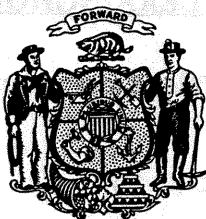


## WISCONSIN LEGISLATIVE COUNCIL STAFF

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**CLEARINGHOUSE REPORT TO AGENCY**


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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-161**

AN ORDER to amend HFS 50.01 (2), 50.03 (1) (b) 3. and 4., 50.04 (1) and (4), 50.05 (1) (b), (2) (a) and (3), 50.06 (1) (d), 50.065 (2) (intro.) and 50.08 (3) (c); to repeal and recreate HFS 50.01 (4), 50.03 (2) and 50.09 (1) (intro.); and to create HFS 50.03 (1) (b) 5., 50.044, 50.045, 50.05 (1) (c) and 50.065 (2) (c) and (d), relating to the adoption assistance program for families that adopt children with special needs.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

12-01-99 RECEIVED BY LEGISLATIVE COUNCIL.

12-29-99 REPORT SENT TO AGENCY.

RS:JLK:rv;jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

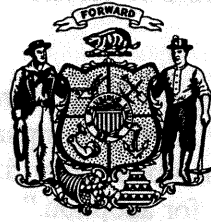
Comment Attached YES  NO

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## CLEARINGHOUSE RULE 99-161

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. Section HFS 50.03 (2) (b) refers to "s. HFS 50.03 (1) (b)." This reference should be changed to "sub. (1) (b)." Also, s. HFS 50.03 (2) (b) refers to "s. HFS 50.03 (2) or (3)." This reference should be changed to "this subsection or sub. (3)." [See s. 1.07 (2), Manual.]

b. Section HFS 50.044 (3) (c) refers to the uniform foster care rate "currently" in effect, the "current" basic rate and the "current" uniform foster care rate; s. HFS 50.045 (3) (c) refers to the "current" uniform foster care rate. Use of the words "current" and "currently" should be eliminated to avoid any ambiguity--for example, it could be argued that what is intended is the rate in effect on the effective date of this rule, the rate in effect at the time of a decision on a request for amendment, the rate in effect at the time a request for an amendment is made or the rate in effect at some other point in time. [See s. 1.01 (9) (b), Manual.] The rule should be specific regarding which rates apply. Also, in s. HFS 50.045 (3) (c), the word "current" should be deleted from the phrase "current level of points."

c. In s. HFS 50.045 (1), the reference to "HFS 50.044" should be to "s. HFS 50.044." [See s. 1.07 (2), Manual.] In sub. (3) (c), the phrase ", as amended," should be deleted.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. HFS 50.01 (4) (c), it would be preferable to have more specific references to the statutes as follows:

- (1) Rather than referring to a “county *agency* authorized to place children for adoption under s. 48.57, Stats.,” (emphasis added), it would be preferable to refer to a “county department authorized under s. 48.57 (1) (e) or (hm), Stats., to place children for adoption.”
- (2) Rather than referring to “an agency authorized under ss. 48.60 and 48.61, Stats., to accept guardianship and place children under its guardianship for adoption,” it would be preferable to refer to a “licensed child welfare agency authorized under ss. 48.60 and 48.61 (5), Stats., to accept guardianship and to place children under its guardianship for adoption.”

b. In s. HFS 50.01 (4) (u), the reference to “s. HSS 56.09” should be changed to “s. HFS 56.09.” There are also several other references to “HSS” which should be changed to “HFS,” for example, see ss. HFS 50.03 (1) (b) 3., 50.044 (3) (c) and 50.045 (3) (c).

c. Section HFS 50.03 (2) (a) refers to the reasonable placement efforts to assure adoption placement. It does not refer to the requirement in s. 48.833, Stats., that an adoption agency must consider the availability of an adoption placement with a relative of the child. It may be useful to cross-reference this statutory requirement.

d. In s. HFS 50.044 (3) (a), the phrase “under sub. (2)” should be inserted after the first occurrence of the word “family.”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Sections HFS 50.01 (4) (d), 50.04 (4) and 50.044 (1) refer to “legal adoption.” The word “adoption” is defined in s. HFS 50.01 (4) (b), thus making it unnecessary and confusing to refer to an adoption as being “legal.”

b. According to the definition of “adoption agency” in s. HFS 50.01 (4) (c), it appears that all “adoption agencies” referred to in ch. HFS 50 could be deemed to be Wisconsin adoption agencies. Therefore, it is not clear why s. HFS 50.01 (4) (j) (intro.) refers to a “Wisconsin adoption agency.” Unless a distinction is intended between Wisconsin agencies and out-of-state agencies, s. HFS 50.01 (4) (j) (intro.) should simply refer to an adoption agency.

c. Section HFS 50.01 (4) (j) defines a “child at high risk” but does not refer to what the child is at high risk of. Other provisions refer to this, for example, s. HFS 50.01 (4) (r) refers to a child at high risk “of developing a moderate or intensive level of special needs,” and s. HFS 50.03 (1) (b) 5. refers to a “child at high risk of developing a moderate or intensive level of special needs under subd. 3.” It would be useful if the definition in s. HFS 50.01 (4) (j) included a reference to what the risk is of, thus providing more initial information and avoiding repeating

language in the rule. For example, s. HFS 50.01 (4) (j) (intro.) could be changed to the following: "‘Child at high risk’ means a child in the guardianship of an adoption agency who does not have a known special need under s. HFS 50.03 (1) (b) 1., 2., 3., or 4., but who is at high risk of developing a moderate or intensive level of special needs under s. HFS 50.03 (1) (b) 3. based on one or more of the following:".

d. Section HFS 50.01 (4) (j) 1. refers to the "guardianship agency." This term is not defined. It appears that this phrase should be changed to use the defined term "adoption agency" or "agency" in s. HFS 50.01 (4) (c). If not, the term "guardianship agency" should be defined or explained.

e. Section HFS 50.01 (4) (j) 3. defines a "child at high risk" as a child who "has experienced 4 or more placements with extended family or foster homes that might affect the normal attachment process." It is unclear whether this means: (1) that having experienced four or more placements is sufficient to establish this criteria; or (2) that the child must have experienced four or more placements *and* it must be established that those placements "might" affect the normal attachment process. This should be clarified.

f. Section HFS 50.01 (4) (j) 4. defines a "child at high risk" as a child who "experienced neglect in the first 3 years of life or sustained physical injury that might have a long term effect on physical, emotional or intellectual development." The following comments apply:

(1) "Neglect" is not defined in ch. HFS 50. It may be useful if it were defined, for example, by reference to the definition of "neglect" in s. 48.981 (1) (d), Stats. Must neglect be substantiated under s. 48.981, Stats., or by a finding by a court under s. 48.13 (10) or 948.21, Stats., or can "neglect" be established by other means for the purpose of s. HFS 50.01 (4) (j) 4.?

(2) Is "physical injury" intended to refer to any type of physical injury, for example, injury in an automobile accident, or is it intended to be physical abuse? If the former is intended, should this also refer to a physical disease instead of just a "physical injury"?

g. Section HFS 50.01 (4) (j) 2. refers to a medical diagnosis or medical history that "could" result in the child's later having certain kinds of conditions; s. HFS 50.01 (4) (j) 3. refers to placements that "might" affect the normal attachment process; s. HFS 50.01 (4) (j) 4. refers to neglect or injury that "might" have a long-term effect. It is unclear what distinction between "could" and "might" is intended. Also, it is not clear if the intention is to require a high probability, a remote possibility, a reasonable likelihood or some other standard. This should be clarified.

h. Section 48.975 (5) (a), Stats., requires the rule to define the extenuating circumstances under which an initial agreement to provide adoption assistance may be made after adoption. Section HFS 50.01 (4) (n) defines "extenuating circumstances," but it appears that the term is never used. A term should not be defined unless it is used.

It appears that the intent is to consider the circumstances in current s. HFS 50.065 (2) (a) 2. a. as those extenuating circumstances and apply the appeal procedure in s. HFS 50.065 (2). If so, s. HFS 50.065 should be amended to explicitly refer to extenuating circumstances and a separate definition may not be necessary. In addition, the internal inconsistency in s. HFS 50.065 (2) should be remedied. Section HFS 50.065 (2) (a) (intro.) provides, in pertinent part, that an adoptive parent may appeal “[a] decision of the department before the adoption became final not to approve an application for adoption assistance” under certain circumstances. The circumstances listed in s. HFS 50.065 (2) (a) 2. a. and d. involve circumstances in which there would have been no decision before the adoption became final because the parents were not given sufficient information before the adoption became final to initiate an application for adoption assistance. Because there was no application, there was no decision not to approve an application before the adoption became final and, literally, no appeal right under s. HFS 50.065 (2) (a). As this is not the intended result, this should be corrected.

It is not clear why the proposed definition of extenuating circumstances in s. HFS 50.01 (4) (m) did not include all of the circumstances in s. HFS 50.065 (2) (a) 2., rather than those in s. HFS 50.065 (2) (a) 2. a.

Also, the rule does not explain what happens if the circumstances in s. HFS 50.065 (2) (a) 2. a. and d. are discovered after the adoptive placement but before the adoption is final inasmuch as s. HFS 50.065 (2) applies only after the adoption is final and s. HFS 50.065 (1) does not explicitly cover such situations as currently drafted.

Because extenuating circumstances are an exception to the requirement in s. HFS 50.04 (1) that an adoption assistance agreement be approved at the time of adoptive placement, it may be useful if s. HFS 50.04 (1) provided a cross-reference to this exception.

i. Section HFS 50.01 (4) (m) refers to the “meaning established in” another provision; whereas s. HFS 50.01 (4) (n) refers to the “meaning found in” another provision. In both cases, it would be preferable to indicate that the term “has the meaning given in [the other provision].”

j. In s. HFS 50.01 (4) (o) and (p), “proceedings” should be singular. Also, both s. HFS 50.01 (4) (o) and (p) refer to “termination of parental rights proceedings under the laws of the state or the federal government.” Is the reference to “the state” intended to refer only to Wisconsin? If not, the phrase should be changed to “a state.” Also, do the laws of the federal government provide for termination of parents rights proceedings? If not, the reference to the laws of the federal government should be deleted. Should a reference to a termination of parental rights proceeding by a tribal court be included? In s. HFS 50.01 (4) (p), the phrase “or both” should be deleted as its inclusion does not change the meaning of the provision. Finally, the use of the terms “condition” and “status” should be made consistent.

k. In s. HFS 50.01 (4) (r), it may be useful to replace the phrase “or to the adoptive parents of a child at high risk of developing a moderate or intensive level of special needs” to read as follows: “and also means the \$0 payment to the adoptive parents or prospective adoptive parents of a child at high risk.” These changes would be useful to clarify that: (1) the maintenance payment in such cases is \$0; (2) the payment also applies to prospective adoptive

parents; and (3) "child at high risk" is a defined term and should explain what the child is at risk of as discussed in comment c., above.

l. In s. HFS 50.01 (4) (u), is the requirement that a substantial change in circumstances be "progressive" intended to eliminate circumstances in which a child suddenly develops intensified needs? Also, should the phrase "a change" be changed to "an increase" to avoid suggesting that the payment rate decreases based on a substantial change in circumstances?

m. Section HFS 50.03 (1) (b) 5. refers to a "child at high risk of developing a moderate or intensive level of special needs under subd. 3." It is unclear if the child must meet the criteria under the definition of a "child at high risk" under s. HFS 50.01 (4) (j) plus meet some additional criteria under s. HFS 50.03 (1) (b) 5. Any ambiguity about this could be eliminated by amending the definition in s. HFS 50.01 (4) (j) as discussed in comment c., above.

n. Section HFS 50.04 (1) should indicate that only prospective adoptive parents file an application under ss. HFS 50.03 (3) (b) or 50.04 (4)--while making it clear that only adoptive parents may file the request under ss. HFS 50.044 and 50.045.

o. Section HFS 50.04 (4) indicates that, prior to adoption, the "family" may file an application for an agreement to replace a prior agreement if the "family" believes there has been a change in circumstances. It then indicates that the agency must assess the current special needs of the child and, as appropriate, offer to "modify" the agreement to "replace" the prior agreement. The following comments apply:

(1) It appears that the term "change in circumstances" should be changed to the defined term "substantial change in circumstances."

(2) The term "family" is unclear. It appears that the term "family" should be changed to "prospective adoptive parent or parents."

(3) It is not clear why the "agency" must conduct the assessment. Under s. 48.975 (4) (b) 1., Stats., Department of Health and Family Services (DHFS) is required to conduct a review of any request for an amendment to increase benefits, not an "agency" as defined in s. HFS 50.01 (4) (c).

(4) It is not clear what is intended by "modifying" the agreement to "replace" the prior agreement. Section 48.975 (4) (b) (intro.), Stats., provides for amendment of an agreement, even an agreement entered into by proposed adoptive parents, rather than replacing an agreement. It is not clear why the agreement is being considered a replacement agreement, rather than an amended agreement.

(5) It appears that the appeal process in s. HFS 50.065 (1), which relates to appeals before an adoption is final, would apply to an adverse decision of a request for a replacement agreement. However, s. HFS 50.065 (1) does not clearly provide for such and should be amended to do so.

p. The following comments apply to s. HFS 50.044 (1):

- (1) Section HFS 50.044 (1) should be changed to add the requirement from s. 48.975 (4), Stats., that the parents must believe there has been a substantial change in circumstances before they may submit a request.
- (2) Section HFS 50.044 (1) indicates that adoptive parents who signed an adoption assistance agreement for a child at high risk may request a review to determine whether a substantial change in circumstances has occurred. However, s. 48.975 (4) (b), Stats., refers to allowing adoptive parents to request that the agreement be amended, rather than allowing them to request a review. Section HFS 50.044 (1) should more accurately reflect the statutory language. This change would have the added advantage of making the language in s. HFS 50.044 consistent with the language in s. HFS 50.065 (2) (c).
- (3) The last sentence of s. HFS 50.044 (1) provides that if the request does not result in an amended agreement, the adoptive parents "may request a review no earlier than 12 months after the date of the last request for a review." As noted in comment (2), above, the reference to requesting a review is problematic--especially in the last sentence of s. HFS 50.044 (1) when the word "review" may be confused with appeal rights. Again, the references to requesting a review should be changed to requesting that an agreement be amended.

q. Section HFS 50.044 (2) (intro.) indicates that "The family shall do all of the following:". It appears that the defined term "adoptive family" should be used, rather than the term "family." Also, this introductory language would be clearer if it specified: "To request that an agreement be amended, the adoptive family shall do all of the following:". These comments also apply to s. HFS 50.045 (2).

r. Section HFS 50.044 (3) (intro.) would be clearer if it specified: "If a request to amend an adoption assistance agreement is received, the department shall do all of the following:". Using this approach, the introductory phrase in s. HFS 50.044 (3) (b), "Upon receiving an application to amend the agreement," could be eliminated. These comments also apply to s. HFS 50.045 (3) (intro.) and (3) (b).

s. Sections HFS 50.044 (3) (b) and 50.045 (3) (b) refer to contacting the "appropriate human service agency or agencies" to request information about substantiated reports of abuse or neglect. It appears that this should more specifically refer to the appropriate county department of human services, county department of social services, or in Milwaukee County, DHFS.

t. It is not clear why ss. HFS 50.044 (3) (c) and 50.045 (3) (c) provide that if there has been a substantial change in circumstances and no substantiated report of abuse or neglect by the adoptive parents, DHFS must offer to adjust the adoption assistance maintenance payment for *up to one year*. This presumably means that after the year has expired, the amount of the adoption



assistance maintenance payment will revert to the amount that was in effect immediately prior to the amendment. However, this is not specifically stated.

Section 48.975 (4) (bm), Stats., requires that if there has been an amended agreement, DHFS must annually review the amended agreement to determine whether the substantial change in circumstances continues to exist. Section 48.975 (5) (dm), Stats., provides that if the substantial change in circumstances no longer exists, DHFS must offer to decrease maintenance payments, but the offer may not result in an amount that is less than the initial amount of adoption assistance for maintenance.

The rule does not make clear the procedure used to determine whether to continue an amended agreement beyond the one year and what will happen at the end of one year. (Section HFS 50.06 (3) (a), which predates s. 48.975 (4) (bm), Stats., requires that DHFS annually review each adoption assistance case to determine the need for continuing, temporarily suspending or adjusting adoption assistance. However, it is not clear that this is the review contemplated by s. 48.975 (4) (bm), Stats., and s. HFS 50.06 (3) (a) does not specifically refer to an annual review to determine if a substantial change in circumstances continues to exist.)

If the intent is that the adoptive parents must initiate a request for an extension of the current payment amount beyond the one year, the procedure for them to do so must be specified. Several provisions in the rule come close to addressing the issue but do not do so. For example, s. HFS 50.045 (1) indicates that if a person has an amended agreement in place, the person may, within 90 days prior to the expiration of the amended agreement, file a request with DHFS to "review the current circumstances of the child for the purpose of amending the amount of the monthly adoption assistance maintenance payment." Presumably, in most cases, the adoptive parents will simply want to amend the agreement to have it continue beyond the one year at the same rate, rather than amending the rate. As another example, s. HFS 50.045 (3) (a) refers to having DHFS "determine whether a substantial change in circumstances exists" but does not refer to having DHFS determine whether a substantial change in circumstances continues to exist. As a third example, s. HFS 50.045 (3) (c) refers to having DHFS offer to amend the adoption assistance agreement, but does not refer to having DHFS offer to continue the agreement.

Again, the rule should either eliminate the reference to a one-year amendment or clarify the procedure for reviewing the case--especially if some affirmative action on the part of the adoptive parents will be required. Presumably, any such affirmative actions would be initiated by DHFS, for example, by sending a form to the adoptive parents by a certain time.

u. Section HFS 50.045 (1) indicates that an adoptive parent with an agreement which provides for a \$0 maintenance payment may file a request under s. HFS 50.045. However, it appears that a request by such a person must be filed under s. HFS 50.044. This should be clarified. Also, s. HFS 50.045 (1) indicates that the adoptive parents may file a request with DHFS to "review the current circumstances of the child for the purpose of amending the amount of the monthly adoption assistance maintenance payment. However, s. 48.975 (4) (b), Stats., refers to allowing adoptive parents to request that an agreement be amended, rather than allowing them to request a review of circumstances. Section HFS 50.045 (1) should more accurately reflect the statutory language.

v. Section HFS 50.044 (1) permits an adoptive parent to make a new request no earlier than 12 months "after the date of the last request for a review." In contrast, s. HFS 50.045 (1) permits a request if there has been at least 12 months "since the denial of a previous request under this section." Is the difference in the two sections as to when the count begins, that is, date of request versus date of decision, intentional?

w. In s. HFS 50.045 (2) (b), it is not clear what "fully concurs" means as opposed to "concurs."

x. According to s. 48.975 (4) (b) 2., Stats., in s. HFS 50.045 (3) (c), the phrase "no substantiated abuse or neglect of the child" should be changed to "no substantiated abuse or neglect of the child by the adoptive parents."

y. Section HFS 50.06 (1) (d) refers to circumstances in which adoption assistance is "decreased" or "reduced." It is not clear why both terms are used and what difference is intended. Unless this is explained, the term "reduced" should be deleted.

z. In s. HFS 50.065 (2) (d), the phrase "determine whether a substantial change in circumstances has occurred" should be changed to "amend an adoption assistance agreement."

aa. On the Request for Adoption Assistance Amendment form (CFS-2092), it may be useful to have "Yes" and "No" check boxes under the three "Not Applicable" categories. Also, it is not clear what the reference to "(8 points)" is intended to mean under the behavioral care needs--moderate category.

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING, REPEALING AND RECREATING AND CREATING RULES

To amend HFS 50.01 (2), 50.03 (1) (b) 3. and 4., 50.04 (1) and (4), 50.05 (1) (b), (2) (a) and (3), 50.06 (1) (d), 50.065 (2) (intro.) and 50.08 (3) (c); to repeal and recreate HFS 50.01 (4), 50.03 (2) and 50.09 (1) (intro.); and to create HFS 50.03 (1) (b) 5., 50.044 and 50.045, 50.05 (1) (c) and 50.065 (2) (c) and (d), relating to the adoption assistance program for families that adopt children with special needs.

Analysis Prepared by the Department of Health and Family Services

This rulemaking order amends ch. HFS 50, the Department's rules for facilitating the adoption of children with special needs, to implement changes to the adoption assistance program statute, s. 48.975, Stats., made by 1997 Wisconsin Act 308. Those changes include permitting a written agreement for adoption assistance to be made following an adoption, but only in "extenuating circumstances;" permitting the amendment of an adoption assistance agreement for up to one year to increase the amount of adoption assistance for maintenance when there is a "substantial change in circumstances;" and requiring the Department to annually review the circumstances of the child when the original agreement has been amended because of a substantial change in circumstances, with the object of amending the agreement again to either continue the increase or to decrease the amount of adoption assistance if the substantial change in circumstances no longer exists. The monthly adoption assistance payment cannot be less than the amount in the original agreement, unless agreed to by all parties.

Section 48.975 (5), Stats., as amended by Act 308, directs the Department to promulgate rules that, among other things, define extenuating circumstances, a child with special needs and substantial change in circumstances.

Once the rule changes were developed, they were published by emergency order on November 16, 1999 to take effect on that date so that adoption assistance or the higher adoption assistance payments to which adoptive parents are entitled because of "extenuating circumstances" or a "substantial change in circumstances" under the statutory changes that were effective on January 1, 1999, could be made available to them as soon as possible rather than 7 to 9 months later which is how long the promulgation process takes for permanent rules. This is the proposed permanent order to amend ch. HFS 50 that will replace the time-limited emergency order that amended ch. HFS 50.

The Department's authority to amend, repeal and recreate and create these rules is found in ss. 48.975 (5) and 227.11 (2) (a), Stats. The rules interpret s. 48.975, Stats.

SECTION 1. HFS 50.01 (2) is amended to read:

HFS 50.01 (2) PURPOSE OF RULES. This chapter establishes criteria to be used by the department in determining when adoption assistance, as authorized by s. 48.975, Stats., may be provided, specifies limitations on the granting of adoption assistance, sets procedures for application applying for adoption assistance and for amending the adoption assistance agreement and establishes an adoption information exchange, as required by s. 48.55, Stats., to be operated by the department directly or through a contract with an individual or private agency to assist in finding the best adoptive homes available for the placement of children with special needs.

SECTION 2. HFS 50.01 (4) is repealed and recreated to read:

HFS 50.01 (4) DEFINITIONS. In this chapter:

(a) "Administrative review" means a review of the plan of services for a child conducted by a panel of persons selected by the adoption agency, at least one of whom is not responsible for the case management or for the supervision or delivery of services to either the child who is subject to the review or the child's parents.

(b) "Adoption" means a method provided by law to establish the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents.

(c) "Adoption agency" or "agency" means a county <sup>(1)(e) or (h)</sup> ~~agency~~ <sup>department</sup> authorized to place children for adoption under s. 48.57, Stats., the department, an agency authorized under ss. 48.60 and 48.61, Stats., to accept guardianship and to place children under its guardianship for adoption or an American Indian tribal agency in this state.

(d) "Adoption assistance" means assistance provided under agreement by the department to the parents of an adopted child or the prospective adoptive parents of a child placed for adoption, when the family has signed and the department has approved the agreement that is designed to assist in the cost of care of the child after <sup>2</sup> legal adoption or after the child has been placed for adoption. <sup>(see definition)</sup>

(e) "Adoption assistance for medical care" means the program under Title XIX of the Social Security Act of 1935, as amended, 42 USC 1396, ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108.

(f) "Adoption information exchange" or "exchange" means a department program created to facilitate the adoption of special needs children by disseminating information about the children to adoption agencies and prospective adoptive families.

(g) "Adoption photo listing book" means a publication that lists individual special needs children and includes photographs and descriptions of them.

(h) "Adoptive family" means a husband and wife jointly or an unmarried adult.

(i) "Child" means a person under 18 years of age.

(j) "Child at high risk" means a child in the guardianship of a Wisconsin adoption agency who does not have a known special need under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. but for whom one or more of the following apply:

1. After diligent effort the guardianship agency has not been able to locate sufficient social and medical background information on the child or the child's birth family necessary to establish the existence of medical or genetic risk factors.

2. There is documented information that either or both birth parents have a medical diagnosis or medical history which could result in a condition for the child described in s. HFS 50.03 (1) (b) 3. at a later time.

3. The child has experienced 4 or more placements with extended family or foster homes that might affect the normal attachment process.

4. The child experienced neglect in the first 3 years of life or sustained physical injury that might have a long term effect on physical, emotional or intellectual development.

5. There is documented evidence that the birth mother used harmful drugs or alcohol or otherwise did not practice appropriate prenatal care which could later result in the child developing special needs as described in s. HFS 50.03 (1) (b) 3.

(k) "Department" means the Wisconsin department of health and family services.

(L) "Division" means the department's division of children and family services.

(m) "Extenuating circumstances" has the meaning established in s. HFS 50.065

(n) "Guardian" has the meaning found in s. 48.02 (8), Stats.

(o) "Legal risk" means a condition of a child in which the severance of the legal rights of the child's birth parents through a termination of parental rights proceedings under the laws of the state or the federal government has not been completed or the court's decision is being legally contested.

(p) "Legally free" means the status of a child when the legal rights of the birth parents of the child have been severed through death of a parent or a termination of parental rights proceedings according to the laws of the state or the federal government, or both, and the court has transferred guardianship and custody of the child to a placement agency pending adoptive placement.

*anyone else?*

*is it enough sufficient or otherwise be affected needs?*  
*abuse? when?*

*does this cover all the circumstances?*

*only 1 or 2?*

*determine whether*

*or non existence?*

*is having a condition?*

*or may have? include info to determine?*  
*the entire 3 yrs?*

*Miss*

(q) "Medical adoption assistance card" means a card issued for the purpose of identifying a person as a recipient of adoption assistance for medical care.

*after the child has been placed for adoption*

*and means the 10 pages to*

(r) "Monthly adoption assistance payment" means a monthly payment amount described in an adoption assistance agreement to help with the expense of raising the child made by the department to the parents of an adopted child with special needs or to the prospective adoptive parents of a child with special needs or to the adoptive parents of a child at high risk of developing a moderate or intensive level of special needs.

*or prospective adoptive parents*

*defined term (sox effort)*

(s) "Registration" means the listing of information about special needs children or the listing of information about approved prospective adoptive families with the adoption information exchange for the purpose of locating a prospective adoptive family.

*for*

(t) "Special needs child" means a legally free child for whom it is difficult to find an adoptive home and who meets the eligibility criteria for adoption assistance under s. HFS 50.03.

*for*

*??, unhelpful*

(u) "Substantial change in circumstances" means that a progressive, documented change has occurred to the child in one or more areas of special needs, including physical, behavioral or emotional special needs, that would result in a change in the supplemental rate as determined by the uniform foster care rate schedule under s. HSS 56.09.

*or increase*

(v) "Sustaining care" means the placement of a child under s. 48.428, Stats.

SECTION 3. HFS 50.03 (1) (b) 3. and 4. are amended to read:

HFS 50.03 (1) (b) 3. The child exhibits special need characteristics judged to be moderate or intensive under the schedule of difficulty-of-care levels specified in s. HSS 56.09 (3); ~~or~~

4. The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources ~~or~~ or

SECTION 4. HFS 50.03 (1) (b) 5. is created to read:

HFS 50.03 (1) (b) 5. The child is a child at high risk of developing a moderate or intensive level of special needs under subd. 3.

*how determined? By def criteria?*

*defined term - must then meet def*

SECTION 5. HFS 50.03 (2) is repealed and recreated to read:

*Criteria plus risk of developing*

HFS 50.03 (2) REASONABLE PLACEMENT EFFORTS TO ASSURE ADOPTION PLACEMENT. (a) Reasonable efforts shall be made to assure a timely placement of the child with the best available family without adoption assistance. The agency shall make efforts to consider a number of families in order to locate the most suitable family for the child, including a review of all approved families associated with

*copy change def*

*copy change def*

*what has changed*

the agency, and those efforts shall be documented in the child's record. If 2 or more appropriate families are not approved and available within the agency, a timely effort shall be made to locate additional families by contacting other adoption agencies or by registering the child with the adoption exchange or a national adoption exchange. Once the agency has determined that placement with a specific family would be the most suitable for the child, the agency shall make a full disclosure to the family of the child's background, to the extent known, as well as any existing or potential problem known to the agency.

(b) If the child has a special need under s. HFS 50.03(1) (b) and if the circumstances of either s. ~~HFS 50.03(2)~~ or (3) exist, the agency shall inform the family of the adoption assistance program and ask the proposed adoptive parents whether they are willing to adopt without adoption assistance. If the family is not willing to adopt without adoption assistance, the requirement that a reasonable, but unsuccessful, effort to place the child without adoption assistance is met.

SECTION 6. HFS 50.04 (1) and (4) are amended to read:

HFS 50.04 (1) TIMING. An initial application for adoption assistance shall be completed and approved ~~before an~~ at the time the adoptive placement of the child occurs, ~~except~~. The adoptive parents may file an application for adoption assistance under the circumstances noted in s. HFS 50.03 (3) (b) or in sub. (4) or may request an amendment to an existing agreement under s. HFS 50.044 or 50.045.

(4) ADOPTION ASSISTANCE AGREEMENT. The adoption assistance agreement shall be completed and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. If at any time prior to the legal adoption the family believes there has been a change in circumstances, the family may file an application for an agreement to replace a prior agreement. The agency shall assess the current special needs of the child and, as appropriate, shall offer to modify the agreement to replace the prior agreement. The replacement agreement shall be agreed to and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. Copies of the signed agreement shall be given to the adoptive parent or parents and placed in the child's adoption record. For purposes of amending an agreement following legal adoption, the agreement in effect at the time of adoption is considered the original agreement.

SECTION 7. HFS 50.044 is created to read:

**HFS 50.044 Request to amend the adoption assistance agreement for a child at high risk of developing special needs.** (1) REQUEST FOR REVIEW. At least 12 months after the date of legal adoption, the adoptive parents who signed an adoption assistance agreement for a child at high risk may request a review to determine whether a substantial change in circumstances has occurred. If the request results in an amended agreement, any subsequent request for an amended agreement shall be made under s.

*incorrect? ref.* *internal ref.*

*or prospective*

*but they then are "prospective"*

*use term "admitted"*

*family*  
*substitute 12*  
*if not who now*

*12 + 12*

*Family*

*who decided this?*

*have it done by 15 (or 10) people*

*why wait 12 mths after 12m*

*had you...*

*request - request amendment of 5 - HFS*

*Not agreed - be amended, HFS 50.044*

*not submit or request a review*  
*could not request a review earlier -*  
*does not have resubmission - my not submit rule v 12 mo.*  
*not*

HFS 50.045. If the request does not result in an amended agreement, the adoptive parents may request a review no earlier than 12 months after the date of the last request for a review.

*Adopt*  
*to verify if not a substantial change*  
*Adoptive re*  
*use request form*

(2) FAMILY RESPONSIBILITY. The family shall do all of the following:

- (a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.
- (b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she fully concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.
- (c) If requested by the department, provide additional information about the child's current functioning.
- (d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.
- (e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

**Note:** A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from any regional office of the Department or by writing to: Bureau of Program and Policies, Division of Children and Family Services, P. O. Box 8916, Madison WI 53708-8916.

*IF a request toward an adoptive agreement is submitted under sub. (2)*

(3) DEPARTMENT RESPONSIBILITY. The department shall do all of the following:

- not to family*
- (a) From a review of the information submitted by the family, determine whether a substantial change in circumstances exists to meet the eligibility requirements of s. HFS 50.03 (1) (b) 3. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.



to have specific money fund

(b) Upon receiving an application to amend the agreement, contact the appropriate human service agency or agencies to request information concerning any substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

73

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes a moderate or an intensive level in one or more categories of the supplemental payments schedule, and there has not been a substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, offer to adjust the amount of adoption assistance for maintenance for up to one year based upon the uniform foster care rate currently in effect under s. HSS 56.09 (2) and (3). Payment shall include the current basic rate determined by the age of the child at the time the request for an amendment to the agreement was received in the department, plus any supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the current uniform foster care rate. No exceptional payment may be established.

(d) If the adoptive or proposed adoptive parent agrees with the proposed amount of adoption assistance maintenance payment, offer to amend the original agreement in writing for up to one year to specify the new monthly adoption assistance maintenance payment amount.

(e) Review under s. HFS 50.045 (3) (e) the circumstances of a child with a previously amended adoption assistance agreement under this section by contacting the adoptive parent or parents prior to the expiration of the amended agreement.

SECTION 8. HFS 50.045 is created to read:

**HFS 50.045 Request to amend the adoption assistance agreement following adoption.** (1) REQUEST FOR REVIEW. Twelve months or more following adoption of a child with special needs under s. HFS 50.03 (1) (b) 1., 2., 3. or 4., at least 12 months since the denial of a previous request under this section, at least 12 months following an amended agreement under HFS 50.044, or within 90 days prior to the expiration of an amended agreement, adoptive parents with a current adoption assistance agreement and with a maintenance payment in the amount of \$0 or greater may file a request with the department to review the current circumstances of the child for the purpose of amending the amount of the monthly adoption assistance maintenance payment. An adoption assistance agreement may be amended more than once under the provisions of this section.

(2) FAMILY RESPONSIBILITY. The family shall do all of the following:

(a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

How would it have been done?  
do you mean request absolute amount but first to capture?  
(1781)  
1/18/20  
1/18/20

Why after 12 months? how long?  
Study the OWI/45

to request that a be

2.

(b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she fully concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.

(c) If requested by the department, provide additional information about the child's current functioning.

(d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

**Note:** A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from any regional office of the Department or by writing to: Bureau of Program and Policies, Division of Children and Family Services, P. O. Box 8916, Madison WI 53708-8916.

(3) DEPARTMENT RESPONSIBILITY. The department shall do all of the following:

(a) From the information submitted by the family under sub. (2), determine whether a substantial change in circumstances exists. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense so that the department will have the information it needs to make the determination.

(b) Upon receiving an application to amend the agreement, contact the appropriate human services agency or agencies to request information concerning any substantiated report of abuse or neglect of the child by the adoptive parents.

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes an increase in special needs to the moderate or intensive level in one or more categories of the supplemental payments schedule, or a new category of special needs at the minimum, moderate or intensive level, and there is no substantiated report of abuse or neglect of the child, offer to amend the amount of adoption assistance for maintenance for up to one year. The department may not increase the amount in the agreement above the amount allowed under 42 USC 673,

*If a request for needed is needed*  
*or continues to exist (and)*  
*you doing*  
*to / you*  
*review -*  
*or*  
*to the*  
*want*  
*stays*  
*by the*  
*parent*  
*or continue*  
*Pr. or added*  
*request*

as amended, or any other federal law. The new rate shall include the basic rate in the existing agreement and any exceptional rate in the existing agreement and an adjusted supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the ~~current~~ uniform foster care rate. If the original or amended agreement has not established a basic rate, the new rate shall include the basic rate effective on the date the request was received in the department and an adjusted supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the ~~current~~ uniform foster care rate. If the ~~current~~ level of points in a supplemental rate category is at the highest number of points in an intensive level of need category, no increase in payment may be offered in that category. No adjustment may be made to an existing exceptional rate and no exceptional rate may be established.

*effect of*

*may*

(d) If the adoptive parent agrees with the proposed amount of the payment, offer to amend the agreement in writing to specify the new monthly adoption assistance amount.

(e) Review an amended adoption assistance agreement, as follows:

1. Prior to the expiration of the amended agreement and annually thereafter for the duration of the adoption assistance agreement the department shall contact the adoptive parent or parents to request information concerning the circumstances of the child.

2. The department may require the adoptive parent or parents to provide documentation of the current circumstances of the child. The department shall review the information to determine whether the reasons for the change in circumstances continue to exist or not and shall notify the family whether the amount of adoption assistance will be continued, reduced, or returned to the amount in the original agreement or previous amended agreement. If the adoptive parent or parents fail to provide the requested information within 60 days of the request, the department may adjust the monthly payment to the amount specified in the agreement at the time of the adoption or the previous amended agreement.

*? increase*

*?*

*new*

SECTION 9. HFS 50.05 (1) (b) is amended to read:

HFS 50.05 (1) (b) The amount of adoption assistance shall be the total monthly adoption assistance payment as indicated on the adoption assistance agreement ~~under s. HFS 50.06~~ or as revised by an amendment to the adoption assistance agreement signed by both the adoptive parent or parents and the department. The initial rate for a child at high risk is \$0 in the original adoption assistance agreement if no special needs category under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. applies to the child. The rate may increase or decrease as described in an amendment to the original agreement and law.

*beta to put in (c)*

SECTION 10. HFS 50.05 (1) (c) is created to read:

*not if revised as proposed (OK as stated would be new original)*

HFS 50.05 (1)(c). The effective date for a rate increase for an amended agreement shall be the first day of the month the department received the request to amend the adoption assistance agreement, except that no increase shall be made prior to 12 months from a prior rate increase. The effective date for a rate decrease for an amended agreement shall be the first day of the month following the month that the amended agreement expires. The effective date for discontinuing adoption assistance for any reason shall be the last day of the month that eligibility for benefits ends.

SECTION 11. HFS 50.05 (2) (a) and (3) are amended to read:

HFS 50.05 (2) (a) Adoption assistance for medical care shall be granted to all cases with an approved for monthly adoption assistance payments agreement.

(3) NON-RECURRING ADOPTION EXPENSES. When a child is adopted with an approved adoption assistance agreement, the department shall reimburse adoptive parents for non-recurring adoption expenses up to a \$2000 maximum. In this subsection, "non-recurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of state or federal laws.

SECTION 12. HFS 50.06 (1) (d) is amended to read:

HFS 50.06 (1) (d) Circumstances under which the adoption assistance may be increased, decreased, terminated, temporarily suspended or reduced; and

SECTION 13. HFS 50.065 (2) (intro.) is amended to read:

HFS 50.065 (2) AFTER ADOPTION IS FINAL. (intro.) An adoptive parent, after an adoption has been declared final by a court, may appeal either any of the following under ch. 227, Stats., to the department of administration's division of hearings and appeals:

SECTION 14. HFS 50.065 (2) (c) and (d) are created to read:

HFS 50.065 (2)(c) A department decision on a request under s. HFS 50.044 to amend an adoption assistance agreement regarding a child at high risk. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

(d) A department decision on a request under s. HFS 50.045 to determine whether a substantial change in circumstances has occurred. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

SECTION 15. HFS 50.08 (3) (c) is amended to read:

*How does it set of the above 50.06(3)*

*(used over heard on)*

HFS 50.08 (3) (c) Be updated at least ~~monthly~~ quarterly to revise, add to, or delete from the listing of available special needs children; and

SECTION 16. HFS 50.09 (1) (intro.) is repealed and recreated to read:

HFS 50.09 (1) (intro.) If within 60 days of the date of the termination of parental rights an adoption agency is not able to meet the requirements for reasonable efforts described in s. HFS 50.03(2), the agency shall register the child on the adoption exchange if the child is not currently listed and shall include the following information about the child:

The repeals and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and  
Family Services

Dated:

By: \_\_\_\_\_  
Joseph Leean  
Secretary

SEAL:

NOV 19 1999

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING, REPEALING AND RECREATING AND CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This rulemaking order amends ch. HFS 50, the Department's rules for facilitating the adoption of children with special needs, to implement changes to the adoption assistance program statute, s. 48.975, Stats., made by 1997 Wisconsin Act 308. Those changes include permitting a written agreement for adoption assistance to be made following an adoption, but only in "extenuating circumstances;" permitting the amendment of an adoption assistance agreement for up to one year to increase the amount of adoption assistance for maintenance when there is a "substantial change in circumstances;" and requiring the Department to annually review the circumstances of the child when the original agreement has been amended because of a substantial change in circumstances, with the object of amending the agreement again to either continue the increase or to decrease the amount of adoption assistance if the substantial change in circumstances no longer exists. The monthly adoption assistance payment cannot be less than the amount in the original agreement, unless agreed to by all parties.

The amended rules are being published by emergency order so that adoption assistance or the higher adoption assistance payments, to which adoptive parents are entitled because of "extenuating circumstances" or a "substantial change in circumstances" under the statutory changes that were effective on January 1, 1999, may be made available to them at this time, now that the rules have been developed, rather than 7 to 9 months later which is how long the promulgation process takes for permanent rules. Act 308 directs the Department to promulgate rules that, among other things, define extenuating circumstances, a child with special needs and substantial change in circumstances.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss.48.975 (5) and 227.24 (1), Stats., the Department of Health and Family Services hereby amends, repeals and recreates and creates rules interpreting s. 48.975, Stats., as follows:

SECTION 1. HFS 50.01 (2) is amended to read:

HFS 50.01 (2) PURPOSE OF RULES. This chapter establishes criteria to be used by the department in determining when adoption assistance, as authorized by s. 48.975, Stats., may be provided, specifies limitations on the granting of adoption assistance, sets procedures for application applying for adoption assistance and for amending the adoption assistance agreement and establishes an adoption information exchange, as required by s. 48.55, Stats., to be operated

by the department directly or through a contract with an individual or private agency to assist in finding the best adoptive homes available for the placement of children with special needs.

SECTION 2. HFS 50.01 (4) is repealed and recreated to read:

HFS 50.01 (4) DEFINITIONS. In this chapter:

(a) "Administrative review" means a review of the plan of services for a child conducted by a panel of persons selected by the adoption agency, at least one of whom is not responsible for the case management or for the supervision or delivery of services to either the child who is subject to the review or the child's parents.

(b) "Adoption" means a method provided by law to establish the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents.

(c) "Adoption agency" or "agency" means a county agency authorized to place children for adoption under s. 48.57, Stats., the department, an agency authorized under ss. 48.60 and 48.61, Stats. to accept guardianship and to place children under its guardianship for adoption or an American Indian tribal agency in this state.

(d) "Adoption assistance" means assistance provided under agreement by the department to the parents of an adopted child or the prospective adoptive parents of a child placed for adoption, when the family has signed and the department has approved the agreement that is designed to assist in the cost of care of the child after legal adoption or after the child has been placed for adoption.

(e) "Adoption assistance for medical care" means the program under Title XIX of the Social Security Act of 1935, as amended, 42 USC 1396, ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108.

(f) "Adoption information exchange" or "exchange" means a department program created to facilitate the adoption of special needs children by disseminating information about the children to adoption agencies and prospective adoptive families.

(g) "Adoption photo listing book" means a publication that lists individual special needs children and includes photographs and descriptions of them.

(h) "Adoptive family" means a husband and wife jointly or an unmarried adult.

(i) "Child" means a person under 18 years of age.

(j) "Child at high risk" means a child in the guardianship of a Wisconsin adoption agency who does not have a known special need under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. but for

whom one or more of the following apply:

1. After diligent effort the guardianship agency has not been able to locate sufficient social and medical background information on the child or the child's birth family necessary to establish the existence of medical or genetic risk factors.

2. There is documented information that either or both birth parents have a medical diagnosis or medical history which could result in a condition for the child described in s. HFS 50.03 (1) (b) 3. at a later time.

3. The child has experienced 4 or more placements with extended family or foster homes that might affect the normal attachment process.

4. The child experienced neglect in the first 3 years of life or sustained physical injury that might have a long term effect on physical, emotional or intellectual development.

5. There is documented evidence that the birth mother used harmful drugs or alcohol or otherwise did not practice appropriate prenatal care which could later result in the child developing special needs as described in s. HFS 50.03 (1) (b) 3.

(k) "Department" means the Wisconsin department of health and family services.

(L) "Division" means the department's division of children and family services.

(m) "Extenuating circumstances" has the meaning established in s. HFS 50.065 (2) (a) 2.

a.

(n) "Guardian" has the meaning found in s. 48.02 (8), Stats.

(o) "Legal risk" means a condition of a child in which the severance of the legal rights of the child's birth parents through a termination of parental rights proceedings under the laws of the state or the federal government has not been completed or the court's decision is being legally contested.

(p) "Legally free" means the status of a child when the legal rights of the birth parents of the child have been severed through death of a parent or a termination of parental rights proceedings according to the laws of the state or the federal government, or both, and the court has transferred guardianship and custody of the child to a placement agency pending adoptive placement.

(q) "Medical adoption assistance card" means a card issued for the purpose of identifying a person as a recipient of adoption assistance for medical care.

(r) "Monthly adoption assistance payment" means a monthly payment amount described



in an adoption assistance agreement to help with the expense of raising the child made by the department to the parents of an adopted child with special needs or to the prospective adoptive parents of a child with special needs or to the adoptive parents of a child at high risk of developing a moderate or intensive level of special needs.

(s) "Registration" means the listing of information about special needs children or the listing of information about approved prospective adoptive families with the adoption information exchange for the purpose of locating a prospective adoptive family.

(t) "Special needs child" means a legally free child for whom it is difficult to find an adoptive home and who meets the eligibility criteria for adoption assistance under s. HFS 50.03.

(u) "Substantial change in circumstances" means that a progressive, documented change has occurred to the child in one or more areas of special needs, including physical, behavioral or emotional special needs, that would result in a change in the supplemental rate as determined by the uniform foster care rate schedule under s. HSS 56.09.

(v) "Sustaining care" means the placement of a child under s. 48.428, Stats.

SECTION 3. HFS 50.03 (1) (b) 3. and 4. are amended to read:

HFS 50.03 (1) (b) 3. The child exhibits special need characteristics judged to be moderate or intensive under the schedule of difficulty-of-care levels specified in s. HSS 56.09 (3); ~~or~~

4. The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources ~~or~~; or

SECTION 4. HFS 50.03 (1) (b) 5. is created to read:

HFS 50.03 (1) (b) 5. The child is a child at high risk of developing a moderate or intensive level of special needs under subd. 3.

SECTION 5. HFS 50.03 (2) is repealed and recreated to read:

HFS 50.03 (2) REASONABLE PLACEMENT EFFORTS TO ASSURE ADOPTION PLACEMENT. (a) Reasonable efforts shall be made to assure a timely placement of the child with the best available family without adoption assistance. The agency shall make efforts to consider a number of families in order to locate the most suitable family for the child, including a review of all approved families associated with the agency, and those efforts shall be documented in the child's record. If 2 or more appropriate families are not approved and available within the agency, a timely effort shall be made to locate additional families by contacting other adoption agencies or by registering the child with the adoption exchange or a national adoption exchange. Once the agency has determined that placement with a specific

family would be the most suitable for the child, the agency shall make a full disclosure to the family of the child's background, to the extent known, as well as any existing or potential problem known to the agency.

(b) If the child has a special need under s. HFS 50.03(1) (b) and if the circumstances of either s. HFS 50.03(2) or (3) exist, the agency shall inform the family of the adoption assistance program and ask the proposed adoptive parents whether they are willing to adopt without adoption assistance. If the family is not willing to adopt without adoption assistance, the requirement that a reasonable, but unsuccessful, effort to place the child without adoption assistance is met.

SECTION 6. HFS 50.04 (1) and (4) are amended to read:

HFS 50.04 (1) TIMING. An initial application for adoption assistance shall be completed and approved ~~before an~~ at the time the adoptive placement of the child occurs, except. The adoptive parents may file an application for adoption assistance under the circumstances noted in s. HFS 50.03 (3) (b) or in sub. (4) or may request an amendment to an existing agreement under s. HFS 50.044 or 50.045.

(4) ADOPTION ASSISTANCE AGREEMENT. The adoption assistance agreement shall be completed and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. If at any time prior to the legal adoption the family believes there has been a change in circumstances, the family may file an application for an agreement to replace a prior agreement. The agency shall assess the current special needs of the child and, as appropriate, shall offer to modify the agreement to replace the prior agreement. The replacement agreement shall be agreed to and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. Copies of the signed agreement shall be given to the adoptive parent or parents and placed in the child's adoption record. For purposes of amending an agreement following legal adoption, the agreement in effect at the time of adoption is considered the original agreement.

SECTION 7. HFS 50.044 is created to read:

**HFS 50.044 Request to amend the adoption assistance agreement for a child at high risk of developing special needs.** (1) REQUEST FOR REVIEW. At least 12 months after the date of legal adoption, the adoptive parents who signed an adoption assistance agreement for a child at high risk may request a review to determine whether a substantial change in circumstances has occurred. If the request results in an amended agreement, any subsequent request for an amended agreement shall be made under s. HFS 50.045. If the request does not result in an amended agreement, the adoptive parents may request a review no earlier than 12 months after the date of the last request for a review.

(2) FAMILY RESPONSIBILITY. The family shall do all of the following:

(a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

(b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she fully concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.

(c) If requested by the department, provide additional information about the child's current functioning.

(d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

**Note:** A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from any regional office of the Department or by writing to: Bureau of Program and Policies, Division of Children and Family Services, P. O. Box 8916, Madison WI 53708-8916.

(3) DEPARTMENT RESPONSIBILITY. The department shall do all of the following:

(a) From a review of the information submitted by the family, determine whether a substantial change in circumstances exists to meet the eligibility requirements of s. HFS 50.03 (1) (b) 3. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(b) Upon receiving an application to amend the agreement, contact the appropriate human service agency or agencies to request information concerning any substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes a moderate or an intensive level in one or more categories of the supplemental payments schedule, and there has not been a substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, offer to adjust the amount of adoption assistance for maintenance for up to one year based upon the uniform foster care rate currently in effect under s. HSS 56.09 (2) and (3). Payment shall include the current basic rate determined by the age of the child at the time the request for an amendment to the agreement was received in the department, plus any supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the current uniform foster care rate. No exceptional payment may be established.

(d) If the adoptive or proposed adoptive parent agrees with the proposed amount of adoption assistance maintenance payment, offer to amend the original agreement in writing for up to one year to specify the new monthly adoption assistance maintenance payment amount.

(e) Review under s. HFS 50.045 (3) (e) the circumstances of a child with a previously amended adoption assistance agreement under this section by contacting the adoptive parent or parents prior to the expiration of the amended agreement.

SECTION 8. HFS 50.045 is created to read:

**HFS 50.045 Request to amend the adoption assistance agreement following adoption.** (1) REQUEST FOR REVIEW. Twelve months or more following adoption of a child with special needs under s. HFS 50.03 (1) (b) 1., 2., 3. or 4., at least 12 months since the denial of a previous request under this section, at least 12 months following an amended agreement under HFS 50.044, or within 90 days prior to the expiration of an amended agreement, adoptive parents with a current adoption assistance agreement and with a maintenance payment in the amount of \$0 or greater may file a request with the department to review the current circumstances of the child for the purpose of amending the amount of the monthly adoption assistance maintenance payment. An adoption assistance agreement may be amended more than once under the provisions of this section.

(2) FAMILY RESPONSIBILITY. The family shall do all of the following:

(a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

(b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she fully concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption

assistance amendment.

(c) If requested by the department, provide additional information about the child's current functioning.

(d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

**Note:** A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from any regional office of the Department or by writing to: Bureau of Program and Policies, Division of Children and Family Services, P. O. Box 8916, Madison WI 53708-8916.

(3) DEPARTMENT RESPONSIBILITY. The department shall do all of the following:

(a) From the information submitted by the family under sub. (2), determine whether a substantial change in circumstances exists. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense so that the department will have the information it needs to make the determination.

(b) Upon receiving an application to amend the agreement, contact the appropriate human services agency or agencies to request information concerning any substantiated report of abuse or neglect of the child by the adoptive parents.

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes an increase in special needs to the moderate or intensive level in one or more categories of the supplemental payments schedule, or a new category of special needs at the minimum, moderate or intensive level, and there is no substantiated report of abuse or neglect of the child, offer to amend the amount of adoption assistance for maintenance for up to one year. The department may not increase the amount in the agreement above the amount allowed under 42 USC 673, as amended, or any other federal law. The new rate shall include the basic rate in the existing agreement and any exceptional rate in the existing agreement and an adjusted supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the current uniform foster care rate. If the original or amended agreement has not established a basic rate, the new rate shall include the basic rate effective on the date the request was received in the department and an adjusted supplemental payment

calculated under s. HSS 56.09 (2) and (3) indicated in the current uniform foster care rate. If the current level of points in a supplemental rate category is at the highest number of points in an intensive level of need category, no increase in payment may be offered in that category. No adjustment may be made to an existing exceptional rate and no exceptional rate may be established.

(d) If the adoptive parent agrees with the proposed amount of the payment, offer to amend the agreement in writing to specify the new monthly adoption assistance amount.

(e) Review an amended adoption assistance agreement, as follows:

1. Prior to the expiration of the amended agreement and annually thereafter for the duration of the adoption assistance agreement the department shall contact the adoptive parent or parents to request information concerning the circumstances of the child.

2. The department may require the adoptive parent or parents to provide documentation of the current circumstances of the child. The department shall review the information to determine whether the reasons for the change in circumstances continue to exist or not and shall notify the family whether the amount of adoption assistance will be continued, reduced, or returned to the amount in the original agreement or previous amended agreement. If the adoptive parent or parents fail to provide the requested information within 60 days of the request, the department may adjust the monthly payment to the amount specified in the agreement at the time of the adoption or the previous amended agreement.

SECTION 9. HFS 50.05 (1) (b) is amended to read:

HFS 50.05 (1) (b) The amount of adoption assistance shall be the total monthly adoption assistance payment as indicated on the adoption assistance agreement ~~under s. HFS 50.06~~ or as revised by an amendment to the adoption assistance agreement signed by both the adoptive parent or parents and the department. The initial rate for a child at high risk is \$0 in the original adoption assistance agreement if no special needs category under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. applies to the child. The rate may increase or decrease as described in an amendment to the original agreement and law.

SECTION 10. HFS 50.05 (1) (c) is created to read:

HFS 50.05 (1)(c). The effective date for a rate increase for an amended agreement shall be the first day of the month the department received the request to amend the adoption assistance agreement, except that no increase shall be made prior to 12 months from a prior rate increase. The effective date for a rate decrease for an amended agreement shall be the first day of the month following the month that the amended agreement expires. The effective date for discontinuing adoption assistance for any reason shall be the last day of the month that eligibility for benefits ends.

SECTION 11. HFS 50.05 (2) (a) and (3) are amended to read:

HFS 50.05 (2) (a) Adoption assistance for medical care shall be granted to all cases with an approved for monthly adoption assistance payments agreement.

(3) NON-RECURRING ADOPTION EXPENSES. When a child is adopted with an approved adoption assistance agreement, the department shall reimburse adoptive parents for non-recurring adoption expenses up to a \$2000 maximum. In this subsection, "non-recurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of state or federal laws.

SECTION 12. HFS 50.06 (1) (d) is amended to read:

HFS 50.06 (1) (d) Circumstances under which the adoption assistance may be increased, decreased, terminated, temporarily suspended or reduced; and

SECTION 13. HFS 50.065 (2) (intro.) is amended to read:

HFS 50.065 (2) AFTER ADOPTION IS FINAL. (intro.) An adoptive parent, after an adoption has been declared final by a court, may appeal ~~either any~~ any of the following under ch. 227, Stats.. to the department of administration's division of hearings and appeals:

SECTION 14. HFS 50.065 (2) (c) and (d) are created to read:

(c) A department decision on a request under s. HFS 50.044 to amend an adoption assistance agreement regarding a child at high risk. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

(d) A department decision on a request under s. HFS 50.045 to determine whether a substantial change in circumstances has occurred. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

SECTION 15. HFS 50.08 (3) (c) is amended to read:

HFS 50.08 (3) (c) Be updated at least ~~monthly~~ quarterly to revise, add to, or delete from the listing of available special needs children; and

SECTION 16. HFS 50.09 (1) (intro.) is repealed and recreated to read:

HFS 50.09 (1) (intro.) If within 60 days of the date of the termination of parental rights an adoption agency is not able to meet the requirements for reasonable efforts described in s. HFS 50.03(2), the agency shall register the child on the adoption exchange if the child is not

currently listed and shall include the following information about the child:

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and  
Family Services

Dated: **November 5, 1999**

By: 

Joseph Legan  
Secretary

SEAL:



**FISCAL ESTIMATE**  
DOA-2048 N(R10/96)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
HSS 50

Amendment No. if Applicable

**Subject**

**ADOPTION ASSISTANCE TO FACILITATE THE ADOPTION OF CHILDREN WITH SPECIAL NEEDS**

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget     Yes     No

Decrease Costs

Local:  No local government costs

- |   |   |
|---|---|
| <p>1. <input type="checkbox"/> Increase Costs<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> |
|---|---|

5. Types of Local Governmental Units Affected:
- Towns       Villages       Cities  
 Counties     Others \_\_\_\_\_  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

s. 20.435 (3) (dd) & (pd)

**Assumptions Used in Arriving at Fiscal Estimate**

This order amends ch. HSS 50 to implement changes made in s. 48.975, Stats., the adoption assistance program, by 1997 Wisconsin Act 308. Those changes include permitting a written agreement for adoption assistance to be concluded after the adoption is final, but only when there are "extenuating circumstances," and permitting the amendment of an adoption assistance agreement to increase the amount when, following adoption of a special needs child there is a "substantial change in circumstances." The amended rules define "extenuating circumstances," "child at high risk" and "substantial change in circumstances."

The rule changes will not affect the expenditures or revenues of state government or local governments. They implement the statutory changes. The adoption assistance program is administered by the Department.

Any change in costs as a result of these changes in the adoption assistance program are due not to the implementing rule changes but rather to Act 308 and were taken into consideration by the Legislature in deliberations when the bill, AB 601, was passed.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)

H&FS/Chris Marceil, 266-3595

Authorized Signature/Telephone No.

*John Kiesow*  
John Kiesow, 266-9622

Date

11-5-99

NOV 15 1999

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET  
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Tommy G. Thompson  
Governor

Joe Leraan  
Secretary

**State of Wisconsin**  
**Department of Health and Family Services**

November 15, 1999

✓ The Honorable Judy Robson, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 South, State Capitol  
Madison, Wisconsin

The Honorable Glenn Grothman, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 North, State Capitol  
Madison, Wisconsin

Dear Senator Robson and Representative Grothman:

This is notification that tomorrow the Department will publish an emergency rulemaking order to amend ch. HFS 50, its rules for the adoption assistance program under s. 48.975, Stats., to implement significant changes made to the program effective January 1, 1999 by 1997 Wisconsin Act 308. A copy of the emergency order is attached to this letter.

The changes made in the program statute by Act 308 include permitting a written agreement for adoption assistance to be made following an adoption, but only in "extenuating circumstances;" permitting the amendment of an adoption assistance agreement for up to one year to increase the amount of adoption assistance for maintenance when there is a "substantial change in circumstances;" and requiring the Department to annually review the circumstances of the child when the original agreement has been amended because of a substantial change in circumstances, with the object of amending the agreement again to either continue the increase or to decrease the amount of adoption assistance if the substantial change in circumstances no longer exists.

The amended rules are being published by emergency order so that adoption assistance provided after an adoption or higher adoption assistance payments, to which adoptive parents are entitled because of "extenuating circumstances" or a "substantial change in circumstances" under the statutory changes effective on January 1, 1999, may be made available to them now that the rules in this complex policy area have been developed, rather than several months from now which is how long it will take to promulgate permanent rules.

If you have any questions about this emergency rulemaking order, you may contact Chris Marceil of the Department's Division of Children and Family Services at 266-3595.

Sincerely,

A handwritten signature in cursive script that reads "Paul E. Menge".

Paul E. Menge  
Administrative Rules Manager

Attachment



OFFICE OF LEGAL COUNSEL

Tommy G. Thompson  
Governor

Joe Leean  
Secretary

**State of Wisconsin**  
Department of Health and Family Services

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May 11, 2000

The Honorable Fred Risser, President  
Wisconsin State Senate  
1 East Main, Suite 402  
Madison, WI 53702

The Honorable Scott Jensen, Speaker  
Wisconsin State Assembly  
1 East Main, Suite 402  
Madison, WI 53702

Re: Clearinghouse Rule 99-161  
HFS 50, relating to adoption assistance.

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Jill Duerst at 266-1142.

Sincerely,

Larry Hartzke  
Acting Administrative Rules Manager

cc Gary Poulson, Deputy Revisor of Statutes  
Senator Judy Robson, JCRAR  
Representative Glenn Grothman, JCRAR  
Jill Duerst, Division of Children and Family Services  
Kevin Lewis, Secretary's Office