

## Clearinghouse Rule 15-098



### State of Wisconsin Department of Children and Families

### Information to Be Provided to Physical Custodians of Children in Out-of-Home Care

### DCF 37

The Wisconsin Department of Children and Families proposes to repeal and recreate ch. DCF 37, and to repeal ch. DCF 37 Appendices A and B, relating to information to be provided to physical custodians of children in out-of-home care.

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#### **Analysis Prepared by the Department of Children and Families**

**Statutory authority:** Sections 48.67 (intro.) and 895.485 (4), Stats.

**Statutes interpreted:** Sections 48.67 (intro.) and 895.485, Stats.

**Related statute or rule:** Section 48.371, Stats.

#### **Explanation of Agency Authority**

Section 895.485 (4), Stats., provides that the department shall promulgate rules specifying the kind of information that an agency that places a child in a foster home or family-operated group home shall disclose to the foster parent or family-operated group home operator that relates to a medical, physical, mental, or emotional condition of the child.

Section 48.67 (intro.), 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, child care centers, 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.

#### **Summary of the Proposed Rule**

The current ch. DCF 37, *Information to be Provided to Foster Parents*, requires placing agencies to use the forms in Appendices A and B to provide information to a foster parent or operator of a family-operated group home about a child who may be placed or has been placed in the foster home or the family-operated group home. The current rule and forms have not been updated since the rule became effective in 1995.

Among other reasons, the forms need to be revised to respond to the finding by the Administration for Children and Families that the Wisconsin child welfare system needs to do all of the following:

- Improve the assessment of a child's needs and provide that information to caregivers providing services to the child.
- Provide consistent information to all out-of-home care providers.
- Establish plans for caregivers to follow to manage challenging behaviors by the child.

The revised forms will incorporate basic information and language from the Child and Adolescent Needs and Strengths (CANS) assessment tool that was implemented in 2011 and will be organized in a more logical manner for communicating the child's needs. Also, under the proposed rules, the placing agency will be required to use the forms when a child is placed with any physical custodian, including a foster parent; the operator of a group home; the operator of a residential care center for children and youth; a person who is not a relative with whom the child is placed under s. 48.207 (1) (f), Stats.; or a relative with whom the child has been placed by order of the court under ch. 48 or ch. 938, Stats. Under the current rule, the forms are required only when a child is placed in a foster home or a family-operated group home. In addition, the revised forms will require a plan for managing challenging behaviors by the child.

Under the proposed rule, the actual forms will not be in rule, so minor updates to the form can be made in a timely manner. The rule will include the types of information that placing agencies will be required to gather to complete the forms.

Timing. The proposed rule provides that before a prospective physical custodian agrees to placement of a child, the placing agency shall gather information required by the forms, enter it on the appropriate form or attach it to the form, and provide the forms to the prospective physical custodian.

After the placing agency provides the forms to the prospective physical custodian, the agency is required to make reasonable attempts to gather information required by the forms that was not available to the agency before providing the forms to the physical custodian. For information required under s. DCF 37.04 (4) (a) to (k), the placing agency shall provide the information it receives after providing the forms to the physical custodian as soon as possible, but no later than 2 days after the date that the child is placed with the physical custodian. For information required under s. DCF 37.04 (4) (L) to (y), the placing agency shall provide the information it receives after providing the forms to the physical custodian as soon as possible, but no later than 7 days after the date that the child is placed with the physical custodian.

An exception requires the agency to provide information it determines is of critical importance to the health, safety, or welfare of the child or the physical custodian to the physical custodian no later than 2 days after receiving the information.

If the placing agency receives information required by the forms that the agency has not provided to the physical custodian, the agency shall provide the information to the physical custodian as soon as possible, but no later than 7 days after the date that the agency receives the

information, except the agency shall provide information it determines is of critical importance to the health, safety, or welfare of the child or the physical custodian no later than 2 days after receiving the information.

Allegation. The placing agency may not include information on the forms regarding the child or the child's family that is an allegation, unless the placing agency determines that, if substantiated, the allegation would have a significant impact on the success of the placement and related services or on the health, safety, or welfare of the child, the physical custodian, others in the physical custodian's home or facility, or the community. If the placing agency informs the physical custodian of an allegation about the child or the child's family, the agency shall record the allegation in the child's case record and shall include the justification for providing the information.

Exception. A placing agency may make an exception to the provision of any information to a physical custodian for either of these reasons:

- The information is confidential, the placing agency does not have access to the information, and the placing agency has made a reasonable effort to obtain the information through appropriate releases of information.
- The exception does not jeopardize the health, safety, or welfare of the child, the physical custodian, others in the physical custodian's home or facility, or the community and the information is not critical to the success of the placement and related treatment or services.

Except as permitted under s. 252.15 (6), Stats., a physical custodian that receives information on these forms, other than the information regarding the child's religious affiliation or belief, shall keep the information confidential and may disclose that information only for the purposes of providing care for the child or participating in a court hearing or permanency plan review concerning the child.

### **Summary of Factual Data and Analytical Methodologies**

The non-statutory provisions of the proposed rules and the revised forms are based on suggestions from the Out-of-Home Care/Adoption Committee, Case Process Committee, Foster Parent Advisory Committee, and meetings with county foster care coordinators.

### **Summary of Related Federal Law**

The current 42 USC 671 (a) (24) requires that the state plan under Title IV-E of the Social Security Act for foster care and adoption assistance include a certification that, before a child in foster care 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 the preparation will be continued, as necessary, after the placement of the child.

Effective September 29, 2015, the "Preventing Sex Trafficking and Strengthening Families Act" (Public Law 113-183) amends 42 USC 671 (a) (24) to require that foster parent preparation include knowledge and skills relating to the "reasonable and prudent parenting standard" for the

participation of the child in “age or developmentally-appropriate” activities to support normalcy for children in foster care.

Under 45 CFR 1337.20, “foster care” means 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility, including placements with a relative caregiver or in a foster home, group home, shelter care, or residential care center for children and youth.

### **Comparison to Adjacent States**

Minnesota. Minnesota requires that the agency placing the child fully inform foster care providers on the reasons for placement of the child; specific actions to be taken by the child, the child’s parent or guardian, or foster care providers to correct the problems or conditions identified as a reason or the child’s removal; needs of the child or family for treatment, care, or rehabilitation; services requested or needed by the child, the child’s parent or guardian, and foster care providers; visitation rights and obligations of the parents, guardians, or other relatives; decisions about the child that the agency will make and decisions that will require the consent of the parents; authority of the foster care provider to arrange for the education of the child and to meet with the teachers regarding the child’s progress; date on which the child is expected to return home; information about the child’s immunizations and other pertinent health data; and whether the child has a communicable disease.

Illinois. Illinois requires the department to provide information to a foster parent or other caregiver on the child’s medical history, educational history, client service plan, case history behavior problems, prior criminal history, habits, likes, dislikes, and other relevant background information.

Iowa. Iowa requires that at the time of placement, an agency shall provide foster parents with the name of the child, agency caseworker, and referring agency; information about the child’s known behavioral characteristics including safety-related information, needs, and plans for the child and family; written consent to obtain routine, nonsurgical medical care and to authorize emergency medical and surgical treatment, anesthesia, and immunizations; and a copy of the child’s current physical examination and medical history.

Michigan. Before the placement of a child, Michigan requires that an agency provide a foster parent with information on the child’s name; date of birth; available known information about the child’s health; any known history of abuse or neglect of the child; all known emotional and psychological problems of the child; all known behavioral problems of the child; circumstances necessitating placement of the child; any other known information to enable the foster parent to provide a stable, safe, and healthy environment for the foster child and the foster family; name of assigned social service worker; and authorization to provide routine and emergency medical care.

### **Effect on Small Businesses**

The proposed rule will affect small businesses as defined in s. 227.114 (1), Stats.

### **Analysis Used to Determine Effect on Small Businesses**

The rule will affect private child-placing agencies that are licensed under s. 48.60, Stats., but the effect will be minimal.

### **Agency Contact Person**

Jonelle Brom, Bureau of Permanence and Out-of-Home Care, (608) 422-6930, [jonelle.brom@wisconsin.gov](mailto:jonelle.brom@wisconsin.gov).

### **Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Elaine Pridgen, Office of the Secretary, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or [dcfpublichearing@wisconsin.gov](mailto:dcfpublichearing@wisconsin.gov). The comment deadline is January 22, 2016.

**SECTION 1. Chapter DCF 37 is repealed and recreated to read:**

**Chapter DCF 37**

**INFORMATION TO BE PROVIDED TO PHYSICAL CUSTODIANS  
OF CHILDREN IN OUT-OF-HOME CARE**

**DCF 37.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 48.67 (intro.) and 895.485 (4) (a), Stats., to specify the types of information that a placing agency that places a child in out-of-home care is to provide to the child's physical custodian to ensure that the physical custodian can provide appropriate care for the child and to promote the health, safety, and welfare of the child, the physical custodian, others in the physical custodian's home or facility, and the community.

**DCF 37.02 Exception.** (1) A placing agency may make an exception to the provision of any kind of information required under this chapter if par. (a) or (b) applies:

(a) All of the following apply:

1. The information is confidential.
2. The placing agency does not have access to the information.
3. The placing agency has made a reasonable effort to obtain the information through appropriate releases of information.

(b) All of the following apply:

1. The exception does not jeopardize the health, safety, or welfare of the child, the physical custodian, others in the physical custodian's home or facility, or the community.
2. The information is not critical to the success of the placement and related treatment or services or the purposes described in s. DCF 37.01.

(2) A placing agency shall provide detailed documentation in the narrative section of the child's case record for any exception that the placing agency grants under sub. (1). The documentation shall include the specific information that was not provided to the physical custodian, the reasons for not providing the information, the name of the agency representative who made the decision to not provide that information, the date the decision was made, and written approval by that person's supervisor or the supervisor's designee.

**DCF 37.03 Definitions.** In this chapter:

(1) "Agency" means the department; a county department under s. 46.22 or 46.23, Stats.; or a child-placing agency licensed under ch. DCF 54.

(2) "Allegation" means a charge or statement regarding a child or the child's family that is known to the agency and that has not been proven or for which there is no known substantiating evidence or support, but does not include any of the following:

(a) An interpretation of information made by a professional individual involved in the child's treatment.

(b) A charge or statement that, in whole or in part, formed the basis for the child's removal from his or her home.

(c) In the case of a delinquent, any additional charges read into the record at the time of adjudication.

(3) "Child" means a child placed for care and maintenance in out-of-home care by a placing agency or court.

(4) "Child's family" means, unless otherwise indicated, the child's biological or adoptive family.

(5) "Department" means the department of children and families.

(6) “Foster home” means a facility operated by a person licensed under ch. DCF 56.

(7) “Foster parent” means a person licensed to operate a foster home and who has primary responsibility for the care and maintenance of children placed in his or her home.

(8) “Group home” means a facility operated by a person licensed by the department under ch. DCF 57 for the care and maintenance of 5 to 8 children.

(9) “Out-of-home care” means care in a foster home; a group home; a residential care center for children and youth; a shelter care facility; the unlicensed home of person who is not a relative under s. 48.207 (1) (f), Stats.; or the home of a relative when the child is placed with that relative by a court order under ch. 48 or ch. 938, Stats.

(10) “Permanency plan” means a plan designed to ensure that a child is reunified with his or her family, if appropriate, or the child quickly attains a placement or home providing long-term stability.

(11) “Physical custodian” means a foster parent; the operator of a group home; the operator of a residential care center for children and youth; the operator of a shelter care facility; a person who is not a relative with whom the child is placed under s. 48.207 (1) (f), Stats.; or a relative with whom the child has been placed by order of the court under ch. 48 or 938, Stats.

(12) “Placing agency” means a public or private agency authorized under s. 48.57 or 48.61, Stats., to place a child in out-of-home care or arrange for placement of a child in out-of-home care.

(13) “Relative” means a stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person



named in this subsection, even if the marriage is terminated by death or divorce. For purposes of placement of a child, “relative” also includes a parent of a sibling of the child who has legal custody of that sibling.

(14) “Residential care center for children and youth” means a facility operated by a child welfare agency that is licensed under ch. DCF 52 for the care and maintenance of children residing in that facility.

(15) “Shelter care” means a facility licensed under s. 938.22, Stats., and ch. DCF 59.

**DCF 37.04 Information to be provided to a physical custodian by the placing agency.**

(1) Before a prospective physical custodian agrees to placement of a child, the placing agency shall do all of the following:

(a) Gather all available information about the child and the child’s family that is required under sub. (4).

(b) Enter the information on the forms under sub. (4) or attach another document that contains the information to the appropriate form.

(c) Provide the forms prescribed under sub. (4) and any attached documents to the prospective physical custodian.

(2) (a) The placing agency shall make a reasonable attempt to gather information required under sub. (4) that was not available to the agency when the agency provided the forms to the prospective physical custodian. The agency shall provide the physical custodian with information it receives after providing the forms to the physical custodian, as follows:

1. For information required sub. (4) (a) to (k), as soon as possible, but no later than 2 days after the date that the child is placed with the physical custodian.

2. For information required under sub. (4) (L) to (y), as soon as possible, but no later than 7 days after the date that the child is placed with the physical custodian, except the agency shall provide information it determines is of critical importance to the health, safety, or welfare of the child or the physical custodian to the physical custodian no later than 2 days after receiving the information.

(b) If the placing agency receives information required under sub. (4) after the deadlines in par. (a) have passed and the placing agency has not provided the information to the physical custodian, the agency shall provide the information to the physical custodian as soon as possible, but no later than 7 days after the date that the agency receives the information, except the agency shall provide information it determines is of critical importance to the health, safety, or welfare of the child or the physical custodian no later than 2 days after receiving the information.

**(3)** (a) Notwithstanding subs. (1) and (2), a placing agency may make an exception to any requirement under s. DCF 37.02 (2) to provide information to the physical custodian.

(b) Notwithstanding subs. (1) and (2), the placing agency may not provide information regarding the child or the child's family that is an allegation unless the placing agency determines that, if substantiated, the allegation would have a significant impact on the success of the placement and related services or on the health, safety, or welfare of the child, the physical custodian, others in the physical custodian's home or facility, or the community. If the placing agency informs the physical custodian of an allegation about the child or the child's family, the placing agency shall record the allegation in the child's case record and shall include the justification for providing the information.

(4) A placing agency shall use forms prescribed by the department to provide information about the child and the child's family to a prospective or actual physical custodian under this section. The forms shall include requests for all of the following information:

(a) General information about the child, including the child's name, date of birth, race, physical characteristics, tribal affiliation, the spiritual or religious affiliation of the child or family, and the date the child was placed in out-of-home care.

(b) Parent or caregiver contact information.

(c) Significant contact information, including the child's agency caseworker and a secondary agency contact, emergency contact, and prohibited contacts and visitors.

(d) Placement reason.

(e) Medical information, including providers, health insurance coverage, diagnoses, medications, medical or mental health appointments, special medical equipment needs, and any other medical information necessary for care of the child.

(f) School or child care that the child currently attends or most recently attended.

(g) Emotional or mental health needs.

(h) Behavioral issues or concerns.

(i) Physical or personal care information.

(j) Considerations for making reasonable and prudent parenting decisions.

(k) Any additional information critical to the care of the child.

(L) General information about the child, including the child's name, date of birth, race, tribal affiliation, the spiritual or religious affiliation of the child or family, and the preferred place of worship.

(m) Placement reasons, including child abuse or neglect; delinquent acts; disability; substance abuse; emotional disturbance; behavioral issues; learning disability; and death, illness, or incarceration of the child's primary caregiver.

(n) Significant contact information, including the child's agency caseworker and secondary contact, child's siblings, other individuals who may be having contact with the child, legal custodian or guardian, guardian ad litem and legal counsel, and individuals whose contact with the child is restricted or prohibited.

(o) Medical information, including providers, preferred hospital, and insurance coverage.

(p) Placement history and permanence goals.

(q) Educational information, including the child's behavioral history in educational settings, special educational needs and services, and school-related time or services needed from the physical custodian.

(r) Emotional information regarding attachment, attention or functioning level, mental health, and other behaviors or concerns.

(s) Behavioral information regarding the child's diet, substance use or abuse, sexual development or behaviors, violence or aggression, and other activities or behaviors.

(t) Involvement in any activities that are harmful to the child's well-being.

(u) Physical or personal care information regarding the child's development, health concerns or symptoms, illnesses or medical diagnoses, medical appointments and treatment, and physical or medical restrictions.

(v) Physical custodian qualifications or needs.

(w) A list of important documents and records regarding the child that have been given to the physical custodian.

(x) A plan for managing challenging behaviors, including a list of the child's behaviors that may lead to health or safety concerns, warning signs of escalating behaviors, steps to take in response to those escalations, and the agency's reporting requirements.

Note: Information required under pars. (a) to (k) is entered on Form DCF-F-872A-E, *Information for Physical Custodians, Part A*. Information required under pars. (L) to (y) is entered on Form DCF-F-872B-E, *Information for Physical Custodians, Part B*. Both forms are available in the forms section of the department website at <http://dcf.wisconsin.gov> or by writing the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

**DCF 37.05 Confidentiality.** (1) Except as permitted under s. 252.15 (6), Stats., a physical custodian that receives any information under this chapter shall keep the information confidential and may disclose that information only for the purposes of providing care for the child or participating in a court hearing or permanency plan review concerning the child.

(2) When an agency first provides any information regarding a child to the physical custodian, the agency shall inform the physical custodian of all confidentiality requirements mandated under state or federal law, including the confidentiality requirements under ss. 48.396, 48.78, 48.981 (7), 51.30, 118.125, 146.82, 252.15, 938.396, and 938.78, Stats., and any agency policy. The agency shall also inform the physical custodian of any penalties that may be imposed for violating the confidentiality rights of the child and the child's family.

(3) The agency providing information about a child shall require that the information and any related documents be maintained by the physical custodian in a manner that would prohibit access to the information by the child, any other children in the care of the physical custodian, and any other party whose access to the information is prohibited.

**SECTION 2. Chapter DCF 37 Appendices A and B are repealed.**

**SECTION 3. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.