

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 237A.12 and 2009 Iowa Acts, Senate File 478, sections 208 and 210, the Department of Human Services proposes to amend Chapter 109, "Child Care Centers," Iowa Administrative Code.

The proposed amendments would:

- Implement regulatory fees for issuing child care center licenses;
- Set fees for Department processing of criminal and child abuse record checks;
- Require national criminal history checks based on fingerprints for all persons subject to record checks due to involvement in child care at a licensed center;
- Require centers to have a protocol to handle incidents of biting;
- Require that center volunteers be at least 16 years old; and
- Clarify policy on interim permission for a new facility to open without a license and for training requirements for center directors.

Implementation of regulatory fees based on a child care center's capacity is required by 2009 Iowa Acts, Senate File 478, section 208. Under the proposed amendments, fee amounts would range from \$50 for a center with the capacity to care for up to 20 children to \$150 for a center with the capacity to care for more than 150 children. Fees would be payable before a full or provisional license is issued. Due to the required determination of capacity, the Department will notify each center of the amount of the fee and the due date. Fees will be in effect for relicensures with an effective date on or after June 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after April 1, 2010.

Section 209 of 2009 Iowa Acts, Senate File 478, amends Iowa Code section 237A.5 to require national criminal history checks through the Federal Bureau of Investigation and to specify that the Department shall not be responsible for the cost of these record checks. This requirement shall be phased in as centers are licensed or relicensed beginning January 1, 2010. Centers are responsible for obtaining and submitting fingerprints of staff and others required to have record checks. Training in taking fingerprints is expected to be offered by the Department of Public Safety. A person who has passed state record checks may begin involvement with child care pending the response to the national criminal history check.

Although the amendments set a fee for state record checks made through the Department, it is anticipated that most facilities will conduct record checks directly through the state's "single contact repository" (SING). The single contact repository allows facilities electronic access to criminal and abuse registry information through one contact, instead of requiring separate requests to each agency. To use SING, centers will need to set up business accounts with the Department of Public Safety. In order to reduce duplicate expenses for national record checks when a person moves to another facility, the rules provide that one child care center may forward specified information about these checks to another center upon request.

The amendments clarify that the Department's standard procedure is to issue Form 470-4690, Permission to Open Without a License, to a new center when compliance with administrative

requirements is established and then to complete other aspects of the licensing inspection process after the center begins operation.

The amendments also clarify that training requirements for all center directors are the same as for full-time staff, regardless of whether the director is considered full-time or part-time.

The requirement for a protocol about biting is intended to promote better outcomes when biting occurs, since biting often leads to children being injured and to child abuse assessments.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). However, the Department does not have authority to waive statutory provisions.

Any interested person may make written comments on the proposed amendments on or before September 29, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Tuesday, September 29, 2009, from 1 to 3 p.m. in the Assembly Room at the Department for the Blind, 524 Fourth Street, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement 2009 Iowa Acts, Senate File 478, Division XVII, and Iowa Code chapter 237A.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Regulatory fee” in rule **441—109.1(237A)**:

“*Regulatory fee*” means the amount payable to the department for licensure of a child care center based on the capacity of the center.

ITEM 2. Amend paragraphs **109.2(1)“c”** and **“d”** as follows:

c. When a center makes a sufficient application for an initial ~~or renewal~~ license, it may operate for a period of up to 120 calendar days from the date of issuance of Form 470-4690, Permission to Open Without a License, pending a final licensing decision. A center has made a sufficient application when it has submitted the following to the department:

(1) to (4) No change.

d. Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) If the applicant has been issued Form 470-4690, Permission to Open Without a License, the applicant shall be notified of approval or denial within 120 calendar days of the date of issuance of Form 470-4690.

(2) No full or provisional license shall be issued before payment of the applicable regulatory fee as determined pursuant to subrule 109.2(7).

ITEM 3. Amend paragraph **109.2(2)“a”** as follows:

a. An applicant showing full compliance with center licensing laws and these rules, including department approval of center plans and procedures and submission of the regulatory fee as specified in subrule 109.2(7) to the department by the date due, shall be issued a license for 24 months. In determining whether or not a center is in compliance with the intent of a licensing standard outlined in this chapter, the department shall make the final decision.

ITEM 4. Adopt the following **new** paragraph **109.2(4)“f”**:

f. The regulatory fee as specified in subrule 109.2(7) is not received by the department's division of fiscal management by the due date indicated on Form 470-4834, Child Care Center Licensing Fee Invoice.

ITEM 5. Adopt the following **new** subrule 109.2(7):

109.2(7) Regulatory fees. For relicensures with an effective date on or after June 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after April 1, 2010, a fee based upon center capacity is due to the department before the issuance of the license in accordance with this subrule.

a. *Fee structure.* The amount of the fee is based on the capacity of the center as follows:

<u>Center Capacity</u>	<u>Fee Amount</u>
0 to 20 children	\$50
21 to 50 children	\$75
51 to 100 children	\$100
101 to 150 children	\$125
151 or more children	\$150

b. *Determination of capacity.* The licensing consultant shall determine center capacity by dividing the amount of usable space by the amount of space required per child, as specified in subrule 109.11(1) and subparagraphs 109.11(3)“a”(2) and (3). Upon approval by the department, the final determination of center capacity may include evaluation of other factors that influence capacity, as long as physical space requirements per child as defined in subrule 109.11(1) and subparagraphs 109.11(3)“a”(2) and (3) are maintained.

c. *Notification.* Upon final determination of center capacity by the licensing consultant, the licensing consultant or designee shall sign and provide Form 470-4834, Child Care Center Licensing Fee Invoice, to the center. Form 470-4834 will indicate:

- (1) The center’s name,
- (2) The center’s tax identification number,
- (3) The center’s address,
- (4) The center’s final licensing capacity,
- (5) The center’s regulatory fee amount, and
- (6) The date the fee is due to the department.

d. *Payment.* The center shall return Form 470-4834 to the department with the licensing fee payment within 30 state business days from the date of the licensing consultant's or designee’s signature on Form 470-4834. Payment may be in the form of cash, money order, or cashier’s check.

- (1) Payment must be received before the department will issue a full or provisional license.
- (2) Regulatory fees are nonrefundable and nontransferrable.

ITEM 6. Adopt the following **new** paragraph **109.4(2)“g”**:

g. Develop and implement a protocol for responding to incidents of biting.

ITEM 7. Amend subrule 109.6(5) as follows:

109.6(5) Volunteers and substitutes. A volunteer shall be at least 16 years of age.

a. No change.

b. The center shall have the volunteer or substitute:

(1) Complete Form 595-1396, DHS Criminal History Record Check, Form B, or any other permission form approved by the department of public safety for conducting an Iowa criminal history record check.

~~(2) Complete Form 470-0643, Request for Child Abuse Information.~~

(3) (2) Sign a statement indicating the volunteer or substitute has been informed of the volunteer’s or substitute’s responsibilities as a mandatory reporter.

ITEM 8. Amend subrule 109.6(6) as follows:

109.6(6) Record checks. ~~The department shall conduct criminal~~ Criminal and child abuse record

checks in Iowa shall be conducted for each owner, director, staff member, volunteer, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone and for anyone living in the child care facility who is 14 years of age or older. The department may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check Form B, or any other form required for criminal and child abuse record checks. The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa or in other states. The center shall keep copies of the results of all record checks, including department-issued documents sent to the center related to a records check conducted under this subrule, regardless of findings, for review by the department upon request.

a. Iowa records. Checks and evaluations of Iowa child abuse and criminal records, including the sex offender registry, shall be completed before the person's involvement with child care at the center. Iowa records checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any transgressions.

(1) The child care center may access the single contact repository (SING) as necessary to conduct a criminal and child abuse record check of the person in Iowa. If the results of the check indicate that the person has committed a transgression, the facility shall send a copy of the results to the department for determination of whether or not the person may be involved with child care, regardless of the person's status with the center.

(2) Unless a record check has already been conducted in accordance with subparagraph (1), the department shall conduct a criminal and child abuse record check in Iowa for a person who is subject to a record check. The department may access SING as necessary to conduct criminal and child abuse record checks in Iowa. The department may also conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa.

(3) The department or the child care center may use Form 470-0643, Request for Child Abuse Information, for child abuse record checks and Form 595-1396, DHS Criminal History Record Check Form B, or any other form approved by the department of public safety for criminal record checks.

(4) The cost of conducting the Iowa records checks is the responsibility of the child care center or, as permitted by law, of the person who is the subject of the records check. When the department conducts Iowa records checks in accordance with this paragraph, the center shall submit to the department a fee for each record check before the department initiates the record check process. The fee shall be \$25 through June 30, 2010, and \$35 effective July 1, 2010. Payment must be in the form of cash, money order, or cashier's check.

b. National criminal history records. National criminal history checks based on fingerprints are required effective with a center's initial licensure or relicensure on or after January 1, 2010. When this requirement goes into effect for a center, national criminal history checks are required for all persons subject to record checks under this subrule who are currently involved with child care at the center and for persons newly considered for involvement with child care on or after that date. The center shall submit all required fingerprints before the issuance of the license and before renewal of the license. Centers that have a relicensure date of January 1, 2010, shall have until February 1, 2010, to submit the fingerprints to the department of public safety.

(1) A national criminal history check shall be performed before or upon an individual's involvement with child care. If the results of record checks performed under paragraph 109.6(6) "a" or 109.6(6) "c" do not warrant prohibition of the person's involvement with child care or otherwise present protective concerns, the person may be involved with child care on a provisional basis until the national criminal history check and evaluation have been completed. The national criminal history check shall be repeated every four years and when the department or center becomes aware of any new transgressions committed in another state.

(2) The child care center shall provide fingerprints for submission through the state criminal history repository to the United States Department of Justice, Federal Bureau of Investigation. The child care center is responsible for obtaining the materials necessary for the fingerprinting process and

for submitting the fingerprints to the Iowa department of public safety.

(3) The cost of conducting the national criminal history check is the responsibility of the child care center or, as permitted by law, of the person who is the subject of the national criminal history check.

(4) If the results of the national criminal history check indicate that the person has committed a transgression, the center shall send a copy of the results of the records check to the department for determination of whether or not the person may be involved with child care, regardless of the person's status with the center.

(5) A center considering involvement of a person who has had a national criminal history check at another center may request information from that center. That center (or the department if the department's evaluation was performed after the person was no longer being considered for involvement with child care at that center) shall provide the following information in writing upon a center's request:

1. Date of most recent national criminal history check conducted on the person in question by the center, and

2. Whether or not the results of the check or any subsequent evaluations from that check resulted in clearance for involvement with child care.

c. Other states' records. The department may conduct a dependent adult abuse, sex offender registry, or other public or civil offense records check in other states for a person who is subject to a record check before the person's involvement with child care and when the department or center becomes aware of any transgressions in another state. When the department conducts records checks in accordance with this paragraph, the center shall submit a fee to the department before the department initiates the record check process. The fee shall be \$25 through June 30, 2010, and \$35 effective July 1, 2010. Payment must be in the form of cash, money order, or cashier's check.

~~a-~~ d. Mandatory prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) to (6) No change.

~~b-~~ e. Mandatory time-limited prohibition.

(1) No change.

(2) After the five-year prohibition period from the date of the conviction or the founded abuse report as defined in subparagraph ~~109.6(6)"b"(4)~~ 109.6(6)"e"(1), the person may request the department to perform an evaluation under paragraph ~~109.6(6)"e"~~ 109.6(6)"f" to determine whether prohibition of the person's involvement with child care continues to be warranted.

~~e-~~ f. Evaluation required. For all other transgressions, and as requested under subparagraph ~~109.6(6)"b"(2)~~ 109.6(6)"e"(2), the department shall notify the affected person and the licensee that an evaluation shall be conducted to determine whether prohibition of the person's involvement with child care is warranted.

(1) to (3) No change.

~~a-~~ g. Evaluation decision. Within 30 days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) to (4) No change.

~~e-~~ h. Notice to parents. The department shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care if there has been a founded child abuse record ~~against~~ committed by an owner, director, or staff member of the child care center. The center shall cooperate with the department in providing the names and addresses of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

~~f-~~ Repeat of record checks. ~~The child abuse and criminal record checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any~~

~~transgressions. Any new transgressions discovered shall be handled in accordance with this subrule.~~

ITEM 9. Amend subrule 109.7(2) as follows:

109.7(2) ~~Staff~~ Center directors and staff employed 20 hours or more per week. The requirements of this subrule apply to all center directors, regardless of whether the director works on a full-time or part-time basis.

a. During their first year of employment, all center directors and all staff employed 20 hours or more per week shall receive the following training:

(1) to (6) No change.

b. Following their first year of employment, all center directors and all staff who are employed 20 hours or more a week shall:

(1) to (3) No change.

ITEM 10. Amend subrule 109.9(1) as follows:

109.9(1) *Personnel records.* The center shall maintain personnel information sufficient to ensure that persons employed in the center meet minimum staff and training requirements and do not pose any threat to the health, safety, or well-being of the children. Each employee's file shall contain, at a minimum, the following:

a. A statement signed by each individual indicating whether or not the individual has any conviction ~~by~~ of violating any law ~~of~~ in any state or ~~if the individual~~ has any record of founded child abuse or dependent adult abuse in any state.

b. Copies of all records checks kept in accordance with state and federal law regarding confidentiality of records checks. These records may include:

(1) A copy of Form 595-1396, DHS Criminal History Record Check; Form B, or any other permission form approved by the department of public safety for conducting an Iowa criminal history record check. The center shall complete the form and forward it to the department before the start of employment.

~~e-~~ (2) A copy of Form 470-0643, Request for Child Abuse Information.

(3) Copies of the results of Iowa records checks conducted through SING for review by the department upon request.

(4) Copies of national criminal history check results.

c. Reserved.

d. ~~to f.~~ No change.