



**State of Wisconsin
Department of Children and Families**

NOTICE OF PUBLIC HEARING

Foster Care

DCF 56

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.62 (1) and (8), 48.67 (1) and (4), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold 2 public hearings to consider emergency rules and proposed permanent rules relating to foster care.

Hearing Information

**February 8, 2011
Tuesday
1:30 p.m.**

**MADISON
GEF 1 Building
201 E. Washington Avenue, Room D203**

**February 15, 2011
Tuesday
1:30 p.m.**

**MILWAUKEE
Bureau of Milwaukee Child Welfare
6111 N. Teutonia Avenue**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.62 (1) and (8), 48.67 (1) and (4), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 48.62 and 48.67, Stats.

Related statute or rule: Ch. 48, Stats.; DCF 37 and 54

Explanation of Agency Authority

Section 48.62 (1), Stats., provides that any person who receives, with or without transfer of legal custody, 4 or fewer children or, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75, Stats.

Section 48.62 (8), Stats., as created by 2009 Wisconsin Act 28 and affected by 2009 Wisconsin Act 71, provides that the department shall promulgate rules relating to foster homes as follows:

- Rules providing levels of care that a licensed foster home is certified to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that the department may promulgate by rule.
- Rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs. A foster home that is certified to provide a given level of care may provide foster care for any child whose needs are assessed to be at or below the level of care that the foster home is certified to provide. A foster home that is certified to provide a given level of care may not provide foster care for any child whose needs are assessed to be above that level of care unless the department, county department, or child welfare agency issuing the foster home license determines that support or services sufficient to meet the child's needs are in place and grants an exception to that prohibition.
- Rules providing monthly rates of reimbursement for foster care that are commensurate with the level of care that the foster home is certified to provide and the needs of the child who is placed in the foster home. Those rates shall include rates for supplemental payments for special needs, exceptional circumstances, and initial clothing allowances for children placed in a foster home that is receiving an age-related monthly rate under s. 48.62 (4), Stats. In promulgating the rules, the department shall provide a mechanism for equalizing the amount of reimbursement received by a foster parent prior to the promulgation of those rules and the amount of reimbursement received by a foster parent under those rules so as to reduce the amount of any reimbursement that may be lost as a result of the implementation of those rules.
- Rules providing a monthly retainer fee for a foster home that agrees to maintain openings for emergency placements.

Section 48.67 (1), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes,

group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.67 (4), Stats., requires that all foster parents successfully complete training in the care and support needs of children who are placed in foster care that has been approved by the department. The training shall be completed on an ongoing basis, as determined by the department. The department shall promulgate rules prescribing the training that is required under this subsection and shall monitor compliance with this subsection according to those rules.

Summary of the Rule

Section 48.62 (8) (a), Stats., directs the department to create rules providing levels of care for foster homes. The purpose of levels of care is to improve the placement stability, safety, and permanence of children placed in foster homes by matching their assessed needs with the skills, abilities, and capacities of caregivers.

Levels of Care

The Department has implemented the rules on levels of care in two phases. The first level of care rule was effective January 1, 2010, and created a process to certify foster homes at Level 1 or 2 and created training requirements for foster parents who operate foster homes with a Level 1 or 2 certification. A Level 1 foster home is available only to foster parents with a child-specific license. The creation of Level 1 foster homes coincided with implementation of the statutory requirement that relative caregivers of a child placed in the caregiver's home under court order who received kinship care payments under DCF 58 apply for and obtain a foster care license if they are licensable. A Level 2 foster home is a basic foster home.

This rule creates a process to certify foster homes at Level 3 to 5. DCF 38, Treatment Foster Care for Children, is repealed and most of the requirements in DCF 38 are integrated into DCF 56, Foster Home Care for Children, to create a single foster care rule with progressive requirements for all foster parents and agencies. Requirements from DCF 38 that have been integrated into DCF 56 with minor modifications include requirements regarding the characteristics and responsibilities of foster parents, physical environment of foster homes, care of foster children, responsibilities of supervising and licensing agencies, and responsibilities of the treatment team.

Treatment Foster Parent Requirements under DCF 38. Under DCF 38, a treatment foster parent had to have the following qualifications:

- Experience: An applicant had to meet at least 2 criteria from a list of 5 types of education, skills, abilities, and work or personal experience with children.
- Training:
 - 18 hours of pre-placement training.
 - 24 hours of training in the second 12-month period following licensure.
 - 18 hours of ongoing training in every subsequent 12-month period.
- Three favorable references.

Level 3 Moderate Treatment Foster Homes. For new Level 3 foster homes, a foster parent must have the following qualifications:

- Experience: An applicant must meet at least 3 criteria from a list of 7 types of education, skills, abilities, and work or personal experience with children.
- Training:
 - 36 hours of pre-placement training.
 - 24 hours of training during the initial licensing period, which is generally 2 years.
 - 18 hours of ongoing training in each 12-month period subsequent to initial licensing period.
- Four favorable references.

The rule provides that a licensing agency shall issue a modified license with a certification to operate a Level 3 foster home without determining the eligibility of the foster parent if on December 31, 2010, the foster parent had a license to operate a treatment foster home under ch. DCF 38.

Level 4 Specialized Treatment Foster Homes. For new Level 4 foster homes, a foster parent must have the following qualifications:

- Experience: An applicant must meet at least 4 criteria from a list of 7 types of education, skills, abilities, and work or personal experience with children.
- Training:
 - 40 hours of pre-placement training.
 - 30 hours of training during the initial licensing period, which is generally 2 years.
 - 24 hours of ongoing training in each 12-month period subsequent to initial licensing period.
- Four favorable references.

The rule provides that no licensing agency may issue a certification to operate a Level 4 foster home without first determining the eligibility of the foster parent under the new Level 4 requirements.

Level 5 Exceptional Treatment Foster Homes. Certification to operate a Level 5 foster home is available only when an exception is granted by the department exceptions panel. An applicant for certification to operate a Level 5 foster home, in conjunction with a licensing agency, may apply for Level 5 certification if the following conditions are met:

- A placement is needed for a child with the following conditions:
 - The child has behaviors or conditions that require a high degree of supervision and overnight awake care that is provided by program staff who rotate shifts within a 24-hour period.
 - The child will benefit from a home-like environment that has fewer children than a group home or residential care center for children and youth.
 - The child is expected to need long-term care or has needs agreed to by the department.

- All other community placement options have been investigated and determined to be unavailable or not in the best interest of the child.

A Level 5 foster home must have a program manager who is the foster parent and licensee of the foster home. An applicant for a program manager position must have specified education or experience and must complete 40 hours of pre-placement training, 30 hours of initial licensing training, and 24 hours of ongoing training in each 12-month period subsequent to the initial licensing period.

A Level 5 foster home must have program staff who are responsible for daily supervision of the children and direct care to the children to ensure their safety and well-being. The minimum staff ratios for program staff are one program staff person for every 2 children during waking hours and one program staff person for every 4 children during sleeping hours. An applicant for a program staff position must have specified education and experience and have a background check, favorable references, and, if hired, a health exam. Before working independently with a child, program staff must complete 40 hours of pre-placement training and work with qualified experienced program staff or similar professionals for at least the first 80 hours of employment. Program staff must also complete 24 hours of ongoing training in each year of employment subsequent to the initial year of employment.

The department exceptions panel has been granting exceptions to operate shift-staffed treatment foster homes under DCFS Memo Series 2006-15. Licensing agencies will issue a modified license with a certification to operate a Level 5 foster home to a foster parent who, on December 31, 2010, had been granted an exception to operate a shift-staffed treatment foster home by the department exceptions panel.

Assessment of Needs and Strengths

Section 48.62 (8) (b), Stats., directs the department to create rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs.

The standardized assessment tool prescribed by the department is the *Child and Adolescent Needs and Strengths* (CANS) tool authored by Dr. John Lyons and the Praed Foundation and customized for use in Wisconsin by the department and the author. There is substantial research demonstrating the reliability and validity of the CANS tool. It is used statewide in 15 other states and is used in parts of 22 additional states.

The rule provides that a placing agency shall assess each foster child before placement in a foster home or within 30 days after the child's placement. A placing agency shall assess each foster parent in relation to the child placed within 30 days after the child's placement in the foster home. A placing agency shall reassess each foster child and the child's foster parent within 6 months after the child's last assessment or reassessment. The placing agency, licensing agency, or foster parent may request a reassessment more frequently. The person who will administer the tool will first review the child's case record; interview or collect information from an individual who has interviewed the child, child's family, foster parent or

other out-of-home care provider, and the child's team or treatment team; and review information gathered in collaboration with the child's team or treatment team. The person administering the standardized assessment tool will rate the child's needs and strengths relative to what is developmentally appropriate for a child of a similar age and the foster parent's needs in relation to that child to determine how to support the placement stability of the child with that foster parent.

The placing agency will use information from the assessment of a child, child's family, and the foster parent of the child for all of the following:

- To communicate information about the needs and strengths of the child and child's family.
- To assist with determining the child's service needs and developing the child's plan of care.
- To determine a level of need of 1/2, 3, 4, 5, or 6 for the child.
- To inform decisions regarding a placement at a level of care that is appropriate to meet the child's level of need.
- To evaluate the match between the knowledge, skills, and abilities of a foster parent and the needs and strengths of a child.
- To assist in the development of services and supports needed for a specific child and foster parent to promote the stability of the placement.
- To provide a mental health screen to all children entering foster care.
- To determine any supplemental payments for a child's special needs.

A placing agency, in accordance with a licensing agency, may place a child in a foster home that is certified to provide a given level of care if the child's level of need is at or below the level of care that the foster home is certified to provide. A placing agency may place a child with a level of need that is higher than the level of care that a foster home is certified to provide if the placing agency grants an exception and documents in the child's electronic case record what services and supports will be provided to meet the child's needs. A child whose level of need is lower than 5 may not be placed in a Level 5 foster home, except for continuation of an existing placement during planning for the child's transition to a less restrictive setting following a reassessment.

Supplemental Payments, Exceptional Payments, and Retainer Fee

Supplemental Payments. A placing agency shall make supplemental payments for a child's special needs to a foster parent who operates a foster home with a Level 2 to 5 certification. The placing agency shall determine the amount of a supplemental payment based on the total of all of the following:

- 'Identified needs and strengths.' A dollar amount determined by the department multiplied by the total points that the placing agency rates a child to determine the presence of special needs on a form prescribed by the department. The placing agency will use information obtained from the standardized assessment tool to rate the child relative what is developmentally appropriate for a child of a similar age in the following areas:
 - Adjustment to trauma.

- Life functioning, including physical, mental, and dental health; relationships with family members; and social skills.
 - Functioning in a child care or school setting.
 - Strengths.
 - Behavioral and emotional needs.
 - Risk behaviors.
 - Child's language.
- 'Level of care higher than level of need.' An amount determined by the department if a foster home's level of care certification is higher than the level of need of a child placed in the foster home and the foster home has a Level 3 or 4 certification.

Exceptional Payments. A placing agency may make exceptional payments to a foster parent to accomplish any of the following:

- Enable the child to be placed in a foster home instead of being placed or remaining in a more restrictive setting.
- Enable the placement of siblings or minor parent and minor children together.
- Assist with transportation costs to the school the child was attending prior to placement in out-of-home care.
- Replace a child's basic wardrobe that has been lost or destroyed in a manner other than normal wear and tear.
- For a child placed in a foster home before February 21, 2011, and who remains placed in that foster home, equalize the total monthly payment amount lost by the child's foster parent due to implementation of the new method of determining supplemental payments.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 allows the state to claim federal funds for expenses to assist a foster child with transportation costs to the school the child was attending prior to placement in out-of-home care.

Retainer Fee. A placing agency may provide a monthly retainer fee to a foster parent to maintain openings in a foster home for emergency placements. This fee may not be considered part of the foster care payment for a specific child.

Other

- A foster parent may not smoke or allow another person to smoke in a foster home or in a vehicle when a foster child is present.
- The rule incorporates provisions of DSP Memo Series 2009-05 that was jointly issued by the Department of Health Services and the Department of Children and Families. It provides that a foster parent may not use any type of physical restraint on a foster child unless the foster child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the foster child and others safe. If physical restraint is necessary, the rule provides certain prohibited practices.

Summary of Factual Data and Analytical Methodologies

The non-statutory requirements of the rule are based on recommendations from the Out-of-Home Care/Adoption Committee and the Foster Parent Training Committee. The committees have worked with the department for the past 5 years to incorporate new federal laws into state law and policy by referring to other state models and national standards of child welfare practice. For the past 2 years, both committees have focused on developing policy to implement the levels of care and foster parent training initiatives in 2009 Wisconsin Act 28. Both committees have statewide membership of staff from counties, tribes, private child-placing agencies, foster and treatment foster parents, court personnel, advocacy agencies, and state government.

Summary of Related Federal Requirements

Under 45 CFR 1355.32 and 1355.33, the federal Administration for Children and Families conducts a Child and Family Services Review of each state's child welfare system every 5 years. States found not to be operating in substantial conformity with federal requirements shall develop a program improvement plan. The program improvement plan must set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas.

42 USC 671(a)(24) requires that the state plan for foster care and adoption assistance include a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

42 USC 675 (1) (G) defines "case plan" to include a plan for ensuring the educational stability of the child while in foster care, including an assurance that the state agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement or if remaining in such school is not in the best interests of the child, assurances by the state agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

42 USC 674 (4) (A) defines "foster care maintenance payments" as payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

As part of the Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 USC 675 (1) (G) was created and 42 USC 674 (4) (A) was amended to add the phrase "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement."

Comparison to Adjacent States

The assessment tool prescribed by the department is used statewide in Iowa and Illinois and is used parts of Minnesota and Michigan. Michigan and Illinois have a levels of care system for foster homes.

Effect on Small Business

The rule will affect small businesses, but will not have a significant economic effect on a substantial number of small businesses. The Department's Small Business Regulatory Coordinator is Elaine Pridgen, elaine.pridgen@wisconsin.gov; (608) 267-9403.

Analysis Used to Determine Effect on Small Businesses

The proposed rule will affect private child-placing agencies, some of which are small businesses. The policies in the rule were developed in collaboration with members of the Foster Parent Training Committee and the Out-of-Home Care/Adoption Committee, which included representatives from child-placing agencies.

Much of the rule is based on current practices of the majority of agencies supporting treatment foster care. The sections on agency responsibilities were part of DCF 38 and have been rewritten into DCF 56 with few changes. Representatives from child-placing agencies indicated that their agencies already require foster parents to have as much or more than the training hours in the proposed rule. Many agencies that serve treatment foster parents and treatment foster children with higher needs already have a levels or intensity system with different foster parent qualifications, training, and payments. The rule will put structure and consistency to the levels of care that will help counties know what services they are purchasing as they work with different private agencies that provide similar services. Existing treatment foster homes will be grandfathered in as Level 3 foster homes and existing shift-staffed treatment foster homes will be grandfathered in as Level 5 foster homes. Some private child-placing agencies will choose to offer Level 4 foster homes and will certify these foster parents under the emergency and proposed rules. The administrative cost will be minimal.

In addition, the department will be providing 6 hours of the new pre-placement training without charge to the agencies. The department is also creating online training to allow agency staff to receive certification and recertification in administering the standardized assessment tool without charge.

Agency Contact Person

Jonelle Brom, Bureau of Permanence and Out-of-Home Care, Division of Safety and Permanence, (608) 264-6933, jonelle.brom@wisconsin.gov.

Place Where Comments are to be Submitted and Deadline for Submission

A copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public

comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
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Madison, WI 53707
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dcfpublichearing@wisconsin.gov

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than February 17, 2011, will be given the same consideration as testimony presented at the hearing.

Kimmie Collins December 21, 2010
Secretary or designee