also be involved in conducting home studies for American Indian and Alaska Native children. 42 U.S.C.A. Section 671(a)(26)(B) provides that any receiving state must treat any tribal home study report as meeting the requirements imposed by the state for the completion of a home study.

(1) The worker shall hold at least ~~two~~ three face-to-face interviews with the applicant with one of the interviews taking place in the applicant's home.

(2) The worker shall hold at least one face-to-face interview with each member of the household in the applicant's home to observe family functioning and to assess the family's capacity to meet the needs of ~~a child~~ the child(ren) in foster care. The worker will determine whether to interview or just observe each household member based on the household member's age and development.

(3) A physical inspection of the home is required. The worker shall use ~~the Foster Family Survey Report Form 470-0695~~ to complete the physical inspection of the home to verify compliance with the licensing and regulation standards in this chapter.

(4) Reference checks shall be conducted as described at rule 441—113.14(237).

*b. Family assessment topics.* The assessment of the prospective foster family shall evaluate the family's ability to parent ~~a~~ the special needs ~~child~~ child(ren). The assessment shall include the following:

(1) The applicant's motivation for foster care and whether the family has biological, adopted, or foster ~~children~~ child(ren).

(2) The attitude of the family and the extended family toward accepting ~~a foster child~~ the child(ren).

(3) and (4) No change.

(5) Medical, mental, and emotional conditions that may affect the applicant's ability to parent ~~a child~~ the child(ren); treatment history; current status of treatment; and the evaluation of the treatment. Applicants and all household members must disclose any past or current mental health or substance abuse issues, or both. The department may require further documentation or evaluation, or both, to determine the suitability of the home.

(6) ~~All children~~ Any child(ren) who are household members must be up to date on immunizations jointly recommended by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless the immunization is contrary to the ~~child's~~ child(ren)'s health as documented by a licensed health care professional.

(7) An evaluation of the applicant's willingness to accept ~~a child~~ the child(ren) who ~~has~~ have medical problems (such as ~~HIV~~ a communicable disease), an intellectual disability, or emotional or behavioral problems. The applicant shall complete the department form to indicate choices about caring for ~~children~~ any child(ren) who have or are at risk for ~~HIV infection~~ a communicable disease and other medical problems.

(8) The applicant's ability to provide for ~~a child's~~ the child(ren)'s physical, medical, and emotional needs; ~~and~~ to respect the ~~child's~~ child(ren)'s ethnic and religious identity; and to support the child(ren)'s overall well-being.

(9) The safety of ~~foster children~~ the child(ren) in relation to any animals that live on the applicant's property.

(10) The adjustment of any ~~children~~ child(ren) in the home, including their attitudes toward foster care and adoption, relationships with others, and school performance.

(11) No change.

(12) The applicant's financial information and ability to provide for ~~a child~~ the child(ren).

(13) The applicant's attitude toward the ~~foster child's~~ birth parents and siblings of the child(ren)

placed in foster care.

(14) The applicant's commitment to and capacity to maintain ~~a foster child's~~ significant relationships of the child(ren) in foster care and work with the ~~child's~~ child(ren)'s parents when the permanency goal is reunification.

(15) to (17) No change.

c. *Written report.* The recruitment and retention contractor shall prepare a written report of the family assessment using Form 470-5436 ~~, Resource Parent Home Study. The Resource Parent Home Study Form 470-5436~~ shall include a recommendation for the number, age, sex, characteristics, and special needs of ~~a child or children~~ the child(ren) the family can best parent and any other pertinent information in making the licensing recommendation. The home study shall be maintained in the foster family record.

**113.3(5) Decision.** The department worker shall use the home study to approve or deny a prospective family as an appropriate placement for ~~a child or children~~ the child(ren). The department worker shall notify the family of the licensing decision using Form 470-0709, ~~Notice of Action: Foster Family Home.~~

a. Upon approval, the department shall issue the applicant a foster family home license as described at rule 441—112.4(237). The license shall indicate the licensed capacity for the number of ~~foster children~~ child(ren) approved for placement in the foster family home under subrule 113.4(1).

b. No change.

ITEM 5. Amend rule 441—113.4(237) as follows:

**441—113.4(237) Provisions pertaining to the license.** On a case-by-case basis, the service area manager or area social work administrator may waive any non-safety licensing standard for a kinship caregiver or grant a variance for any standard for a non-kinship caregiver in this chapter unless:

1. No change.

2. The waiver or variance could have a negative impact on the safety and well-being of ~~a child~~ the child(ren) placed in the foster family home.

**113.4(1) Number of children.** A foster family home may care for up to five children unless a variance is approved as described in this rule. The license capacity shall be based on the number of the foster family's biological and adoptive children and any relative placements. The license shall be issued for at least one child. ~~A child~~ Any child(ren) who ~~has~~ have reached the age of 18 and ~~remains~~ remain eligible for foster family care shall be included in the license capacity. Any variance to this rule must:

a. and b. No change.

c. Meet one of the following criteria:

(1) The foster parents have three or more children in the home and have shown the ability to parent a large number of children. A licensing variance may be approved at initial or renewal licensure to allow the placement of up to three ~~foster~~ children as set forth in the chart below:

No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3

No. of Children in the Home (birth/relative/adoptive placements)	Maximum License Capacity:	
	Without variance	With variance
5 or more children	Not applicable	3

(2) A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity. Unless a variance is needed for the placement of a sibling(s) of a ~~foster child~~ the child(ren) already in the home, or to keep siblings together, the maximum number of children in the home shall not exceed eight. On a case-by-case basis, if it is determined the foster parents have shown the parenting skills and have the social support system to meet the children’s needs for parenting more than eight children, the social work administrator shall approve the foster parents to parent more than eight children. A foster family may have both a licensing and a child-specific variance concurrently.

d. No change.

**113.4(2)** and **113.4(3)** No change.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

ITEM 6. Amend subrules 113.5(1) to 113.5(3) as follows:

**113.5(1) General standards.** The foster home shall be safe, clean, well ventilated, properly lighted, properly heated, and free from vermin and rodents to ensure the well-being of the ~~foster children~~ child(ren) residing in the home.

**113.5(2) Grounds.**

a. There shall be safe outdoor space provided according to the age and developmental needs of the ~~foster child~~ child(ren) for active play. The area available shall be documented in the case record.

b. The ~~foster child~~ child(ren) shall be adequately supervised and protected against hazards including, but not limited to, traffic, bodies of water, railroads, waste material, and contaminated water. The foster parent shall provide environmental protections such as door alarms, baby monitors, fences, and foliage barriers as necessary to promote a safe environment.

c. The applicant’s home must meet the following standards concerning swimming pools, hot tubs and spas:

(1) A child’s plastic pool shall be drained daily and shall be inaccessible to ~~children~~ the child(ren) when it is not in use. Swimming pools must have a barrier on all sides at least four feet high.

(2) to (4) No change.

(5) Hot tubs and spas must have safety covers that are locked when not in use.

The foster parent or other adult shall provide reasonable supervision according to the ages and swimming abilities of the ~~foster children~~ child(ren) when they are using the pool.

**113.5(3) Bedrooms for ~~foster children~~ child(ren) placed in the home.**

a. Bedrooms shall either have been constructed for the purpose of providing sleeping accommodation or remodeled for sleeping to provide proper heat and ventilation. Bedroom additions to a home shall meet building code requirements. All bedrooms used by ~~foster children~~ the child(ren) placed in the home shall have:

(1) and (2) No change.

(3) An unobstructed, operable window that opens from the inside that is large enough to allow for an unrestricted exit by a ~~foster child~~ the child(ren) placed in the home;

(4) A closet, wardrobe, armoire, or dresser for the ~~child’s~~ child(ren)’s clothes; and

(5) A standard bed, for infants and toddlers who cannot safely use a standard bed, a crib or crib-like furniture which has a waterproof mattress covering and sufficient bedding to enable ~~a child~~ the child(ren) to rest comfortably and which meets the current standards or recommendations from the U.S. Consumer Product Safety Commission or ASTM International for juvenile products for each

child under two years of age if developmentally appropriate. The provider shall follow safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one. Safe infant sleep practices shall conform to the following standards:

1. and 2. No change.

3. Infants shall not be allowed to sleep on a bed, sofa, air mattress or other soft surface. No ~~child~~ child(ren) shall be allowed to sleep in any item not designed for sleeping. This is not referring to a child in a car seat in a car.

4. to 6. No change.

b. The minimum bedroom area per child shall be 40 square feet. However, the service area manager or designee may approve a ~~smaller room size~~ waiver of this non-safety licensing standard for kinship caregivers or a variance when approval is in the best interest of specific children placed or to be placed in the home. Such approvals shall:

(1) No change.

(2) Contain the names and birth dates of the ~~children~~ child(ren) for whom issued; and

(3) No change.

c. No change.

d. The ceiling height for bedrooms shall be adequate for the ~~child~~ child(ren).

e. Except for baby video monitors for ~~children~~ the child(ren) birth to two years of age used in their bedrooms, video or surveillance cameras are not allowed in ~~children's~~ the child(ren)'s bedrooms or bathrooms.

f. Bedrooms belowground shall:

(1) to (3) No change.

(4) Have provisions, such as a ladder or steps, to ensure that the ~~foster child~~ child(ren) can safely reach the window if the finished sill height is more than 44 inches above the floor and that the ~~foster child~~ child(ren) can safely reach ground level if there is a window well that has a depth of 44 inches or higher;

(5) and (6) No change.

ITEM 7. Amend subrules 113.5(6) to 113.5(8) as follows:

**113.5(6)** *Physical care standards for ~~foster children~~ child(ren).*

a. Grouping children in bedrooms shall take into consideration the age and sex of ~~children~~ the child(ren), including the individual child's need for privacy.

(1) ~~Children~~ Any child(ren) over five years of age shall not share a bedroom with a ~~child~~ child(ren) of the opposite sex.

(2) ~~Foster children~~ The child(ren) shall not share a bed with any other child. The social work administrator may approve a waiver of this policy for kinship caregivers or a variance for non-kinship caregivers.

b. ~~Children~~ Any child(ren) two years of age or older shall be provided bedroom space other than in the foster parents' bedroom. ~~Foster children~~ Any child(ren) under the age of two may share a bedroom with the foster parent in an individual crib.

c. There shall be a plan for isolating the healthy ~~children~~ child(ren) from a child who is ill or suspected of having a contagious disease.

d. The foster home shall provide food with good nutritional content and in sufficient quantity to meet the individual needs of the ~~children~~ child(ren).

e. Personal care items must be provided for youth, and these items must reflect the individual, cultural, racial, and ethnic needs of the youth living in the foster home.

~~e-~~ f. Bedding shall be clean, odor-free, and free of urine and feces.

~~f-~~ g. Foster parents shall follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials when providing care to ~~all children~~ any child(ren) placed in their physical custody.

~~g-~~ h. Smoking and vaping shall be prohibited in the foster home or any vehicle when the

~~foster child is child(ren)~~ are present.

**113.5(7) Lead-based paint.** If the applicant lives in a home built before ~~1960~~ 1978, the applicant shall submit Form 470-4819, ~~Lead Paint Assessment~~, certifying that the applicant:

a. and b. No change.

**113.5(8) Artificial lighting.** Adequate artificial lighting fixtures shall be provided for study in areas where ~~children~~ the child(ren) will be studying.

ITEM 8. Amend subrule 113.5(11) as follows:

**113.5(11) Ventilation.** Ventilation shall be provided in all rooms where ~~foster children~~ the child(ren) eat, sleep, and play either by windows which can be opened or by mechanical venting systems. Windows and doors used for ventilation shall be screened.

ITEM 9. Amend subrule 113.6(3) as follows:

**113.6(3) Private water supply.**

a. ~~Each privately operated water supply shall be tested prior~~ Prior to initial licensure and tested before prior to each license renewal, each privately operated water supply shall be tested and evaluated for obvious deficiencies, such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples must be collected and submitted by the licensing worker or health sanitarian to the university hygienic laboratory or other laboratory certified by the hygienic laboratory and analyzed for coliform bacteria. In order for a foster family home to be licensed for the care of ~~children~~ any child(ren) under two years of age, the nitrate (NO<sub>3</sub>) content must be analyzed.

c. and d. No change.

e. When the water sample is not approved, no foster family home license shall be issued until the foster parents provide a written statement that ~~foster children~~ the child(ren) will be provided potable water, including where the water will be obtained and how it will be transported and stored.

(1) The statement shall be provided on Form 470-0699, ~~Provisions for Alternate Water Supply~~.

(2) No change.

ITEM 10. Amend paragraph **113.7(1)“a”** as follows:

a. At least one UL (Underwriter’s Laboratory)-approved smoke detector. On floors that are used for sleeping, the smoke detector shall be in a location where sleeping areas can be alerted. For any deaf or hard-of-hearing ~~children~~ child(ren), the foster parent shall install a smoke detector in the ~~child’s~~ child(ren)’s bedroom that will use an alternative means of waking the ~~child~~ child(ren).

ITEM 11. Amend paragraph **113.7(2)“b”** as follows:

b. Explosives and flammable substances shall be stored securely and be inaccessible to ~~a child~~ the child(ren). Matches and lighters shall be inaccessible to ~~a child~~ the child(ren).

ITEM 12. Amend subrule 113.7(3) as follows:

**113.7(3) Safety plan.** The family shall have an emergency safety plan to be used for fire, tornado, blizzard, flood, other natural or manmade disasters, accidents, medical issues, and other life-threatening situations for ~~children~~ the child(ren) in out-of-home placements. The safety plans shall state the action that the foster parents and ~~children~~ the child(ren) are to take in each situation that may occur and shall be posted in a prominent place in the home.

a. The safety plans for fire and tornadoes shall be reviewed with ~~foster children~~ the child(ren) at the time of placement. Fire and tornado plans shall be practiced with the ~~foster children~~ child(ren) within one week of placement and no less than annually thereafter.

b. to d. No change.



ITEM 13. Amend paragraph 113.7(4)“a” as follows:

- a. All prescription medication shall be administered as prescribed and documented in a medication log that is given to the ~~child’s~~ child(ren)’s department caseworker when the ~~child leaves~~ child(ren) leave the placement.

ITEM 14. Amend paragraph 113.7(4)“c” as follows:

- b. Applicants must prevent the ~~child’s~~ child(ren)’s access, as appropriate for the ~~child’s~~ child(ren)’s age and development, to all medications, poisonous materials, cleaning supplies, other hazardous materials and alcoholic beverages.

ITEM 15. Amend subrules 113.7(5) to 113.7(9) as follows:

**113.7(5) Weapons.** All weapons, firearms, and ammunition shall be inaccessible to ~~a child~~ the child(ren) of any age.

- a. The following weapons must be stored in an inoperative condition in a locked area inaccessible to ~~children~~ the child(ren):

- (1) to (5) No change.

- b. No change.

- c. The weapons, firearms, and ammunition storage ~~unit~~ units shall not share the same key or matching security code. If a key is used, the key shall be stored in a place inaccessible to the ~~foster child~~ child(ren).

- d. Any motor vehicles used to transport ~~foster children~~ the child(ren) shall not contain a loaded gun, and any ammunition in the vehicle shall be kept in a separate, locked container.

- e. Foster parents who have a permit to carry a firearm shall sign Form 470-4657, ~~Firearms Safety Plan~~. Foster parents who have firearms but do not have a permit to carry shall complete the safety plan section of ~~the Firearms Safety Plan form~~ Form 470-4657.

- f. No change.

**113.7(6) Transporting ~~foster children~~ child(ren).**

- a. Foster parents will ensure that if a privately owned vehicle, owned by the applicants, family or friends, is used to transport the ~~child~~ child(ren) in foster care, it must be inspected (if applicable under state law), registered, and insured and meet all applicable state or tribal requirements to be an operable vehicle on the road.

- b. No change.

- c. Safety restraints will be used that are appropriate to the ~~child’s~~ child(ren)’s age, height, and weight.

- d. Any motor vehicles used to transport ~~foster children~~ the child(ren) shall be smoke-free when ~~foster children~~ the child(ren) are being transported.

- e. Weapons must not be transported in any vehicle in which the ~~child is~~ child(ren) are riding unless the weapons are made inoperable and inaccessible.

- f. No change.

**113.7(7) Supervision.** The foster parents shall provide reasonable and prudent supervision of ~~foster children~~ the child(ren) to ensure ~~their~~ the child(ren)’s safety.

- a. Foster parents shall adequately supervise ~~foster children~~ the child(ren) while the ~~children~~ child(ren) are using any hazardous or dangerous objects or equipment. In order for ~~foster children~~ the child(ren) to participate in age- or developmentally appropriate activities, the foster parent would apply the reasonable and prudent parent standard.

- b. Foster parents shall use reasonable and prudent supervision of ~~foster children~~ the child(ren) when the ~~foster children~~ child(ren) are using the Internet or other social media.

**113.7(8) Household pets.** Household pets and any outdoor animals or pets accessible to ~~foster children~~ the child(ren) shall have a current veterinary health certificate verifying that the animal’s routine immunizations, e.g., rabies, are current.

- a. No change.

b. Foster parents who have pets or animals with any history of aggression shall have a written plan that addresses strategies to reduce the risk of aggression by their pets or animals with which the ~~child~~ child(ren) will have contact.

c. Foster parents will complete a written plan on how they will introduce a pet to the child(ren).

~~e-~~ d. Animal waste will be contained and disposed of on a routine basis.

**113.7(9) Liability.** Foster parents who apply the reasonable and prudent parent standard reasonably and in good faith in regard to ~~a foster child~~ the child(ren) placed in their home shall have immunity from civil or criminal liability which might otherwise be incurred or imposed. This subrule shall not remove or limit any existing liability protection afforded under any other law.

ITEM 16. Amend subrules 113.8(1) and 113.8(2) as follows:

**113.8(1) Preservice training.** All foster parent applicants shall complete the following training before licensure and the placement of ~~a child in foster care~~ the child(ren) in their home:

a. and b. No change.

c. Preservice training, which shall include:

(1) and (2) No change.

(3) Mandatory reporter training on child abuse identification, ~~and~~

(4) The reasonable and prudent parent standard training, ~~and~~

(5) Lessons teaching foster parents how to support a child's overall well-being and emotional needs; and

d. No change.

**113.8(2) In-service training.** All licensed foster parents shall complete six hours of in-service training annually as required by rule 441—117.7(237).

Each foster parent shall maintain certification in face-to-face CPR and first-aid training.

ITEM 17. Amend rules 441—113.9(237) to 441—113.11(237) as follows:

**441—113.9(237) Involvement of kin.**

**113.9(1) Support by foster parents.** Foster parents shall support the involvement of biological or adoptive parents and other relatives of the ~~foster child~~ child(ren) unless this involvement is evaluated and documented by the department to be detrimental to the ~~child's~~ child(ren)'s well-being.

**113.9(2) Nature of involvement.** The extent and nature of the involvement of the biological or adoptive parents and other relatives shall be determined by the caseworker in consultation with the foster parents, biological or adoptive parents, and others involved with the ~~child~~ child(ren) and family.

**113.9(3) Cultural connections.** Throughout the provision of care, the foster family shall actively ensure that the ~~foster child stays~~ child(ren) stay connected to the ~~child's~~ child(ren)'s kin, culture, and community as required in the ~~child's~~ child(ren)'s case permanency plan.

This rule is intended to implement Iowa Code section 237.3.

**441—113.10(237) Information on the ~~foster child~~ child(ren) placed in the home.**

**113.10(1) ~~Foster child information~~ Information about the child(ren).** Foster parents shall maintain a separate folder of information on ~~each foster child~~ the child(ren) placed in the ~~foster family~~ home. This folder shall be provided to the department or the ~~child's~~ child(ren)'s parent or guardian when the ~~child leaves~~ child(ren) leave the placement. The folder shall contain:

a. The names and addresses of all doctors, mental health professionals, and dentists who have treated the ~~foster child~~ child(ren); current medications prescribed, including over-the-counter medications; medication log; and the type of medical, dental, vision, and mental health treatments and hearing examinations received while the ~~foster child is~~ child(ren) are in the foster home.

b. No change.

c. Date the ~~child~~ child(ren) left the placement.

d. Name, address, and telephone number of the person to whom the ~~child is~~ child(ren) are

discharged.

**113.10(2) Confidentiality.** Foster parents shall maintain confidentiality regarding ~~a child~~ the child(ren) in placement except as required to comply with rules on mandatory reporting of child abuse and with the ~~child's~~ child(ren)'s case permanency plan. Foster parents shall not without parent or guardian and department consent post pictures or information concerning ~~a foster child~~ the child(ren) on any Internet ~~Web site~~ website or on social media.

This rule is intended to implement Iowa Code section 237.7.

**441—113.11(237) Health of foster family.**

**113.11(1) Health report required.** The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months before the application for licensure. The report shall include information on all family members, including foster parents, their minor ~~children~~ child(ren) who reside in the home, and adult household members. An updated report shall be provided upon request of the department licensing worker or the recruitment and retention contractor.

**113.11(2) Contents of report.** This report shall include a statement from ~~the~~ an impartial health practitioner that there are no physical or mental health problems which would be a hazard to ~~foster children~~ the child(ren) placed in the home and a statement that the foster parents' health would not prevent needed care from being provided to the ~~child~~ child(ren).

**113.11(3) Whooping cough vaccine.** All adult household members who are caregivers must have up-to-date whooping cough vaccines unless contrary to the person's health or sincerely held religious belief.

**113.11(4) Exemption from whooping cough vaccine.** Nothing in this rule shall be construed to require the whooping cough vaccine for adult household members who are a member of a church or religious organization which is against vaccinations. In such instance, a notarized statement from the household member shall be incorporated into the health record.

~~113.11(4)~~ **113.11(5) Capability for caring for the ~~child~~ child(ren).** If there is evidence that the foster parent is unable to provide necessary care for the ~~child~~ child(ren), the department licensing worker, the recruitment and retention contractor, or the physician may require additional medical and mental health reports, including a substance abuse evaluation.

This rule is intended to implement Iowa Code section 237.7.

ITEM 18. Amend subrules 113.12(3) to 113.12(5) as follows:

**113.12(3) Religious considerations.** The foster parent shall respect the ~~foster child's~~ child(ren)'s religious background and affiliation.

**113.12(4) Requirements of foster parents.** Foster parents shall be stable, responsible, physically able to care for the type of ~~child~~ child(ren) placed, mature individuals who are not unsuited by reason of substance abuse, lewd or lascivious behavior or other conduct likely to be detrimental to the physical or mental health or morals of the ~~child~~ child(ren). They shall exercise good judgment in caring for ~~children~~ the child(ren) and have a capacity to accept agency supervision.

**113.12(5) Personal characteristics.** The foster parents shall:

- a. No change.
- b. Have realistic expectations of ~~foster children~~ the child(ren).
- c. Have time available to parent ~~foster children~~ the child(ren).
- d. to f. No change.
- g. Include ~~foster children~~ the child(ren) in normal family life.
- h. Have the ability to be accepting and loving toward ~~a foster child~~ the child(ren) entering the home.
- i. Be able to support the case permanency plan for the ~~foster child~~ child(ren) and be willing to cooperate with visits, transportation, or other activities that support the ~~child's~~ child(ren)'s connection to and reunification with the ~~child's~~ child(ren)'s family.
- j. Ensure that all family members are aware of having ~~foster children~~ the child(ren) in the home.

k. Articulate their strengths and concerns and limitations which are essential to the department's matching the ~~foster children~~ child(ren) with foster parents appropriately.

ITEM 19. Amend rule 441—113.13(237), introductory paragraph, as follows:

**441—113.13(237) Record checks.** Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether any of these persons has any founded child abuse or dependent adult abuse reports or criminal convictions or has been placed on the sex offender registry.

ITEM 20. Amend subparagraphs **113.13(1)“a”(1)** and **(2)** as follows:

(1) The Iowa central abuse registry, using Form 470-0643, ~~Request for Child and Dependent Adult Abuse Information;~~

(2) The Iowa division of criminal investigation, using Form 595-1396, ~~DHS Criminal History Record Check, Form B;~~

ITEM 21. Amend subparagraphs **113.13(2)“a”(1)** and **(2)** as follows:

(1) A felony offense as set forth in Iowa Code section ~~237.8(2)“a”(4)~~ 237.8(2)“a”(3); or

(2) A crime in another state that would be a felony as set forth in Iowa Code section ~~237.8(2)“a”(4)~~ 237.8(2)“a”(3).

ITEM 22. Renumber subparagraphs **113.13(2)“b”(3)** to **(5)** as **113.13(2)“b”(4)** to **(6)**.

ITEM 23. Adopt the following new subparagraph **113.13(2)“b”(3)**:

(3) The circumstances under which the crime or founded abuse was committed,

ITEM 24. Amend paragraph **113.13(2)“c”** as follows:

c. *Evaluation form.* The person with the founded child or dependent adult abuse or criminal conviction report shall complete and return Form 470-2310, ~~Record Check Evaluation,~~ within ten calendar days of the date of receipt to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure.

ITEM 25. Amend subrule 113.13(3) as follows:

**113.13(3) Evaluation decision.** ~~The service area manager~~ Centralized service area staff or designee shall conduct the evaluation and make the decision. The department shall issue Form 470-2310, ~~Record Check Evaluation,~~ to inform the subject of the decision and describe the basis of the decision using the criteria specified in paragraph 113.13(2)“b.” The department shall mail the form to the person on whom the evaluation was completed:

a. Within 30 days of receipt of the completed Form 470-2310, ~~Record Check Evaluation,~~ or

b. No change.

ITEM 26. Amend paragraph **113.14(4)“b”** as follows:

b. Personal qualities of the applicant including the general character, ability to get along with others, ability to deal with ~~children's~~ the child(ren)'s problem behavior, ability to give affection and care, discussion of use of drugs and alcohol, and questions regarding personal difficulties that could be detrimental to ~~a foster child~~ the child(ren).

ITEM 27. Amend paragraph **113.14(4)“f”** as follows:

*f.* Would the reference feel comfortable leaving ~~a child~~ the child(ren) in this home for a period of time?

ITEM 28. Amend subrule 113.15(1) as follows:

**113.15(1)** The department’s recruitment and retention contractor shall make unannounced visits during periods of the day when the ~~child~~ child(ren) and foster parents would normally be at home and awake, unless there has been a specific complaint about the family and care of the ~~child~~ child(ren).

ITEM 29. Amend paragraphs **113.15(2)“c”** to “e” as follows:

*c.* Interaction between the ~~foster child~~ child(ren) and foster family and their ~~children~~ child(ren).

*d.* The ~~foster child’s~~ child(ren)’s perception of the foster parents, other ~~children~~ child(ren) and adults in the home, behavioral expectations of foster parents, discipline used by foster parents, religious training, school, contact with natural parents, and purpose of placement in foster care.

*e.* The foster parents’ view of the ~~child~~ child(ren), the ~~child’s~~ child(ren)’s problem, placement worker’s involvement, plan for the ~~child~~ child(ren), involvement of ~~natural~~ biological parents, and additional services that either the ~~foster child~~ child(ren) or foster parents need.

ITEM 30. Amend subrule 113.15(4), introductory paragraph, as follows:

**113.15(4)** The findings from the unannounced visit shall be summarized on Form 470-5438; ~~Progress Notes.~~

ITEM 31. Amend subrule 113.15(5) as follows:

**113.15(5)** Actions after the unannounced visit.

*a.* When deficiencies are cited that do not appear likely to cause immediate physical or mental harm to the ~~child~~ child(ren), an additional visit may be scheduled. The department licensing worker and the recruitment and retention contractor shall discuss the deficiencies with the foster parents and make plans for improving the deficiencies.

*b.* When the reported deficiencies raise questions of concern as to the quality of care provided, the recruitment and retention contractor shall:

(1) Report deficiencies to the department licensing worker and to the placement worker for ~~each foster child~~ any child(ren) currently placed in the home;

(2) No change.

*c.* When the reported deficiencies appear likely to cause immediate physical or mental harm to the ~~child~~ child(ren), the service area manager or designee shall immediately:

(1) Direct the placement worker to determine if the ~~child~~ child(ren) should be removed, and

(2) No change.

ITEM 32. Amend rules 441—113.16(237) to 441—113.20(237) as follows:

**441—113.16(237) Planned activities and personal effects.**

**113.16(1)** *Daily routine.* The daily routine shall promote good health and provide an opportunity for activity suitable for the ~~foster child~~ child(ren) with time for rest and play.

**113.16(2)** *Clothing.*

*a.* ~~All children~~ Any child(ren) should have their own clothing.

*b.* ~~Children~~ Any child(ren) shall have training and help in selection and proper care of clothing.

*c. to e.* No change.

*f.* There shall be adequate closet and drawer space for ~~children~~ the child(ren) to permit access to their clothing.

**113.16(3)** *Educational opportunity.* Every ~~foster~~ child shall be given the opportunity to complete

high school or vocational training in accordance with the child's case permanency plan. The foster parent shall be an advocate for the ~~foster child~~ child(ren) by working with the ~~foster child's~~ child(ren)'s school.

**113.16(4) Religion and culture.** Each child shall be given an opportunity, in consultation with the child's parents, to participate in the child's culture and religion. ~~Children~~ The child(ren) shall not be required to participate in religious training or observances contrary to the wishes of the biological or adoptive family or the religious beliefs of the ~~child~~ child(ren).

**113.16(5) Community participation.** Every child shall be given the opportunity to develop healthy social relationships through participation in neighborhood, school and other community and group activities. The ~~child~~ child(ren) shall have the opportunity to invite friends to the foster home and to visit the home of friends.

**113.16(6) Work assignments.** Work assignments shall be in keeping with the ~~child's~~ child(ren)'s age and development.

a. Exploitation of the ~~child~~ child(ren) is prohibited. No ~~child~~ child(ren) shall be permitted to do any hazardous tasks or to engage in any work which is in violation of the child labor laws of the state.

b. ~~Each child~~ The child(ren) shall have the opportunity to learn to assume some responsibility for self and for household duties in accordance with the ~~child's~~ child(ren)'s age, health and ability. However, assigned tasks shall not deprive the ~~child~~ child(ren) of school, sleep, play or study periods.

This rule is intended to implement Iowa Code section 237.3.

#### **441—113.17(237) Medical examinations and health care of the ~~child~~ child(ren).**

**113.17(1) Medical and dental care.** Foster parents shall keep the ~~child's~~ child(ren)'s department case manager informed of any medical and dental appointments and treatments prescribed for the ~~child~~ child(ren).

a. Foster parents shall contact the ~~child's~~ child(ren)'s parents to engage them in the process of accessing routine medical and dental care for their ~~child~~ child(ren) unless parental rights have been terminated.

b. In case of an emergency or urgent situation requiring medical care and treatment of an acute illness, disease or condition of ~~a child~~ the child(ren), when a delay or inability to access parental or department consent for medical care or treatment would endanger the health or physical well-being of the ~~child~~ child(ren), the foster parents can provide consent for medical care and treatment.

**113.17(2)** No change.

This rule is intended to implement Iowa Code section 237.3.

#### **441—113.18(237) Training and discipline of ~~foster children~~ child(ren).**

**113.18(1) Foster parents' methods of training and discipline.** The home study evaluation of each foster parent applicant shall include a discussion and a written report of the foster parents' methods of training and discipline. Discipline shall be designed to help the ~~child~~ child(ren) develop self-control, self-esteem, and respect for the rights of others.

**113.18(2) Restrictions on training and discipline.** ~~Child training~~ Training and discipline of the child(ren) shall be handled with kindness and understanding.

a. ~~A child~~ The child(ren) shall not be locked in a room, closet, box, or other device.

b. No ~~child~~ child(ren) shall be deprived of food as punishment.

c. No ~~child~~ child(ren) shall be subjected to verbal abuse, threats or derogatory remarks about the ~~child~~ child(ren) or the ~~child's~~ child(ren)'s family.

d. No change.

e. Restraints shall not be used as a form of discipline.

(1) Reasonable physical force may be used to restrain ~~a child~~ the child(ren) only in order to prevent injury to the ~~child~~ child(ren), injury to others, the destruction of property, or extremely disruptive behavior.

(2) Upon approval of the department, the foster parent may use restraints only in accordance with the written plan of a licensed mental health professional who is working with the ~~child~~ child(ren) and

the foster parents.

**113.18(3) Reports of mistreatment.** Reports of mistreatment coming to the attention of the department licensing worker and caseworker for the ~~foster-child~~ child(ren) shall be investigated promptly and referred to the proper authorities when necessary.

This rule is intended to implement Iowa Code sections 234.40 and 237.3.

**441—113.19(237) Emergency care and release of ~~children~~ child(ren).**

**113.19(1) Supervision and arrangements for emergency care.**

a. Foster parents shall provide supervision of ~~foster children and children~~ the child(ren) in preadoptive placement as dictated by the individual child's specific needs.

b. In case of emergency requiring the foster parents' temporary absence from the home, arrangements shall be made with other licensed foster parents or with designated, responsible persons for the care of the ~~children~~ child(ren) during the period of absence. The ~~child's~~ child(ren)'s placement worker shall be notified of all emergency absences of the foster parents.

**113.19(2) Release of ~~foster-child~~ child(ren).** The foster parents shall release the ~~foster-child~~ child(ren) only to the agency, parent or guardian from whom the ~~child was~~ child(ren) were received for care, or the person specifically designated by the agency, parent or guardian.

This rule is intended to implement Iowa Code section 237.3.

**441—113.20(237) Changes in foster family home.** Foster parents shall notify the department and the recruitment and retention contractor within seven working days of:

1. Any change in the number of persons living in the home (except for ~~foster children~~ the child(ren) placed in the home);

2. No change.

3. Any circumstances in the home that could negatively affect the health, safety or welfare of a ~~child~~ the child(ren) in the family's care.

This rule is intended to implement Iowa Code section 237.3.



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Nancy Swanson	Telephone Number 515-281-6379	Email Address nswanso@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 113 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- New definitions for kin and fictive kin were added due to an increase of kin and fictive kin becoming licensed foster parents and to align with the Ch. 232 rewrite
- Definition of "child" and "children" added for this chapter only to mean children who are in foster care
- "foster" taken from each reference of "foster child" to create language that avoids using the term "foster child"
- Communicable disease language was added to replace HIV

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential applicants for foster care, and licensed foster parents.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.





## Administrative Rule Fiscal Impact Statement

Date: 12/5/2022

**Agency:** Human Services  
**IAC citation:** 441 IAC 113  
**Agency contact:** Nancy Swanson, Foster Care Program Manager

**Summary of the rule:**

- New definitions for kin and fictive kin were added due to an increase of kin and fictive kin becoming licensed foster parents and to align with the Ch. 232 rewrite
- Definition of “child” and “children” added for this chapter only to mean children who are in foster care
- “foster” taken from each reference of “foster child” to create language that avoids using the term “foster child”
- Communicable disease language was added to replace HIV

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.  
 Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.  
 Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rules in Chapter 113 were reviewed as part of the Department’s five-year rules review project, none of the changes created a financial impact. The following changes were made to the rule: Definitions were added to the rule due to those definitions not being a part of the original rule, these do not have a financial impact. Language was removed that also did not have a financial impact. Language was also changed to align more with HHS policy which also did not have a financial impact.

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

There is no fiscal impact.

**Fiscal impact to persons affected by the rule:**

There is no fiscal impact.

**Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):**

There is no fiscal impact.

Agency representative preparing estimate: David Philmon, Jr.

JH 12/06/2022, JB 12/06/22

Telephone number:

12/5/2022

# HUMAN SERVICES DEPARTMENT[441]

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

## **Adopted and Filed**

**Rule making related to group foster care facilities for children.**

**The Human Services Department hereby amends Chapter 114, “Licensing And Regulation Of All Group Living Foster Care Facilities For Children,” Iowa Administrative Code.**

## **Legal Authority for Rule Making**

**This rule making is adopted under the authority provided in Iowa Code section 217.6.**

## **State or Federal Law Implemented**

**This rule making implements, in whole or in part, Iowa Code section 237.3.**

## **Purpose and Summary**

**Chapter 114 was reviewed as part of the Department’s five-year review of rules. This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. These amendments update definitions and provide additional clarity. Qualifications are amended to provide further information on related human services fields and experience in social work or experience in the delivery of human services in a public or private agency as additional ways to qualify as a caseworker. Rules are updated to provide information on the record check process.**

## **Public Comment and Changes to Rule Making**

**Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as ARC 6837C.**

**No public comments were received.**

**No changes from the Notice have been made.**

## **Adoption of Rule Making**

**This rule making was adopted by the Council on Human Services on March 9, 2023.**

## **Fiscal Impact**

**This rule making has no fiscal impact to the State of Iowa.**

## **Jobs Impact**

**After analysis and review of this rule making, no impact on jobs has been found.**

## Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441\_1.8(17A, 217).

## Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).

## Effective Date

This rule making will become effective on June 1, 2023.

The following rule-making action is adopted:

Please see attached.

ADOPTED AND FILED RULES FOR CHAPTER 114

The following rule-making actions are adopted:

ITEM 1. Amend rule 441—114.1(237) as follows:

**441—114.1(237) Applicability.** This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. Additional standards applicable to specific levels of group living are discussed in 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for Children with an Intellectual Disability or Brain Injury.”

~~This rule is intended to implement Iowa Code chapter 237.~~

ITEM 2. Amend rule **441—114.2(237)**, definitions of “Private juvenile detention home” and “Private juvenile shelter care home,” as follows:

“*Private juvenile detention home*” means a juvenile detention home as defined in Iowa Code section 232.2, which does not meet the requirements of being “county or multicounty” as defined in ~~441—subrule 105.1(2) rule 441—105.1(232).~~

“*Private juvenile shelter care home*” means a juvenile shelter care home as defined in Iowa Code section 232.2, which does not meet the requirements of being “county or multicounty” as defined in ~~441—subrule 105.1(2) rule 441—105.1(232).~~

ITEM 3. Rescind the implementation sentence in rule **441—114.3(237)**.

ITEM 4. Rescind the implementation sentence in rule **441—114.4(237)**.

ITEM 5. Adopt the following **new** paragraph **114.5(6)“g”**:

g. Providing personal care items to children in care. Personal care items must be provided to the children in care and must reflect the individual, cultural, racial and ethnic needs of the youth living in the facility’s programs.

ITEM 6. Rescind the implementation sentence in rule **441—114.5(237)**.

ITEM 7. Rescind the implementation sentence in rule **441—114.6(237)**.

ITEM 8. Amend subparagraph **114.7(3)“b”(8)** as follows:

(8) If the applicant, probationary employee or temporary employee has completed and submitted Form 470-2310, ~~Record Check Evaluation~~, to the agency, a copy shall be kept in the staff record.

ITEM 9. Amend paragraph **114.8(1)“a”** as follows:

a. A caseworker shall have ~~a bachelor of arts or bachelor of science~~ graduated from a four-year college or university with a bachelor’s degree in a human services field related to social work, psychology or a related behavioral science ; plus two years of supervised or in education and the equivalent of one year of full-time experience ; or a bachelor’s degree in social work with one year of supervised experience; in social work or in the delivery of human services in a

public or private agency, or six years of supervised child welfare experience in residential care or a combination of advanced education in the behavioral sciences and experience equal to six years.

ITEM 10. Amend paragraph **114.8(1)“e”** as follows:

*e.* A person who has a record of a criminal conviction or founded child or dependent adult abuse report shall not be employed, unless an evaluation of the crime or founded child or dependent adult abuse has been made by the department which concludes that the crime or founded child or dependent adult abuse does not merit prohibition of employment. If a record of criminal conviction or founded child or dependent adult abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, ~~“Record Check Evaluation.”~~. In its evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuses committed by the person involved.

ITEM 11. Rescind the implementation sentence in rule **441—114.8(237)**.

ITEM 12. Amend subparagraphs **114.9(4)“b”(2)** and **(3)** as follows:

(2) Written policies regarding children’s rights as in ~~114.13(2)~~ rule 441—114.13(237).

(3) Written policies regarding religion, work or vocational experiences, family involvement, ~~grievance procedures~~ and discipline as in ~~441—114.13(237)~~ rules 441—114.15(237) to ~~114.18(237)~~ 441—114.17(237) and ~~114.20(237)~~ rule 441—114.20(237).

ITEM 13. Rescind the implementation sentence in rule **441—114.9(237)**.

ITEM 14. Rescind the implementation sentence in rule **441—114.10(237)**.

ITEM 15. Rescind the implementation sentence in rule **441—114.11(237)**.

ITEM 16. Rescind the implementation sentence in rule **441—114.12(237)**.

ITEM 17. Rescind the implementation sentence in rule **441—114.13(237)**.

ITEM 18. Rescind the implementation sentence in rule **441—114.14(237)**.

ITEM 19. Rescind the implementation sentence in rule **441—114.15(237)**.

ITEM 20. Rescind the implementation sentence in rule **441—114.16(237)**.

ITEM 21. Rescind the implementation sentence in rule **441—114.17(237)**.

ITEM 22. Rescind the implementation sentence in rule **441—114.18(237)**.

ITEM 23. Amend rule 441—114.19(237) as follows:

**441—114.19(237) Child abuse.** Written policies shall prohibit mistreatment, neglect, or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and ~~appropriate the~~ department of human services ~~personnel~~ centralized abuse hotline. Any employee found to be in violation of Iowa Code chapter 232, ~~division subchapter~~ III, part 2, as substantiated by the department of human services' investigation shall be subject to the agency's policies concerning dismissal.

~~This rule is intended to implement Iowa Code section 237.2.~~

ITEM 24. Rescind the implementation sentence in rule **441—114.20(237)**.

ITEM 25. Rescind the implementation sentence in rule **441—114.21(237)**.

ITEM 26. Rescind the implementation sentence in rule **441—114.22(237)**.

ITEM 27. Rescind the implementation sentence in rule **441—114.23(237)**.

ITEM 28. Amend paragraph **114.24(2)“a”** as follows:

*a. Scope.* The evaluation shall consider the nature and seriousness of the founded child or dependent adult abuse or criminal conviction report in relation to:

(1) and (2) No change.

(3) The circumstances under which the abuse or crime was committed,

~~(3)~~ (4) The degree of rehabilitation,

~~(4)~~ (5) The likelihood that the person will commit the abuse or crime again, and

~~(5)~~ (6) The number of abuses or crimes committed by the person.

ITEM 29. Rescind the implementation sentence in rule **441—114.24(237)**.

ITEM 30. Rescind the implementation sentence in rule **441—114.25(237)**.

ITEM 31. Adopt the following new implementation sentence in **441—Chapter 114**:

These rules are intended to implement Iowa Code section 237.3.





Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Kristin Konchalski	Telephone Number 515-281-9368	Email Address kkoncha@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 114 were reviewed as part of the Department’s five-year rules review project. As a result, the following changes were made:

- Hygiene items language was updated to reflect new expectations
- Caseworker qualifications language was updated to allow for more flexibility for applicants
- Updated child abuse reporting language to DHS Centralized Abuse Hotline

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential providers of group living facilities, and youth residing in the facilities.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



## Administrative Rule Fiscal Impact Statement

Date: September 13, 2022

**Agency:** Human Services

**IAC citation:** 441 IAC 114

**Agency contact:** David Philmon, Jr.

**Summary of the rule:**

The rules in Chapter 114 were reviewed as part of the Department's five-year rules review project and a few changes were made to language.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

No fiscal impact as this was a 5 year rule change that changed the language on the following items:  
Hygiene items language was updated to reflect new expectations, Caseworker qualifications language was updated to allow for more flexibility for applicants, Updated child abuse reporting language to DHS Centralized Abuse Hotline

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	0.00	0.00

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

No fiscal impact.

***Fiscal impact to persons affected by the rule:***

No fiscal impact.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***

No fiscal impact.

Agency representative preparing estimate: David Philmon, Jr.

JH 09/16/2022

Telephone number: 404-345-1088

# HUMAN SERVICES DEPARTMENT[441]

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

## **Adopted and Filed**

**Rule making related to comprehensive residential facilities for children.**

**The Human Services Department hereby amends Chapter 115, “Licensing And Regulation Of Comprehensive Residential Facilities For Children,” Iowa Administrative Code.**

## **Legal Authority for Rule Making**

**This rule making is adopted under the authority provided in Iowa Code section 237.3.**

## **State or Federal Law Implemented**

**This rule making implements, in whole or in part, Iowa Code section 237.3.**

## **Purpose and Summary**

**Chapter 115 was reviewed as part of the Department’s five-year review of rules. This chapter outlines the licensing and regulation standards for comprehensive regulations of residential care facilities for children. Changes include updating language regarding additional contact time requirements with caseworkers per provider requests. Language regarding the use of chemical restraints is removed. Expanded documentation requirements regarding the use of the control room are aligned with other chapters.**

## **Public Comment and Changes to Rule Making**

**Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as ARC 6838C.**

**No public comments were received.**

**No changes from the Notice have been made.**

## **Adoption of Rule Making**

**This rule making was adopted by the Council on Human Services on March 9, 2023.**

## **Fiscal Impact**

**This rule making has no fiscal impact to the State of Iowa.**

## **Jobs Impact**

**After analysis and review of this rule making, no impact on jobs has been found.**

## Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441\_1.8(17A,217).

## Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).

## Effective Date

This rule making will become effective on June 1, 2023.

The following rule-making action is adopted:

ITEM 1. Amend subparagraph 115.4(2)“a”(3) as follows:

(3) ~~At least one additional hour per week per~~ Additional contact as needed with each caseworker in other related duties including case intake discussions, staffings of cases, evaluations of the caseworker, teaching, and administrative duties.

ITEM 2. Amend rule 441—115.5(237), implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~237C.3~~ 237.3.

ITEM 3. Amend subrule 115.6(2) as follows:

**115.6(2) *Secure facilities.*** Secure facilities may use physical restraints, a control room, locked cottages, and mechanical restraints, ~~and chemical restraints.~~

ITEM 4. Amend paragraph 115.7(2)“c” as follows:

c. Require documentation in writing of the types of behaviors leading to control room placement and the conditions that will allow the child to return to the living unit. The child shall be informed of these conditions. Documentation of control room use shall include, but not be limited to, the following:

- (1) Each use of the control room.
- (2) The time the intervention began and ended.
- (3) The reason that required the resident to be put in the control room.
- (4) The name(s) of staff involved in the intervention.



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Kristin Konchalski	Telephone Number 515-281-9368	Email Address kkoncha@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 115 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- Updated language on additional contact time requirements with caseworkers per provider request
- Removed chemical restraint language to align with language later in chapter
- Expanded language regarding documentation of control room use to align with other chapters and forms

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential providers of comprehensive group living facilities, and youth residing in the facilities.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.

## Proposed Rule Changes

ITEM 1. Amend subparagraph 441.115.4(2)(a)(3) as follows:

(3) Additional contact as needed with ~~At least one additional hour per week per~~ caseworker in other related duties including case intake discussions, staffings of cases, evaluations of caseworker, teaching, and administrative duties.

ITEM 2. Amend subrule 441.115.6(2) as follows:

**115.6(2) *Secure facilities.*** Secure facilities may use physical restraints, a control room, locked cottages, and mechanical restraints, ~~and chemical restraints.~~

ITEM 3. Adopt **new** language in paragraph 441.115.7(2)(c) as follows:

c. Require documentation in writing of the types of behaviors leading to control room placement and the conditions that will allow the child to return to the living unit. The child shall be informed of these conditions. Documentation of control room use shall include, but need not be limited to, the following:

- (1) Each use of control room.
- (2) The time the intervention began and ended.
- (3) The reason that required the resident to be put in a control room.
- (4) The name of staff involved in the intervention.



## Administrative Rule Fiscal Impact Statement

Date: September 14, 2022

**Agency:** Human Services  
**IAC citation:** 441 IAC 115  
**Agency contact:** David O. Philmon, Jr.

**Summary of the rule:**

The rules in Chapter 115 were reviewed as part of the Department's five-year rules review project. As a result, changes were made to update language and terms.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rules in Chapter 115 were reviewed as part of the Department's five-year rules review project. This does not result in a fiscal impact. The result was the following changes were made: Updated language on additional contact time requirements with caseworkers per provider request, Removed chemical restraint language to align with language later in chapter, and Expanded language regarding documentation of control room use to align with other chapters and forms

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**



**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	_____	_____

- This rule is required by state law or federal mandate.  
*Please identify the state or federal law:*  
Identify provided change fiscal persons:
  
- Funding has been provided for the rule change.  
*Please identify the amount provided and the funding source:*
  
- Funding has not been provided for the rule.  
*Please explain how the agency will pay for the rule change:*  
No fiscal impact.

***Fiscal impact to persons affected by the rule:***

No fiscal impact.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***

No fiscal impact.

Agency representative preparing estimate: David O. Philmon, Jr. JH 09/16/2022  
Telephone number: 404-345-1088

## HUMAN SERVICES DEPARTMENT[441]

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

### Adopted and Filed

Rule making related to payments for foster care.

The Human Services Department hereby amends Chapter 156, "Payments For Foster Care," Iowa Administrative Code.

### Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 237.3.

### State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 237.3.

### Purpose and Summary

The rules in Chapter 156 were reviewed as part of the Department's five-year rules review. As a result, the following changes were made:

- Removed references to difficulty of care payments for therapeutic foster care.
- Updated the rate for kinship caregiver payments.
- Updated the subrule regarding clothing allowances to address an increase in the allowance and a change in when it can be issued.
- Added runaways and family visits as allowable reserve bed payment types under shelter care.
- Removed the date that coincides with Comm. 502, Instructions for the Combined Cost Report.
- Changed rate-setting methodology for shelter care to reflect the rates set in the contract.
- Updated language to use the term "department caseworker."

### Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as ARC 6810C.

The Department received one comment from a provider that is in charge of licensing staff for their organization. She provided the same comments for chapters 108 and 156.

#### Commenter's Response.

The commenter stated that she recognized that there is a shortage of qualified applicants under the current regulations. She further stated that with the proposed changes relating to caseworker qualifications in chapters 108 and 156 there will be a stronger likelihood that qualified applicants will be applying for RTSS caseworker positions and the frequency of requesting an exception to policy will decline.

However, she was concerned as to how the change in caseworker qualifications will impact the Council of Accreditation (COA) requirements. The commenter noted that the COA requirements do exist so that preference still be given to hire caseworkers who meet the COA requirements.

The commenter wanted to know if in order to maintain accreditation requirements is there some accommodation needed to ensure that when an employee is hired at the lower qualifications listed in this rule filing that the accreditation requirements will not jeopardized. One suggestion would be to develop additional mentoring and supervision with reports signed off by a supervisor who meets the higher qualification requirements.

#### Department's Response.

COA will not withhold any accreditation, but they will offer it up as an area of opportunity to enhance an agency's practice standards. This change in our rules will offer COA an opportunity to review their standards in light of the employment and hiring challenges Iowa providers and contractors are facing. This rule change will be effective July 1, 2023. We appreciate the concern submitted and the Department will monitor to ensure there are no unintended consequences. No changes from the Notice have been made.

#### Adoption of Rule Making

This rule making was adopted by the Council on Human Services on March 9, 2023.

#### Fiscal Impact

The rule change removed references to difficulty of care payments for therapeutic foster care definition of Level of Care. It also updated rates for kinship caregiver payments to match the rates we have currently in our contracts. The rule also updated the methodology for rate setting in shelter care to reflect the rates set in the contract. Since those rates are already in our contract and budget we do not believe any of these changes to have a fiscal impact since their fiscal impact has already been absorbed in our budget prior to any rule changes. We also updated the clothing allowance to match what we have in the budget. The allowance went from not to exceed \$237.50, to \$500 for children through age 12 and \$750 for the child aged 13 and older. This reflects the rates we have set aside in the budget so it does not add any additional fiscal impact by updating this in the rule.

#### Jobs Impact

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

#### Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441\_1.7(17A, 217).

#### Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).

#### Effective Date

This rule making will become effective on July 1, 2023.

The following rule-making action is adopted:

Please see attached.

ADOPTED AND FILED RULE CHANGES FOR CHAPTER 156

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **156.6(4)“c”** as follows:

c. When the foster family’s responsibilities in the case permanency plan include providing transportation related to family or preplacement visits outside the community in which the foster family lives, the department ~~worker~~ caseworker may authorize an additional maintenance payment of \$1 per day. Expenses over the monthly amount may be reimbursed with prior approval by the ~~worker~~ department caseworker. Eligible expenses shall include the actual cost of the most reasonable passenger fare or gas.

ITEM 2. Rescind paragraphs **156.6(4)“d”** and **“e.”**

ITEM 3. Reletter paragraphs **156.6(4)“f”** and **“g”** as **156.6(4)“d”** and **“e.”**

ITEM 4. Amend relettered paragraphs **156.6(4)“d”** and **“e”** as follows:

d. For placements made on or after January 1, 2007, the supervisor may approve an additional maintenance payment above the basic rate in subrule 156.6(1) to meet the child’s special needs as identified by the child’s score on Form 470-4401, ~~Foster Child Behavioral Assessment~~. The ~~placement worker~~ department caseworker shall complete Form 470-4401 within 30 days of the child’s initial entry into foster care.

(1) and (2) No change.

e. All maintenance payments, including difficulty of care payments, shall be documented on Form 470-0716, ~~Foster Family Placement Contract~~.

ITEM 5. Amend subrule 156.6(6) as follows:

**156.6(6) Return of overpayments.** When a foster family has received payments in excess of those allowed under this chapter, the department caseworker shall ask the foster family to return the overpayment. If the foster family is returning the overpayment to the department, the department caseworker will note the monthly amount the foster family agrees to pay in the family’s case file. The amount returned shall not be less than \$50 per month.

ITEM 6. Amend paragraph **156.7(2)“a”** as follows:

a. For each eligible child living in a kinship placement, ~~the monthly payment for the child shall be \$300~~ a caregiver will receive up to \$310 (\$10 per day) as a result of a court-ordered placement.

ITEM 7. Amend subrule 156.8(1) as follows:

**156.8(1) Clothing allowance.**

a. When, in the judgment of the ~~worker~~ department caseworker, clothing is needed at the time the child is removed from the child’s home and placed in foster care and annually thereafter as needed based on the date the child entered foster care, an allowance may be authorized, not to exceed ~~\$237.50~~ \$500 for the child through the age of 12 and \$750 for the child aged 13 and older, to purchase clothing.

~~a. Once during each calendar year that the child remains in foster care, the department worker may authorize another clothing allowance, not to exceed \$190 for family foster care and \$100 for all~~

other levels when:

- (1) ~~The child needs clothing to replace lost clothing or because of growth or weight change, and~~
- (2) ~~The child does not have escrow funds to cover the cost.~~

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the ~~worker~~ department caseworker within 30 days of purchase for auditing purposes, using Form 470-1952, ~~Foster Care Clothing Allowance~~.

ITEM 8. Amend subrule 156.8(6) as follows:

**156.8(6) School fees.** Payment for required school fees of a child in foster family care or supervised apartment living that exceed \$5 may be authorized by the department ~~worker~~ caseworker in an amount not to exceed \$50 per calendar year if the child does not have sufficient escrow funds to cover the cost. Required school fees shall include:

- a. Fees required for participation in school or extracurricular activities; and
- b. Fees related to enrolling a child in preschool when a mental health professional or an intellectual disabilities professional has recommended school attendance.

ITEM 9. Amend subparagraph **156.10(1)“a”(2)** as follows:

(2) The facility shall notify the ~~worker~~ department caseworker of each visit and its planned length prior to the visit.

ITEM 10. Amend subparagraph **156.10(1)“b”(1)** as follows:

(1) The facility shall contact the ~~worker~~ department caseworker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.

ITEM 11. Amend subparagraph **156.10(1)“c”(1)** as follows:

(1) The facility shall notify the ~~worker~~ department caseworker within 24 hours after the child runs away.

ITEM 12. Amend subparagraph **156.10(2)“c”(1)** as follows:

(1) The foster family shall notify the ~~worker~~ department caseworker within 24 hours after the child runs away.

ITEM 13. Amend subparagraph **156.10(3)“a”(1)** as follows:

(1) The facility shall contact the ~~worker~~ department caseworker at least 48 hours in advance of a planned hospitalization and within 24 hours after an unplanned hospitalization.

ITEM 14. Adopt the following new paragraphs **156.10(3)“c”** and **“d”**:

c. *Family visits.* Reserve bed payment shall be made for days a child is absent from the facility for family visits when the absence is in accord with the following:

- (1) The visits shall be consistent with the child’s case permanency plan.
- (2) The facility shall notify the department caseworker of each visit and its planned length prior to the visit.
- (3) The intent of the department and the facility shall be for the child to return to the facility after the visit.
- (4) Staff from the facility shall be available to provide support to the child and family during the visit.
- (5) Payment shall be canceled and payments returned if the facility refuses to accept the child back.
- (6) If the department agrees that the return would not be in the child’s best interest, payment shall

be canceled effective the day after the joint decision not to return the child.

(7) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(8) Payment shall not exceed seven consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 14 consecutive days.

(9) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

*d. Runaways.* Reserve bed payment shall be made for days a child is absent from the facility after the child has run away when the absence is in accord with the following:

(1) The facility shall notify the department caseworker within 24 hours after the child runs away.

(2) The intent of the department and the facility shall be for the child to return to the facility once the child is found.

(3) Payment shall be canceled and payments returned if the facility refuses to accept the child back.

(4) If the department agrees that the return would not be in the child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.

(5) Payment shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child.

(6) Payment shall not exceed seven consecutive days, except upon prior written approval of the service area manager. In no case shall payment exceed 14 consecutive days.

(7) The provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.

ITEM 15. Amend rule 441—156.11(234) as follows:

~~441—156.11(234) Emergency juvenile shelter care payment. Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the following rate setting methodology~~ Contracted juvenile shelter care facilities approved or licensed in Iowa shall be paid in accordance with contracted terms, not to exceed the allowable costs as permitted by Iowa Code section 232.141(8).

~~156.11(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the verified Form 470-5421, Combined Cost Report, submitted to the department, but shall not exceed the prevailing rate. The department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost, plus the inflation factor and the \$3.99 allowance originated under the tobacco settlement fund, or to the prevailing rate, whichever is less, effective the first day of the month following the department's receipt from the fiscal consultant of the provider's verified cost for the most recently reviewed fiscal year.~~

~~156.11(2) Net allowable expenditures are limited to those costs that are considered reasonable, necessary, and related to the service provided to the client as set forth in Comm. 502 (7/16), Instructions for the Combined Cost Report.~~

This rule is intended to implement Iowa Code sections 234.6 and 234.39.

ITEM 16. Adopt the following **new** implementation sentence in rule **441—156.14(234,252C)**:

This rule is intended to implement Iowa Code section 234.39.

ITEM 17. Adopt the following **new** implementation sentence in rule **441—156.15(234)**:

This rule is intended to implement Iowa Code section 234.39.



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Kristin Konchalski	Telephone Number 515-281-9368	Email Address kkoncha@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:

The rules in Chapter 156 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- Removed references to difficulty of care payments for therapeutic foster care definition of Level of Care
- Updated rate for kinship caregiver payments
- Updated clothing allowance sections to address increase in allowance and change in when it can be issued
- Added runaway and family visits as allowable reserve bed payment types under Shelter Care
- Removed date that coincides with Comm. 502, Instructions for the Cost Report
- Changed rate setting methodology for shelter care to reflect rates set in contract
- Updated language to department caseworker

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

237.3 gives the administrator of ACFS the authority to write rules.

3. Describe who this rulemaking will positively or adversely impact.

It is expected that clarifying our rules and providing updated information will provide a positive benefit to members of the public, potential providers of kinship care, foster care, and residential services, and youth residing in foster care and foster care facilities.

4. Does this rule contain a waiver provision? If not, why?

No

5. What are the likely areas of public comment?

We do not expect any public comment on these rules.

6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)

No impact is expected to private sector jobs or employment opportunities in Iowa.



## Administrative Rule Fiscal Impact Statement

Date: October 19, 2022

**Agency:** Human Services

**IAC citation:** 441 IAC 156

**Agency contact:** Kristin Konchalski

**Summary of the rule:**

The rules in Chapter 156 were reviewed as part of the Department's five-year rules review project. As a result, the following changes were made:

- Removed references to difficulty of care payments for therapeutic foster care definition of Level of Care
- Updated rate for kinship caregiver payments
- Updated clothing allowance sections to address increase in allowance and change in when it can be issued
- Added runaway and family visits as allowable reserve bed payment types under Shelter Care
- Removed date that coincides with Comm. 502, Instructions for the Cost Report
- Changed rate setting methodology for shelter care to reflect rates set in contract
- Updated language to department caseworker

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

The rule change removed references to difficulty of care payments for therapeutic foster care definition of Level of Care. It also updated rates for kinship caregiver payments to match the rates we have currently in our contracts.

The rule also updated the methodology for rate setting in shelter care to reflect the rates set in the contract. Since those rates are already in our contract and budget we do not believe any of these changes to have a fiscal impact since their fiscal impact has already been absorbed in our budget prior to any rule changes.

We also updated the clothing allowance to match what we have in the budget. The allowance went from not to exceed \$237.50, to \$500 for children through age 12 and \$750 for the child age 13 and older. This reflects the rates we have set aside in the budget so it does not add any additional fiscal impact by updating this in the rule. Since this is a new cost, the estimated impact is provided below.

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.



**Assumptions:**

Clothing Allowance

Children age 0-12 get an increase from \$237.50 to \$500 per child/year, when approved by caseworker.

Teens (13 and older) get an increase from \$237.50 to \$750 per year, when approved by caseworker—the \$190 supplemental payment is removed.

20% of children who get a clothing allowance are teens

Percent of children in foster care who get a clothing allowance will increase from 20% to 30%, due to fiscal incentive and increased awareness, a 10% increase in participation.

FMAP Rate of 62%

**Describe how estimates were derived:**

9,238 - Avg Count of children in Foster care last 5 years

1,816 - Percent who are teens - 19.65 or 20%

Average Annual amount paid for clothing at current rate - \$326,342

Amount expected to pay at new amount - \$1,243,320

Difference in that amount - \$916,978

State Share - \$568,526

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 23)</u>	<u>Year 2 (FY 24)</u>
<b>Revenue by each source:</b>		
General fund	568,526.00	568,526.00
Federal funds	348,452.00	348,452.00
Other (specify):		
<b>TOTAL REVENUE</b>	<u>916,978.00</u>	<u>916,978.00</u>
<b>Expenditures:</b>		
General fund	568,526.00	568,526.00
Federal funds	348,452.00	348,452.00
Other (specify):		
<b>TOTAL EXPENDITURES</b>	<u>916,978.00</u>	<u>916,978.00</u>
<b>NET IMPACT</b>	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding was identified through cost savings in the Foster Care Population. Population has been decreasing, decreasing the overall expenses in the Foster Care budget. Clothing Allowance increases are not more than the decrease in the Foster Care budget, due to population decreases. Also,

consideration was taken that the \$190 supplemental payment was removed, helping to lessen the impact of the increased clothing allowance.

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

***Fiscal impact to persons affected by the rule:***

An increase to the clothing allowance will benefit foster families and those in foster care.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***

None

Agency representative preparing estimate:	David O. Philmon, Jr.	JH 11/14/2022
Telephone number:	404-345-1088	JB 11/15/22

## **HUMAN SERVICES DEPARTMENT[441]**

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

### **Adopted and Filed**

**Rule making related to child care services.**

**The Human Services Department hereby amends Chapter 170, “Child Care Services,” Iowa Administrative Code.**

### **Legal Authority for Rule Making**

**This rule making is adopted under the authority provided in Iowa Code section 234.6.**

### **State or Federal Law Implemented**

**This rule making implements, in whole or in part, Iowa Code section 234.6.**

### **Purpose and Summary**

**Chapter 170 was reviewed as part of the Department’s five-year rules review. This rule making removed all references to the term “relatives” because this term has no standing in the child care assistance program. The rule making includes language relating to eligibility for child care for foster children to reflect a recent policy change.**

**The definition of “PROMISE JOBS” is updated to be consistent with the definition in Chapter 40. References are added to the definition of “child with special needs” to clarify where the definitions of “qualified intellectual disability professional” and “mental health professional” can be found. The names of forms are removed to eliminate unnecessary future changes as form names change. The rule making updates a reference to Iowa’s Food Assistance Program to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.**

**A provider who disagrees with the calculation of a half-day rate may request a review of that decision. After sending a written request to the service area manager and receiving a response, the provider could then file a disagreement with the Bureau of Child Care Services. This rule making updates the name of the bureau, which handles the review of the service area manager’s decision. Requirements of notices of adverse action have been moved from Chapter 7 to Chapter 16. This chapter is updated to reflect that change.**

### **Public Comment and Changes to Rule Making**

**Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 11, 2023, as ARC 6811C.**

**No public comments were received.**

**No changes from the Notice have been made.**

### **Adoption of Rule Making**

**This rule making was adopted by the Council on Human Services on March 9, 2023.**

### **Fiscal Impact**

**This rule making has no fiscal impact to the State of Iowa.**

### **Jobs Impact**

**After analysis and review of this rule making, no impact on jobs has been found.**

### **Waivers**

**Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441\_1.8(17A, 217).**

### **Review by Administrative Rules Review Committee**

**The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).**

### **Effective Date**

**This rule making will become effective on May 1, 2023.**

**The following rule-making action is adopted:**

**Please see attached.**

ADOPTED AND FILES RULES FOR CHAPTER 170

The following rule-making actions are adopted:

ITEM 1. Amend **441—Chapter 170**, preamble, as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child care services. Child care services are for children of low-income parents who are in academic or vocational training; or employed or looking for employment; or ~~for a limited period of time~~, unable to care for children due to physical or mental illness; or needing protective services to prevent or alleviate child abuse or neglect. Services may be provided in a licensed child care center, a registered child development home, ~~the home of a relative~~, the child's own home, or a nonregistered family child care home.

ITEM 2. Rescind the definition of "Relative" in rule **441—170.1(237A)**.

ITEM 3. Amend rule **441—170.1(237A)**, definitions of "Child with protective needs," "Child with special needs," "PROMISE JOBS," "Provider" and "Provider error," as follows:

"*Child with protective needs*" means a child who is ~~not~~ in foster care ~~and~~ or has a case file that identifies child care as a safety or well-being need to prevent or alleviate the effects of child abuse or neglect. Child care is provided as part of a safety plan during a child abuse or child in need of assistance assessment or as part of the service plan established in the family's case plan. The child must have:

1. An open child abuse assessment;
2. An open child in need of assistance assessment;
3. An open child welfare case as a result of a child abuse assessment;
4. A petition on file for a child in need of assistance adjudication; or
5. Adjudication as a child in need of assistance.

"*Child with special needs*" means a child with one or more of the following conditions:

1. The child has been diagnosed by a physician or by a person endorsed for service as a school psychologist by the Iowa department of education to have a developmental disability which substantially limits one or more major life activities, and the child requires professional treatment, assistance in self-care, or the purchase of special adaptive equipment.

2. The child has been determined by a qualified intellectual disability professional as defined in rule 441—83.60(249A) to have a condition which impairs the child's intellectual and social functioning.

3. The child has been diagnosed by a mental health professional as defined in rule 441—24.1(225C) to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age, or which significantly interferes with the child's intellectual, social, or personal adjustment.

"*PROMISE JOBS*" means the department's work and training program, promoting independence and self-sufficiency through employment job opportunities and basic skills, as described in 441—Chapter 93.

"*Provider*" means a licensed child care center, a registered child development home, ~~a relative who provides care in the relative's own home solely for a related child~~, a caretaker who provides care for a child in the child's home, or a nonregistered child care home.

"*Provider error*" means and may result from:

1. to 4. No change.
5. Failure to maintain a copy of Form 470-4535, ~~Child Care Assistance Billing/Attendance Provider Record~~, signed by the parent and the provider.

ITEM 4. Adopt the following **new** subparagraph **170.2(1)“b”(5)**:  
(5) Child care services for licensed foster parents who need child care for foster children are provided without regard to income.

ITEM 5. Amend subparagraph **170.2(1)“d”(10)** as follows:  
(10) The value of the ~~food assistance~~ Supplemental Nutrition Assistance Program (SNAP) allotment under the Food and Nutrition Act of 2008.

ITEM 6. Amend subparagraph **170.2(2)“b”(5)** as follows:  
(5) The parent is looking for employment. Child care for job search hours shall be limited to only those hours the parent is actually looking for employment, including travel time. Job search shall be limited to a maximum of 90 consecutive calendar days.  
1. For applicants, job search shall be approved for a maximum of 90 consecutive calendar days. If the parent has not started employment within 90 days, assistance shall be canceled.  
2. For ongoing participants, job search shall be limited to a maximum of 90 consecutive calendar days and will be treated the same as a temporary lapse in need as described at ~~170.2(2)“b”(9) and (10)~~ subparagraphs 170.2(2)“b”(10) and (11).

ITEM 7. Renumber subparagraphs **170.2(2)“b”(9)** and **(10)** as **170.2(2)“b”(10)** and **(11)**.

ITEM 8. Adopt the following **new** subparagraph **170.2(2)“b”(9)**:  
(9) The parent is a licensed foster parent who needs child care for foster children.

ITEM 9. Amend paragraph **170.2(2)“d”** as follows:  
*d. Citizenship.* As a condition of eligibility, the applicant shall attest to the child’s citizenship or alien status by signing Form 470-3624 or 470-3624(S), ~~Child Care Assistance Application~~, or Form 470-0462 or 470-0462(S), ~~Health and Financial Support Application~~. Child care assistance payments may be made only for a child who:  
(1) and (2) No change.

ITEM 10. Amend subrule 170.2(3), introductory paragraph, as follows:  
**170.2(3) Priority for assistance.** Child care services shall be provided only when funds are available. Funds available for child care assistance shall first be used to continue assistance to families currently receiving child care assistance and to families with protective child care needs or licensed foster parents who need child care for foster children. When funds are insufficient, families applying for services must meet the specific requirements in this subrule.

ITEM 11. Adopt the following **new** subparagraph **170.2(3)“b”(5)**:  
(5) Licensed foster parents who need child care for foster children.

ITEM 12. Amend paragraph **170.3(1)“a”** as follows:  
*a.* Application for child care assistance may be made at any local office of the department on:  
(1) Form 470-3624 or 470-3624(S), ~~Child Care Assistance Application~~, or  
(2) ~~Form 470-0462 or 470-0462(S), Health and Financial Support Application~~, or  
(~~3~~) (2) Form 470-4377 or 470-4377(S), ~~Child Care Assistance Review~~, when returned after the end of the certification period.

ITEM 13. Adopt the following **new** paragraph **170.3(2)“f”**:

*f.* Licensed foster parents who need child care for foster children.

ITEM 14. Amend subparagraph **170.3(3)“a”(2)** as follows:

(2) Inform the family’s provider through the notice of decision or through Form 470-4444; ~~Certificate of Enrollment.~~

ITEM 15. Amend subparagraph **170.3(3)“c”(3)** as follows:

(3) For a family with protective service needs, the effective date of assistance shall be the date the family signs Form 470-0615 or 470-0615(S); ~~Application for All Social Services.~~

ITEM 16. Amend paragraph **170.3(5)“b”** as follows:

*b.* The department shall use information gathered on Form 470-4377 or 470-4377(S); ~~Child Care Assistance Review~~, to redetermine eligibility, except when the family is not required to complete a review form as provided in paragraph 170.3(5)“c.”

(1) and (2) No change.

ITEM 17. Amend paragraph **170.3(5)“c”** as follows:

*c.* Families who have children with protective needs, licensed foster parents who need child care for foster children, and families who are receiving child care assistance because the parent is participating in activities under the PROMISE JOBS program are not required to complete Form 470-4377 or 470-4377(S).

(1) and (2) No change.

ITEM 18. Amend paragraph **170.3(6)“b”** as follows:

*b.* Assistance shall be reinstated without a new application when the case was canceled for failure to provide requested information but all information necessary to determine eligibility, including verification of all changes in circumstances, is provided within 14 calendar days of the effective date of cancellation and eligibility can be reestablished. If the fourteenth calendar day falls on a weekend or state holiday, the family shall have until the next business day to provide the information. The effective date of child care assistance shall be the date that all information required to establish eligibility is provided.

ITEM 19. Amend paragraphs **170.4(3)“a”** and **“b”** as follows:

*a.* *Licensed child care center.* A child care center shall be licensed by the department to meet the requirements set forth in 441—Chapter 109 and shall have a current ~~Certificate of License~~, Form 470-0618.

*b.* *Registered child development home.* A child development home shall meet the requirements for registration set forth in 441—Chapter 110 and shall have a current ~~Certificate of Registration~~, Form 470-3498.

ITEM 20. Amend paragraph **170.4(3)“e”** as follows:

*e.* *In-home care.* The adult ~~caretaker~~ provider selected by the parent to provide care in the child’s own home shall be sent Form 470-2890 or 470-2890(S); ~~Payment Application for Nonregistered Providers~~. The provider shall complete and sign Form 470-2890 or 470-2890(S) and return the form to the department before payment may be made. An identifiable application is an application that contains a legible name and address and that has been signed. Signature on the form certifies the provider’s understanding of and compliance with the conditions and requirements for nonregistered in-home care providers that include:

(1) to (4) No change.

ITEM 21. Amend paragraph **170.4(3)“h”** as follows:

*h. National criminal history record checks for in-home care.* If a person who provides in-home care applies to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete Form DCI-45, ~~Waiver Agreement~~, and Form FD-258, ~~Federal Fingerprint Card~~.

(1) to (5) No change.

ITEM 22. Amend subrule 170.4(7), introductory paragraph, as follows:

**170.4(7) Payment.** The department shall make payment for child care provided to an eligible family when the family reports their choice of provider to the department and the provider has a completed Form 470-3871 or 470-3871(S), ~~Child Care Assistance Provider Agreement~~, on file with the department. Both the child care provider and the department worker shall sign this form.

ITEM 23. Amend subparagraph **170.4(7)“f”(2)** as follows:

(2) When dissatisfied with the response, the provider may, within 15 calendar days of the response, request a review by the ~~chief of the bureau of financial support~~ child care services chief. The provider shall submit to the bureau chief the original request, the response received, and any additional information desired. The bureau chief shall render a decision in writing within 15 calendar days of receipt of the request.

ITEM 24. Amend subparagraphs **170.4(7)“g”(1)** and **(2)** as follows:

(1) Using Form 470-4534, ~~Child Care Assistance Billing/Attendance~~; or  
(2) Using an electronic request for payment submitted through the KinderTrack system. Providers using this method shall print Form 470-4535, ~~Child Care Assistance Billing/Attendance Provider Record~~, to be signed by the provider and the parent. The provider shall keep the signed Form 470-4535 for a period of five years after the billing date.

ITEM 25. Amend subrule 170.5(1) as follows:

**170.5(1) Provider agreement.** The department may refuse to enter into or may revoke ~~the Child Care Assistance Provider Agreement~~, Form 470-3871 or 470-3871(S), if any of the following occur:

- a. to d.* No change.
- e.* The provider fails to comply with any of the terms and conditions of ~~the Child Care Assistance Provider Agreement~~, Form 470-3871 or 470-3871(S).
- f. to h.* No change.

ITEM 26. Amend subrule 170.5(5) as follows:

**170.5(5) Provider agreement sanction.** If a ~~Child Care Assistance Provider Agreement~~, Form 470-3871 or 470-3871(S), is terminated for any of the reasons in subrule 170.5(1), the agreement shall remain terminated for the time periods set forth below:

- a. to d.* No change.

ITEM 27. Amend rule 441—170.6(237A) as follows:

**441—170.6(237A) Appeals.** Notice of adverse ~~actions and the~~ action shall be given in accordance with 441—Chapter 16. The right of to appeal shall be given in accordance with 441—Chapter 7.



ITEM 28. Amend paragraph **170.9(6)“b”** as follows:

*b.* The department of inspections and appeals shall initiate recoupment by notifying the debtor of the overpayment on Form 470-4530, ~~Notice of Child Care Assistance Overpayment.~~



## Administrative Rule Fiscal Impact Statement

Date: November 30, 2022

**Agency:** Human Services

**IAC citation:** 441 IAC 170

**Agency contact:** Mark Adams

**Summary of the rule:**

This chapter was reviewed as part of the Department's five-year rules review. The proposed rule making removes all references to the term "relatives" as this term has no standing in the child care assistance program. The proposed rule making includes language relating to foster care child care eligibility to reflect a recent policy change.

The definition of "PROMISE JOBS" is updated to be in compliance with the definition in Chapter 40. References are added to the definition of "Child with special needs" to clarify where the definition of a qualified intellectual disability professional and mental health professional can be found. The names of forms are removed to eliminate unnecessary future changes as form names change. This proposed rule making updates a reference to Iowa's Food Assistance Program to the Supplemental Nutrition Assistance Program (SNAP) to be consistent with the name of the federal program.

A provider who disagrees with the calculation of a half-day rate may request a review of that decision. After sending a written request to the service area manager and receiving a response, the provider could then file a disagreement with the Bureau of Child Care Services. This proposed rule making updates the name of the bureau who handles the review of the service area manager's decision. Requirements for notices of adverse action were moved from Chapter 7 to Chapter 16, effective April 15, 2020. This chapter is updated to reflect that change.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

This chapter was reviewed as part of the Department's five-year rules review. The proposed rule making removes outdated terminology and form names, and updates definitions, program names, bureau names and references to the correct Iowa Administrative Code chapters relating to notices of adverse actions.

The changes related to foster care child care eligibility will result in certain child care expenses being paid from the Child Care Assistance appropriation instead of the Child and Family Services appropriation, but in the aggregate this will be budget neutral.

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	<u>0.00</u>	<u>0.00</u>

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

Iowa Code 234.6

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

No additional funding is necessary to implement these rules.

***Fiscal impact to persons affected by the rule:***

This rulemaking positively impacts applicants, recipients and providers of child care assistance. The proposed rule making removes outdated terminology and form names, and updates definitions, program names, bureau names and references to the correct Iowa Administrative Code chapters relating to notices of adverse actions.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***

No impact is anticipated.

Agency representative preparing estimate: Francis Thurman

JH 12/05/2022, JB 12/05/22

Telephone number:

515-281-6855

## **HUMAN SERVICES DEPARTMENT[441]**

**DRAFT ONLY: Dates herein may not comply with Schedule for Rule Making.**

### **Adopted and Filed**

**Rule making related to Dependent adult abuse.**

**The Human Services Department hereby amends Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.**

### **Legal Authority for Rule Making**

**This rule making is adopted under the authority provided in Iowa Code section 217.6.**

### **State or Federal Law Implemented**

**This rule making implements, in whole or in part, Iowa Code chapter 235B.**

### **Purpose and Summary**

**Chapter 176 was reviewed as part of the Department’s five-year rules review. Definitions are updated to align with the Iowa Code and to provide consistency. The word “dependent” is added to “adult abuse” to ensure dependent adult abuse is correctly identified. The amendments clarify the relationships of all parties involved in the assessment process.**

### **Public Comment and Changes to Rule Making**

**Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 25, 2023, as ARC 6839C.**

**No public comments were received.**

**No changes from the Notice have been made.**

### **Adoption of Rule Making**

**This rule making was adopted by the Council on Human Services on March 9, 2023.**

### **Fiscal Impact**

**This rule making has no fiscal impact to the State of Iowa.**

### **Jobs Impact**

**After analysis and review of this rule making, no impact on jobs has been found.**

### **Waivers**

**Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 441\_1.8(17A,217).**

## **Review by Administrative Rules Review Committee**

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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).

### **Effective Date**

This rule making will become effective on June 1, 2023.

The following rule-making action is adopted:

Please see attached.

ADOPTED AND FILED RULES FOR CHAPTER 176

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—176.1(235B)**, definitions of “Adult abuse,” “Expungement,” “Informed consent,” “Multidisciplinary team,” “Preponderance of evidence” and “Registry,” as follows:

~~“Adult Dependent adult abuse” means either:~~

1. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:
  - Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.
  - The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.
  - Exploitation of a dependent adult, which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.
  - The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health.
2. Sexual exploitation of a dependent adult by a caretaker. “Sexual exploitation” means any consensual or nonconsensual sexual contact with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in Iowa Code section 702.17. “Sexual exploitation” includes the transmission, display, or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation or investigation. “Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.
3. Personal degradation of a dependent adult, which means a willful act or statement by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a dependent adult, or where the caretaker knew or reasonably should have known the act or statement would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person.
4. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health as a result of the acts or omissions of the dependent adult.

*“Expungement”* means the process of destroying or erasing dependent adult abuse information in compliance with Iowa Code section 235B.9.

*“Informed consent<sub>2</sub>”* ~~(as used in Iowa Code section 235B.2(5)“e”)~~ as used in the description of exploitation in Iowa Code section 235B.2(5), means a dependent adult’s agreement to allow something to happen that is based on a full disclosure of known facts and circumstances needed to make the decision intelligently, i.e., knowledge of risks involved or alternatives.

*“Multidisciplinary team”* ~~shall mean~~ means a membership of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, social work, law, law enforcement and other disciplines relative to dependent adults. Members of the team shall include, but are not limited to, persons representing the area agencies on aging, county attorneys, health care providers, and others involved in advocating or providing services for dependent adults.

*“Preponderance of evidence”* ~~shall mean~~ means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

*“Registry”* means the central registry for dependent adult abuse information established in Iowa

Code Supplement section 235B.5.

ITEM 2. Adopt the following **new** definitions of “Assessment information” and “Confidential information” in rule **441—176.1(235B)**:

“*Assessment information*” means material and data maintained by the department in a manual or automated data storage system concerning the report, assessment or evaluation, or disposition of dependent adult abuse.

“*Confidential information*” means any information restricted by Iowa Code chapter 22, 217, 235B, 229, or 125; 45 CFR 160, 162 and 164 as of January 1, 2023; or any other provision in state or federal law that prohibits disclosure of information.

ITEM 3. Rescind the definition of “Confidentiality” in rule **441—176.1(235B)**.

ITEM 4. Amend rule 441—176.2(235B) as follows:

**441—176.2(235B) Denial of critical care.** The failure, by acts or omissions, on the part of the caretaker or dependent adult to provide for minimum food, shelter, clothing, supervision, physical or mental care, and other care necessary for the dependent adult’s health and welfare when financially able to do so or when offered financial and other reasonable means to do so shall constitute denial of critical care to that dependent adult.

ITEM 5. Amend rule 441—176.3(235B) as follows:

**441—176.3(235B) Appropriate evaluation.** ~~Immediately upon~~ Upon receipt of a dependent adult abuse report, ~~the worker~~ the department shall conduct an intake sufficient to determine whether the allegation meets criteria and constitutes a report of dependent adult abuse as defined in Iowa Code section 235B.2.

**176.3(1)** Dependent adult abuse reports shall be evaluated when all of the following criteria are alleged to be met:

- a. ~~The~~ There is a reasonable belief the person is a dependent adult.
- b. Dependent adult abuse ~~exists~~ is suspected as defined in Iowa Code section 235B.2.
- c. The alleged person responsible is:

(1) A caretaker ~~exists~~ in reports of physical injury to or, assault, unreasonable confinement or cruel punishment of a dependent adult; commission of a sexual offense; exploitation; personal degradation; and deprivation by another person of food, shelter, clothing, supervision, physical and or mental health care and other care necessary to maintain life or health.

(2) The dependent adult in reports of deprivation of food, shelter, clothing, supervision, physical or mental health care and other care necessary to maintain life or health due to the adult’s own acts or omissions pursuant to Iowa Code section 235B.2(5)“a”(2).

**176.3(2)** Nondependent adult abuse situations. The following are not dependent adult abuse situations:

- a. A report of domestic abuse under Iowa Code chapter 236, Domestic Abuse, does not in and of itself constitute a report of dependent adult abuse.
- b. Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- c. Circumstances in which the dependent adult’s caretaker, acting in accordance with the dependent adult’s stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in



place of reliance on medical treatment.

*d.* Withholding and withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician when the withholding and withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next-of-kin or guardian pursuant to the applicable procedures under Iowa Code chapter 125, 144A, 222, 229, or 633.

*e.* All persons legally incarcerated in a penal setting, either in a local jail or confined to the custody of the director of the department of corrections, when the allegation pertains to correctional staff as caretakers.

**176.3(3)** Reports of dependent adult abuse which are the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as ~~assessments~~ assessment information only and shall not be included on the central registry. The central registry shall be notified as to the disposition of the assessment.

**176.3(4)** Confirmed, not registered. Reports of physical abuse, denial of critical care by a caretaker, or personal degradation that would otherwise be founded reports shall be considered confirmed, not registered reports if the abuse is determined to be minor, isolated, and unlikely to reoccur. These reports shall be assessments and shall not be included on the central abuse registry. ~~The assessment shall be maintained in the local office as directed in subrule 176.13(4).~~ Access to confirmed, not registered reports will be authorized pursuant to Iowa Code section 235B.6(3).

ITEM 6. Amend rule 441—176.4(235B) as follows:

**441—176.4(235B) Reporters.** ~~The~~ As a function of the central registry and county office, centralized intake shall accept take reports from mandatory reporters or any other person who believes dependent adult abuse has occurred.

**176.4(1)** Mandatory reporters shall:

~~*a.* Report report~~ suspected abuse of a dependent adult within 24 hours of becoming aware of an abusive incident.

~~*b.* Make a written report within 48 hours after an oral report.~~

**176.4(2)** The reporter may use ~~a form prescribed by the department or may use~~ Form 470-2441 or a form developed by the reporter that meets the requirements of Iowa Code section 235B.3.

ITEM 7. Amend rule 441—176.5(235B) as follows:

**441—176.5(235B) Reporting procedure.**

**176.5(1)** Each report made by someone other than a mandatory reporter may be oral or written.

**176.5(2)** The report shall be made by telephone or otherwise to the department of ~~human services.~~ When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person ~~shall~~ will be asked to also make an oral report to an appropriate law enforcement agency.

**176.5(3)** The department of ~~human services~~ shall ~~;~~ provide electronic access to all reports alleging dependent adult abuse to the appropriate county attorney.

~~*a.* Immediately, upon receipt of a report, make an oral report to the registry;~~

~~*b.* Forward a copy of the report to the registry; and~~

~~*c.* Promptly notify the appropriate county attorney of the receipt of any report.~~

**176.5(4)** The report ~~shall~~ may contain the following information, or as much thereof as the person making the report is able to furnish:

*a.* The names and home addresses of the dependent adult, appropriate relatives, caretakers, and other persons believed to be responsible for the care of the dependent adult.

*b.* The dependent adult's present whereabouts if not the same as the address given.

*c.* The reason the adult is believed to be dependent. Dependency is the first criterion to be considered before beginning an evaluation.

- d. The dependent adult's age.
- e. The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse. The existence of alleged dependent adult abuse is the second criterion to be considered before beginning an evaluation.
- f. Information concerning ~~the~~ suspected dependent adult abuse of other dependent adults in the same residence.
- g. Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse, or helpful in providing assistance to the dependent adult.
- h. The name and address of the person making the report.

**176.5(5)** A report ~~shall be accepted~~ will be received whether or not it contains all of the information requested in subrule 176.5(4), and may be made to the department, county attorney, or law enforcement agency. When the report is made to any agency other than the department ~~of human services~~, that agency shall promptly refer the report to the department.

ITEM 8. Amend rule 441—176.6(235B) as follows:

**441—176.6(235B) Duties of the department upon receipt of report.**

**176.6(1)** When a report is received ~~;~~ and meets the criteria pursuant to Iowa Code section 235B.2(5) "a." the department shall promptly commence an appropriate evaluation or assessment, except that the department of inspections and appeals is responsible for the evaluation and disposition of a case of dependent adult abuse in a health care facility pursuant to Iowa Code chapter 235E, including hospitals as defined in Iowa Code section 135B.1 and facilities as defined in Iowa Code section 135C.1. The department shall forward all reports and other information concerning dependent adult abuse in a health care facility to the department of inspections and appeals on the first working day following the submitting of the report. The department of inspections and appeals shall inform the registry of all actions taken or contemplated concerning the evaluation or disposition of a case of dependent adult abuse in a health care facility. ~~The primary purpose of the evaluation or assessment by the department shall be the protection of the dependent adult named in the report.~~

**176.6(2)** The evaluation or assessment shall include all of the following:

- a. Identification of the nature, extent, and cause of the dependent adult abuse, if any, to the dependent adult named in the report.
- b. The identification of the person or persons responsible for the dependent adult abuse.
- c. A determination of whether other dependent adults in the same residence have been subjected to dependent adult abuse.
- d. A critical examination of the residential environment of the dependent adult named in the report, and the dependent adult's relationship with caretakers and other adults in the same residence.
- e. A critical explanation of all other pertinent matters.

**176.6(3)** The evaluation or assessment, with the consent of the dependent adult or caretaker, when appropriate, may include a visit to the residence of the dependent adult named in the report and an examination of the dependent adult. If permission to enter the residence and to examine the dependent adult is refused, the district court, upon a showing of probable cause that a dependent adult has been abused, may authorize a person, authorized by the department, to make an evaluation or assessment, to enter the residence of, and to examine the dependent adult.

Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to gain access to the financial records of the dependent adult.

~~**176.6(4)** County attorneys, law enforcement agencies, multidisciplinary teams as defined in Iowa Code section 235B.1, subsection 1, and social services agencies in the state shall cooperate and assist in the evaluation or assessment upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the~~

protection of the dependent adult.

~~176.6(5)~~ **176.6(4)** Completion of evaluation or assessment report. Upon completion of its evaluation or assessment, the department shall complete a report that describes its findings and includes all actions taken or contemplated.

a. The department shall complete its report within 20 working business days of the receipt of the abuse allegations, unless the worker's supervisor grants an extension of time for good cause ~~shown~~. The worker's supervisor may grant an extension for a maximum of 30 working business days. No more than three extensions shall be granted.

b. Upon completion of an assessment or evaluation, the department shall enter its report into the dependent adult reporting and evaluation system (DARES).

~~c. Upon completion of an assessment when the alleged abuse is the result of the acts or omissions of the dependent adult, the department shall place the report in the case file of the dependent adult and enter the information into DARES.~~

~~176.6(6)~~ **176.6(5)** Report to county attorney. The department shall ~~transmit a copy of the report of its~~ provide electronic access to the complete evaluation or assessment to the appropriate county attorney. ~~The county attorney shall notify the local office of the department of any actions or contemplated actions with respect to a suspected case of adult abuse.~~

**176.6(7)** **176.6(6)** Based on the evaluation, the department shall complete an assessment of services needed by a dependent adult believed to be the victim of abuse, the dependent adult's family, or a caretaker. The department shall explain that the department does not have independent legal authority to compel the acceptance of protective services. Upon voluntary acceptance of the offer of services, the department shall make referrals or may provide necessary protective services to eligible dependent adults, their family members, and caretakers.

~~176.6(8)~~ **176.6(8)** Court action. ~~When, upon completion of the evaluation or assessment or upon referral from the state department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator, or for admission or commitment to an appropriate institution or facility, pursuant to the applicable procedures under Iowa Code chapter 125, 222, 229, or 633. The department may pursue other remedies provided by law pursuant to the applicable procedures under Iowa Code sections 235B.17, 235B.18, 235B.19, and 235B.20 or any other legal remedy which provides protection to a dependent adult. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action, and shall appear and represent the department at all district court proceedings.~~

~~176.6(9)~~ The department shall assist the district court during all stages of court proceedings involving a suspected case of adult abuse.

~~176.6(10)~~ In every case involving adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult when necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to Iowa Code section 235B.3, subsection 7, paragraph "e," the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

**176.6(11)** **176.6(7)** Notification of licensing authority. Based on information discovered during an evaluation of dependent adult abuse in a program providing care to a dependent adult as authorized pursuant to Iowa Code section 235B.6(2) "c" and for the purpose of assuring safety and mitigating

risk to dependent adults, the department shall notify the licensing or accrediting authority for the program, the governing body of the program, and the administrator in charge of the program of any of the following:

- a. A violation of program policy noted in the evaluation.
- b. An instance in which program policy or lack of program policy may have contributed to the dependent adult abuse.
- c. An instance in which general practice in the program appears to differ from the program's policy.

~~The licensing or accrediting authority, the governing body, and the administrator in charge of the program shall take any lawful action which may be necessary or advisable to protect dependent adults receiving care in the program.~~

~~176.6(12)~~ **176.6(8)** Assessments Services by other agencies. The department may approve agencies considered capable and appropriate to complete assessments of provide services during the course of an assessment or evaluation to dependent adults who are suspected of being abused or neglected.

a. The department may make a referral to an approved agency to complete an assessment of provide services to a dependent adult who is suspected of being abused or neglected, in conjunction with a department abuse evaluation or assessment on the dependent adult.

b. The department may use information obtained ~~from the assessment completed~~ during services provided by the approved agency in the abuse evaluation or assessment. The department has complete authority in determining the conclusions of the abuse evaluation or assessment.

~~176.6(13) Referrals to other agencies. During an assessment or evaluation of suspected abuse of a dependent adult, the department shall:~~

~~a. Make a referral to the division of labor services of the department of workforce development if an issue is discovered that concerns wages, workplace safety, or labor and employment matters under the jurisdiction of that agency.~~

~~b. Make a referral to the civil rights commission if an issue is discovered that involves discrimination under the jurisdiction of that agency.~~

~~176.6(14)~~ **176.6(9)** Assessment of dependency and risk. After the first visit to a dependent adult who is alleged to be abused During a dependent adult abuse assessment or evaluation, the department shall complete an assessment of the adult using a form prescribed by the department pursuant to Iowa Code section 235B.16A(2). The department shall assess:

- a. The adult's dependency,
- b. The risk to the adult's health or safety, and
- c. The areas in which the adult is either dependent or independent.

~~176.6(15)~~ **176.6(10)** Follow-up for at-risk adults. When it has not been possible or necessary to obtain a court order for services to an at-risk adult, the department shall attempt to empower the at-risk adult to agree to accept services and to participate in preparing a safety plan. If the adult refuses to sign a safety plan for an at-risk adult and to accept recommended services, the department shall provide periodic visits at the conclusion of the assessment or evaluation. Periodic visits will be conducted with the at-risk adult. The department has no authority to share information or obtain information with any other individuals during the course of periodic visits. Periodic visits should not be used as a means to continue gathering assessment or evaluation information.

a. *Purpose.* The purpose of the visits shall be to:

- (1) Assess the adult for increased risk or impairment,
- (2) Monitor the adult's situation to determine the feasibility of intervening with protective services, and
- (3) Empower the adult to accept recommended services and to engage in safety planning.

b. *Exemption.* If it has been determined there is a physical threat to the safety of the department employee who is attempting to visit an at-risk adult, the department shall not attempt a periodic visit unless the physical threat to safety has been removed.

- c. Criteria to continue visits.* Periodic visits shall continue if:
- (1) The adult's health or safety has deteriorated somewhat but not to the point that a court order is necessary; or
  - (2) The adult's health or safety has remained the same and there is a possibility the adult may in the future agree to services and to participating in preparing a safety plan.
- d. Criteria to end visits.* Periodic visits shall be terminated when:
- (1) The adult agrees to services and services are arranged; or
  - (2) The adult's health or safety has deteriorated to the point that the department has requested court action pursuant to subrule 176.6(8); or
  - (3) The adult's health or safety has not changed six months after the initial report of alleged abuse ~~and~~ there appears no possibility the adult will ever agree to services ~~and~~ the adult ~~is competent~~ has the capacity to make decisions.

ITEM 9. Amend rule 441—176.7(235B) as follows:

**441—176.7(235B) Appropriate evaluation or assessment.**

~~176.7(1) After receipt of the report alleging dependent adult abuse, the field worker shall make an evaluation or assessment to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources would tend to corroborate the alleged abuse.~~

~~176.7(2) When the information gathered in the evaluation or assessment tends to corroborate, or the worker is uncertain as to whether it repudiates the allegations of the report, the worker shall immediately continue the evaluation or assessment by making a reasonable effort to ensure the safety of the adult. The worker and the worker's supervisor shall determine whether an immediate threat to the physical safety of the adult is believed to exist.~~

~~a. If an immediate threat to the physical safety of the adult is believed to exist, the field worker shall make every reasonable effort to examine the adult, as authorized by 176.6(3), within one hour after receipt of the report and shall take any lawful action necessary or advisable for the protection of the adult.~~

~~b. When physical safety of the adult is not endangered, the worker shall make every reasonable effort to examine the adult within 24 hours after receipt of the report.~~

~~176.7(3) In the event the information gathered in the evaluation or assessment fails to corroborate the allegation of adult abuse, the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the report required by subrule 176.6(5).~~

176.7(1) After receipt of a report alleging dependent adult abuse which meets criteria as outlined in subrule 176.3(1), a dependent adult abuse evaluation or assessment will be initiated and will be assigned to an adult protection worker. The adult protection worker will make an effort to observe and examine the dependent adult as authorized by subrule 176.6(3) and evaluate the dependent adult's safety.

a. For cases where there is information that the alleged perpetrator has access to the adult subject, reasonable efforts shall be made to observe the adult subject and evaluate the adult subject's safety within 24 hours of commencing the assessment of the report alleging dependent adult abuse.

b. For cases where there is information that the alleged perpetrator clearly has no access to the adult subject, or for cases where services are in place to mitigate any safety concerns, reasonable efforts shall be made to observe the adult subject and evaluate the adult subject's safety within 72 hours of commencing the assessment of the report alleging dependent adult abuse.

c. When reasonable efforts have been made to observe the adult subject within the specified time frames and the worker has established that there is no need to observe and no risk to the adult subject, the observation of the adult subject may be delayed or waived with supervisory approval.

176.7(2) After receipt of the report alleging dependent adult abuse, the adult protection worker shall conduct an evaluation or assessment to determine whether the information as reported, other

known information, and any information gathered as a result of the worker's contact with collateral sources or other collateral contacts would tend to corroborate the alleged abuse.

176.7(3) In the event the information gathered in the evaluation or assessment fails to corroborate the allegation of dependent adult abuse as defined in Iowa Code section 235B.2(5) "a," the worker, with approval of the supervisor, may terminate the evaluation or assessment and submit the report.

ITEM 10. Rescind rule **441—176.8(235B)**.

ITEM 11. Renumber rules **441—176.9(235B)** to **441—176.13(235B)** as **441—176.8(235B)** to **441—176.12(235B)**.

ITEM 12. Amend renumbered rule 441—176.8(235B) as follows:

**441—176.8(235B) Registry records.** Central registry records shall be kept in the name of the dependent adult and cross-referenced in the name of the ~~caretaker~~ alleged person responsible (if applicable).

ITEM 13. Amend renumbered rule 441—176.9(235B) as follows:

**441—176.9(235B) Adult Dependent adult abuse information disseminated.**

**176.9(1) Requests for information.** Written requests for dependent adult abuse information by the subject of a report ~~as defined in subrule 176.10(3), paragraph "a,"~~ may be submitted to the county office of the department on the department-prescribed ~~form entitled Request for Child and Dependent Adult Abuse Information Form 470-0643 or 470-2444.~~

Oral requests for dependent adult abuse information may be made to the county office or the central registry when the person making the request believes that the information is needed immediately and the person is authorized to access the information, pursuant to the requirements of Iowa Code section ~~235B.7, subsection 2~~ 235B.7(2). If a request is made orally by telephone, a written request shall be filed within 72 hours of the oral request on the department-prescribed ~~form entitled Request for Child and Dependent Adult Abuse Information Form 470-0643.~~ When an oral request to the county office to obtain dependent adult abuse information is granted by the central registry, the county shall document the approval to the central registry on the department-prescribed ~~form entitled Request for Child and Dependent Adult Abuse Information Form 470-0643.~~

All other requests for information shall be made to the central registry by mail or fax pursuant to the requirements of Iowa Code section 235B.7.

**176.9(2) Verification of identity.** The county office shall verify the identity of the person making the request on the department-prescribed ~~form entitled Request for Child and Dependent Adult Abuse Information Form 470-0643.~~ Upon verification of the identity of the person making the request, the county office shall transmit the request to the central registry. The central registry shall verify the identity of persons making requests for information directly to the central registry by telephone, mail, or fax, or in person, on the department-prescribed form entitled Request for Child and Dependent Adult Abuse Information Form 470-0643.

**176.9(3) Approval of requests.** The department shall grant access to dependent adult abuse information as authorized by Iowa Code section 235B.6. Upon approval of any request for dependent adult abuse information authorized by this rule, the department may withhold the name of the person who made the report of dependent adult abuse ~~when the department finds that the disclosure of the person's identity would be detrimental to the person's interest~~ pursuant to Iowa Code section 22.7(18).

**176.9(4) Requests concerning applicants for employment and employees of health care programs.** A health care program making a request for dependent adult abuse information for the purpose of

determining employability, as authorized by Iowa Code section ~~235B.6, subsection 2, paragraph "e," subparagraphs (6) and (7); 235B.6(2) "e" (6) and (7) and section 135C.33, subsection 6~~ 135C.33(6), shall request the information directly from the central registry or obtain the information from the ~~Internet electronic information system maintained by the health facilities division of the department of inspections and appeals~~ single contact repository (SING).

Requests made directly to the central registry shall be made on the department-prescribed form entitled Request for Child and Dependent Adult Abuse Information Form 470-0643.

Health care programs requesting dependent adult abuse background checks on employee applicants and employees by use of the ~~Internet electronic information system SING~~ shall complete the department-prescribed form entitled ~~Access to Confidential Abuse Information and Non-Redissemination Agreement. The form Form 470-3767. Form 470-3767~~ shall be signed by the administrator of the health care program and be sent to the central registry before receipt of the information from the department. The administrator shall agree not to redisseminate dependent adult abuse information obtained through the ~~Internet electronic information system SING~~, except as authorized in Iowa Code sections 235B.6 and 235B.8.

~~176.9(5) Dissemination of undetermined reports. Rescinded IAB 8/6/03, effective 7/10/03.~~

~~176.9(6) Access to unfounded dependent adult abuse information. Access to unfounded dependent adult abuse information is authorized only to:~~

~~a. Persons identified as subjects of a report, including the dependent adult named in a report as a victim, a guardian of a dependent adult named in a report as a victim, a person named in a report as having abused a dependent adult, or an attorney representing any of the above;~~

~~b. An employee or agency of the department of human services responsible for the evaluation or assessment of a dependent adult abuse report;~~

~~c. Registry or department personnel, when necessary to the performance of their official duties, or a person or agency under contract with the department to carry out official duties and functions of the registry;~~

~~d. The mandatory reporter who reported dependent adult abuse in an individual case;~~

~~e. The long term care resident advocate, if the victim resides in a long term care facility or the alleged perpetrator is an employee of a long term care facility; and~~

~~f. A multidisciplinary team, if the department approves the composition of the team and determines that access to the team is necessary to assist in the evaluation, diagnosis, assessment, and disposition of a dependent adult abuse case.~~

~~176.9(7)~~ 176.9(5) *Requests concerning employees of department facilities.* When a request is made by the hiring authority of a department operated facility which provides direct client care and the request is made for the purpose of determining continued employability of a person employed, with or without compensation, by the facility, the information shall be requested directly from the central registry. The information requested shall be disseminated to the personnel office of the department. The personnel office shall redisseminate the information to the hiring authority for the person involved only upon a finding that the information has a direct bearing on employability of the person involved.

When the personnel office determines that the information has no direct bearing on employability, the hiring authority shall be notified that no job-related dependent adult abuse information is available. If the central registry and local office files contain no information, the hiring authority shall be so informed.

~~176.9(8)~~ 176.9(6) *Dependent adult abuse information disseminated and redisseminated.* Notwithstanding ~~subrule 176.10(1)~~ requests pursuant to Iowa Code section 235B.7, written requests and oral requests are not required for dependent adult abuse information that is disseminated to an employee of the department ~~of human services~~, a district court, ~~or~~ the attorney representing the department as authorized by Iowa Code section 235B.6, or the office of the attorney general.

~~176.9(9)~~ 176.9(7) *Required notification.* The department ~~shall~~ will make a reasonable attempt to notify ~~orally the subject of a report of the results of the evaluation or assessment~~ dependent adult

abuse subjects as described in Iowa Code section 235B.6(2) “a” of the outcome of the dependent adult abuse assessment or evaluation. The department shall subsequently ~~transmit~~ send a written notice to the ~~subject~~ report subjects which will include information regarding the results, the confidentiality provisions of Iowa Code sections 235B.6 and 235B.12, and the procedures for correction or expungement and appeal of dependent adult abuse information as provided in Iowa Code section 235B.10.

~~176.9(10)~~ 176.9(8) *Mandatory reporter notification.* The department shall attempt to notify orally the mandatory reporter who made the report in a dependent adult abuse case of the results of the evaluation or assessment and of the confidentiality provisions of Iowa Code sections 235B.6 and 235B.12. The department shall subsequently transmit a written adult protective notification on a form prescribed by the department to each mandatory reporter who made the report. The form shall include information regarding the results of the evaluation or assessment and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in Iowa Code section 235B.8.

~~176.9(11)~~ 176.9(9) *Subjects informed of abuse history.* The department may inform a subject of a dependent adult abuse report of a person’s abuse history if the department determines at any time that disclosure is necessary for the protection of the dependent adult. A subject may be informed that a person is listed on the child or dependent adult abuse registry as having a founded abuse report or is listed on the sex offender registry.

ITEM 14. Amend renumbered rule 441—176.11(235B) as follows:

**441—176.11(235B) Examination of information.** ~~Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8 a.m. and 12 p.m. or 1 p.m. and 4 p.m., Monday through Friday, except state authorized holidays.~~

~~The Pursuant to Iowa Code section 235B.10, any person, or that person’s attorney, requesting to examine the information in the registry which refers to that person, shall be allowed to inspect the information after providing appropriate identification. Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8 a.m. and 12 noon or 1 p.m. and 4 p.m., Monday through Friday, except state authorized holidays.~~

ITEM 15. Amend renumbered rule 441—176.12(235B) as follows:

**441—176.12(235B) Dependent adult abuse information registry.** The department shall create a central abuse registry for dependent adult abuse information. The registry shall collect, maintain, and disseminate dependent adult abuse information as follows:

**176.12(1) Founded reports.** A report of dependent adult abuse determined to be founded shall be retained and sealed by the registry in accordance with Iowa Code section 235B.9.

**176.12(2) Unfounded reports.** A report of dependent adult abuse determined to be unfounded shall be expunged five years from the date it is determined to be unfounded, in accordance with Iowa Code section ~~235B.9, subsection 2, as amended by 2009 Iowa Acts, Senate File 484~~ 235B.9(2).

**176.12(3) Rejected intakes.** Reports that are found not to meet the criteria to be accepted for evaluation or assessment of abuse shall be kept in the ~~local office~~ dependent adult reporting and evaluation system (DARES) for three years from the date the report of abuse was determined to be rejected.

**176.12(4) Assessments.** Reports classified as assessments shall not be included in the central registry but shall be maintained in the ~~local office~~ DARES. The central registry shall be notified of the disposition of the assessment report.

*a. Self-denial of critical care.* Reports involving abuse as a result of the acts or omissions of the dependent adult will be assessments. These reports shall be retained in the ~~dependent adult’s case file in the local office~~ DARES for five years and then destroyed.



*b. Confirmed, not registered.* Reports of dependent adult abuse where physical abuse ~~or~~, assault, unreasonable confinement, unreasonable punishment, denial of critical care, or personal degradation committed by a caretaker is confirmed but is determined to be minor, isolated, and unlikely to reoccur shall be assessments. These reports shall be maintained in the ~~local office~~ DARES for five years and then destroyed unless a subsequent report of dependent adult abuse on the same caretaker is founded. If a subsequent report on the same caretaker is founded within the five-year period, the confirmed, not registered report shall be maintained in the ~~local office~~ DARES for ten years from the date of the subsequent report and then sealed.

ITEM 16. Renumber rule **441—176.15(235B)** as **441—176.13(235B)**.

ITEM 17. Amend renumbered rule 441—176.13(235B) as follows:

**441—176.13(235B) Multidisciplinary teams.**

**176.13(1) Purpose of multidisciplinary teams.** The service area shall establish multidisciplinary teams for the purpose of assisting the department in assessment, diagnosis, and disposition of reported dependent adult abuse cases. The disposition of a case may include the provision for treatment recommendations and services.

**176.13(2) Execution of team agreement.** When the team is established, the service area manager or designee and all team members shall execute an agreement on a form prescribed by the department. The multidisciplinary team agreement shall specify:

*a.* That the team shall be consulted solely for the purpose of assisting the department in the assessment, diagnosis and treatment of dependent adult abuse cases.

*b.* That any team member may cause a dependent adult abuse case to be reviewed if approved by the department through use of the process of requesting dependent adult abuse information specified in rule ~~441—176.10(235B)~~ 441—176.9(235B).

*c.* That no team members shall redisseminate dependent adult abuse information obtained solely through the multidisciplinary team. This shall not preclude redissemination of information as authorized by Iowa Code section 235B.6 when an individual team member has received information as a result of another authorized access provision of the Iowa Code.

*d.* That the department may consider the recommendation of the team in a specific dependent adult abuse case but shall not, in any way, be bound by the recommendations.

*e.* That any written report or document produced by the team pertaining to an individual case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of Iowa Code sections 235B.6 and 235B.8 and of 441—Chapter 176.

*f.* That any written records maintained by the team which identify an individual dependent adult abuse case shall be destroyed when the agreement lapses.

*g.* That consultation team members shall serve without compensation.

*h.* That any party to the contract may withdraw with or without cause upon the giving of 30 days' notice.

*i.* The date on which the agreement will expire.

**176.13(3) Filing of agreement.** Whenever a team is created, a copy of the executed contract shall be filed with the central registry in addition to any other requirement placed upon execution of agreements by the department.

ITEM 18. Rescind rule **441—176.16(235B)**.

ITEM 19. Renumber rule **441—176.17(235B)** as **441—176.14(235B)**.

ITEM 20. Amend renumbered rule 441—176.14(235B) as follows:

**441—176.14(235B) Request for correction or expungement.** The department of human services is responsible for correction or expungement of reports prepared by department staff. The department of inspections and appeals is responsible for correction or expungement of reports prepared by that department's staff and that determination shall be binding on the registry.

**176.14(1)** ~~Within six months of the date of the notice of evaluation results, a person may file with the registry a written statement to the effect that the dependent adult abuse information referring to the person is partially or entirely erroneous. The person may also request a correction of that information or of the findings of the report. The~~ When a request for correction or expungement pursuant to Iowa Code section 235B.10 is received, the central registry will record all requests and ~~immediately~~ promptly forward the requests to the division of health facilities, department of inspections and appeals, when the reports were prepared by the department of inspections and appeals. The registry will notify the person requesting a correction that the report has been sent to the department of inspections and appeals.

**176.14(2)** Unless the designated department corrects the information or findings as requested, the designated department shall provide the person with an opportunity for a hearing as provided by 441—Chapter 7 to correct the information or the findings. The department may defer the hearing until the conclusion of a pending district court case relating to the information or findings.



Iowa Department of Human Services  
**Information on Proposed Rules**

Name of Program Specialist Gloriana Fisher	Telephone Number 515-281-5392	Email Address gfisher@dhs.state.ia.us
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1. Give a brief purpose and summary of the rulemaking:  
As a part of the 5-year rule review, this change to administrative rules is designed to align consistent language and direction.
2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):  
The dependent adult abuse administrative rules are authorized by Iowa Code Chapter 235B.
3. Describe who this rulemaking will positively or adversely impact.  
The changes will incorporate common language decreasing unnecessary future changes and will positively impact all.
4. Does this rule contain a waiver provision? If not, why?  
No. Not applicable.
5. What are the likely areas of public comment?  
No public comments are anticipated.
6. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee.)  
No such impact is anticipated.



## Administrative Rule Fiscal Impact Statement

Date: June 22, 2022

**Agency:** Human Services  
**IAC citation:** 441 IAC 176  
**Agency contact:** Gloriana Fisher, Social Worker 6

**Summary of the rule:**

The rule defines dependent adult abuse.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.
- Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.
- Fiscal impact cannot be determined.

**Brief explanation:**

[Budget Analysts must complete this section for ALL fiscal impact statements.](#)

This change to administrative rules is designed to align consistent language and direction. The changes will incorporate common language decreasing unnecessary future changes. No fiscal impact is expected.

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

	<u>Year 1 (FY 2023)</u>	<u>Year 2 (FY 2024)</u>
<b>Revenue by each source:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL REVENUE</b>	_____	_____
<b>Expenditures:</b>		
General fund	_____	_____
Federal funds	_____	_____
Other (specify):	_____	_____
<b>TOTAL EXPENDITURES</b>	_____	_____
<b>NET IMPACT</b>	0.00	0.00

This rule is required by state law or federal mandate.  
*Please identify the state or federal law:*  
 Identify provided change fiscal persons:

Funding has been provided for the rule change.  
*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.  
*Please explain how the agency will pay for the rule change:*  
 No fiscal impact.

***Fiscal impact to persons affected by the rule:***

No fiscal impact.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***

No fiscal impact.

Agency representative preparing estimate: David O. Philmon, Jr. JH 09/21/2022, JB 09/21/2022

Telephone number: 404-345-1088