

Chapter HSS 53

ADOPTION INFORMATION SEARCH AND DISCLOSURE

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Note: Chapter HSS 53 was created by emergency rule effective December 14, 1982.

HSS 53.01 Introduction. (1) **AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of ss. 48.432 (9) and 48.433 (11), Stats., to establish procedures for the way in which searches for information about adoptees and birth parents are carried out, access is permitted to medical and genetic information and to information about birth parent identity and location, and information is recorded and reported to the department by adoption agencies and courts when parental rights are terminated. This chapter also establishes procedures to ensure sensitive treatment of adoptees, birth parents, adoptive parents, agencies and all others who may be affected by the search for and disclosure of medical and genetic information about adoptees and birth parents and birth parent identity and location.

(2) **DEFINITIONS.** As used in this chapter:

(a) "Adoptee" has the meaning prescribed for "child" in s. 48.432 (1) (b), Stats., namely, a person whose birth parents have had their parental rights terminated in this state at any time, or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(b) "Adoption record information" means all records that the department or agency has accumulated pertaining to the termination of parental rights, the development of an adoption case plan and the supervision and monitoring of an adoption placement, including the adoptive home study, birth parent and family records, foster home placement records, planning card files and adoptive placement materials.

(c) "Adoption search" means the functions and activities of department or agency staff carried out to locate specific birth parents, birth parent relatives or other persons or agencies who could assist in locating birth parents, for the purpose of obtaining medical and genetic information or birth parent identity and location information.

(d) "Adoption search program" means the department program responsible for either conducting searches or delegating responsibility to agencies to conduct searches for medical and genetic information and birth parent identity and location on behalf of persons specified under ss. 48.432 (3) (a) and 48.433 (3) (b), Stats.

(e) "Affidavit" means a sworn written statement from a birth parent giving the department authorization to release that birth parent's identity and location to the requesting adoptee who is at least 21 years of age.

(f) "Agency" means a county agency providing child welfare services under s. 48.56 (1), Stats., or a child-placing agency licensed under s. 48.60, Stats.

(g) "Birth parent" means either the mother designated on the adoptee's original birth certificate or the adjudicated father or, if there is no adjudicated father, the husband of the mother at the time of the adoptee's conception, birth or subsequent legitimation, whose rights to the adoptee have been terminated in this state or who consented to the adoption of his or her child before February 1, 1982.

(h) "Birth relatives" means the adoptee's birth parents, grandparents, aunts, uncles, brothers and sisters.

(i) "Centralized birth record file" means the file established by the department containing affidavits, medical and genetic information, birth parent identity and location and other information received by the department which pertains to the birth family and the adoptee.

(j) "Department" means the Wisconsin department of health and social services.

(k) "Fee for service" means the charge made by the department or agency to the requester for the cost of an adoption search for birth parents in order to obtain medical and genetic information and birth parent identity and location, as required under ss. 48.432 (4) (d) and 48.433 (6) (d), Stats.

(l) "Identifying information" means any information which discloses the name, location or identity of a birth parent.

(m) "Medical and genetic information" means any available medical, genetic, psychiatric or psychological history of the adoptee's birth parents and the adoptee's grandparents, aunts, uncles, brothers, and sisters and is not limited to information contained in the medical record as defined in s. 48.425 (1) (am), Stats.

(n) "Medical emergency" means a situation in which a licensed physician has determined that the life or health of the adoptee is in imminent danger or that treatment without the medical and genetic information could be injurious to the adoptee's health.

(o) "Nonidentifying social history information" has the meaning prescribed in s. 48.02 (12m), Stats.

(p) "Program information" means information about the adoption search program which the department provides to requesters, agencies, courts and the general public, except that it does not include adoption record information.

(q) "Requester" means a person specified in s. 48.432 (3) (a), Stats., who is seeking medical and genetic information, or a person specified in s. 48.433 (3), Stats., who wants his or her original birth certificate or is seeking information about birth parent identity and location.

(r) "Sibling" means a brother or sister having at least one birth parent in common with the adoptee.

HSS 53.02 Provision of adoption search program information. The department shall provide information about the adoption search program to courts, agencies, requesters and the general public as required under this section.

(1) **PROVISION OF PROGRAM INFORMATION TO REQUESTERS.** (a) Program information shall be sent to requesters within 14 days after receiving written or oral inquiry for this material; and

(b) Information regarding additional provisions under the Indian Child Welfare Act shall be provided to all applicable requesters.

(2) **PROVISION OF PROGRAM INFORMATION TO AGENCIES AND COURTS.** (a) The department shall provide agencies and courts with a recommended standard format and procedures for use in obtaining information from birth parents prior to the termination of parental rights and for reporting this information to the department.

(b) The department shall provide agencies and courts with a model medical record form and periodically revise the form as increased medical and genetic knowledge dictates.

(c) The department shall provide information to the courts and agencies regarding their responsibilities under Wisconsin statutes concerning medical and genetic information about adoptees, information about birth parent identity and location and non-identifying social history information.

(d) The department shall provide or arrange for assistance and consultation to agencies and courts regarding the centralized birth record file and the adoption search program.

Note: Requests for forms, procedures and consultation should be sent to: Adoption Search Program, Division of Community Services, P.O. Box 7851, Madison, WI 53707.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

HSS 53.03 Centralized birth record file. (1) **GENERAL.** The department's adoption search program shall establish, organize, and maintain a centralized birth record file and shall control disclosure of information from the file in accordance with s. HSS 53.06.

(2) **ORGANIZATION OF THE CENTRALIZED FILE.** The centralized file shall be organized to consist of individual files containing:

(a) Information received in the course of administering ss. 48.432 and 48.433, Stats.;

(b) Medical and genetic information and birth parent identity and location information received from the courts for each adoptee whose birth parent's or parents' rights were terminated on or after May 7, 1982;

(c) Relevant updated medical or genetic information about the adoptee and the adoptee's birth relatives received from any birth parent or agency;

(d) Reports from physicians which state that an adoptee, birth parent or sibling has or may have a genetically transferable disease;

(e) Affidavits or revocations of affidavits received from any birth parent; and

(f) Any other relevant information received about the adoptee or birth relatives.

(3) **INFORMATION FROM COURTS.** When a petition for termination of parental rights is granted, the court shall provide the adoptive parents with a copy of the adoptee's medical record and other information as required under s. 48.93 (lg), Stats., and shall ensure that the following information is submitted to the department for inclusion in the centralized file:

(a) Information listed in the department's model court report form;

(b) Medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the adoptee's other birth relatives obtained under s. 48.422 (9) or 48.425 (1) (am) or (2), Stats.; and

(c) Any current reports on birth parent medical examinations, information on the adoptee's prenatal care and medical condition of the adoptee at birth.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

HSS 53.04 Department and agency responsibilities. An effective and responsible adoption search program depends on a cooperative working relationship between the department and agencies and a clear delineation of their respective responsibilities as specific under this section.

(1) **DEPARTMENT RESPONSIBILITIES.** (a) The department shall diligently conduct adoption searches in accordance with ss. 48.432 (4) (b) and 48.433 (6) (a), Stats., when specifically requested to conduct a search or when a request is received but no existing agency provided services for the adoption or the agency that provided adoption services does not have a current interagency agreement with the department under par. (b).

(b) The department may delegate authority granted under ss. 48.432 and 48.433, Stats., to an agency to conduct adoption searches but only through a written interagency agreement signed by authorized representatives of the department and the agency. The department shall monitor adoption searches conducted by the agency.

(c) The department shall, upon request, provide adoption search assistance to the agency conducting a search under the interagency agreement in accordance with specific provisions of the interagency agreement.

(2) **AGENCY RESPONSIBILITIES.** (a) Agencies shall direct all requests for adoption searches that they receive to the department for processing, except as provided by court order. At no time may an agency act on its own in providing requesters with adoption information except under the terms and conditions of an interagency agreement, as allowed by s. 48.432 (7), Stats., in response to a court order or if the information is already on file and disclosure is allowed by s. 48.93 (1r), Stats.

(b) All agencies shall make adoption record information available to department staff conducting searches and cooperate in searches upon request of the department as specified in ss. 48.432 (4) (b) and 48.433 (6) (b), Stats., s. HSS 54.05 (1) and this chapter.

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(c) When a petition for termination of parental rights is filed with a court, the agency required under s. 48.425 (1), Stats., or directed by the court under s. 48.425 (3), Stats., to file a report with the court shall prepare a medical record on the child for the court on a form provided by the department within 60 days of the petition for termination of parental rights.

(d) Agencies operating under an interagency agreement shall diligently conduct adoption searches, except when the requester specifies that he or she prefers that the department conduct the search.

(e) When any agency is asked to disclose information from a record of final adoption, the agency may disclose the information only as allowed under ss. 48.432, 48.433 and 48.93 (1r), Stats., and s. HSS 53.06.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

HSS 53.05 Adoption searches. (1) REQUESTING A SEARCH. (a) To initiate a search, a requester shall submit a completed application form to the department.

(b) Before acting on a request for birth parent identity and location, the department or agency shall require adequate identification to ensure that the requester is indeed the adoptee and is 21 years of age or over.

(c) In the event of a medical emergency, the department or agency shall give the request priority attention and immediately initiate search activities and release available information as permitted by law.

(d) Requesters' applications shall be acted upon in the order that the applications are received, except that requests under par. (c) shall have priority over other requests.

Note: Application forms may be obtained from and are to be submitted to: Adoption Search Program, Division of Community Services, P.O. Box 7851, Madison, Wisconsin 53707.

(2) ADOPTION SEARCH PROCEDURES. (a) The department or agency shall diligently conduct adoption searches for birth parents. A search shall not be considered complete until all reasonable means for locating and contacting a birth parent are exhausted.

(b) To the extent allowed by law, adoption search activities shall include, but are not limited to, checking:

1. The current address on file at the department or agency;
2. Known close birth relatives who may know the location of the birth parent;
3. Directories;
4. Motor vehicle records;
5. Marriage and death certificates;
6. The family's physician;
7. Occupational licensing boards if applicable to the birth parent's occupation;
8. Church records;
9. Public agency records;

10. Divorce records; and

11. Probate records.

(c) Employees of the department or agency conducting an adoption search for birth parents may not inform anyone other than the birth parents about the purpose of the search.

(d) When it appears that a sought-after birth parent has been identified and located, the searcher shall first attempt to make contact with the birth parent by telephone. If the presumed birth parent has no telephone or cannot be contacted by telephone, the searcher shall attempt contact through either a home visit or a letter.

1. Whether the searcher attempts contact by letter or home visit, the contact shall be handled in a sensitive manner.

2. If a letter is used, the specifics of the search shall not be revealed in the event that another member of the household opens the mail.

Note: Copies of sample, non-specific letters are available from: Adoption Search Program, Division of Community Services, P.O. Box 7851, Madison, Wisconsin 53707.

(e) Adoption search program information shall be provided to all birth parents contacted under this subsection in accordance with s. 48.433 (7) (b), Stats.

(f) Upon completion of an adoption search, the agency shall provide the requester and the department with the same written correspondence which includes:

1. The search activities utilized and the types of information resulting from the search activities; or

2. The circumstances relating to the agency's inability to locate the birth parent or the birth parent's refusal to provide information.

(3) FEE FOR ADOPTION SEARCH. (a) Except as provided in par. (b), the department or agency designated by the department to conduct the adoption search shall charge the requester a fee to cover costs incurred in conducting the adoption search. The fee shall reflect the amount of effort put into a search for birth parents or birth parent information and not the results or amount of information the department or agency is able to provide.

Note: The department or agency cannot guarantee that birth parents will be found or that, if found, the birth parents will file the required affidavit granting authorization for disclosure of birth parent identity and location.

(b) Neither the department nor the agency may charge a fee for a search of adoption record information maintained in its internal files.

1. A requester may specify that the search be restricted to only that adoption record information available within the agency's internal files.

2. If the department or agency conducting an adoption search finds that the requested information is available within its internal files, the search activity shall cease and no fee may be charged to the requester.

(c) The adoption search fee shall be an hourly amount and represent the same costs the department or agency uses to compute fees for other

client services that are provided on an hourly basis. The following items may be included in the fee:

1. Salary and fringe benefit expenses of personnel needed to operate and manage the search activity (professional staff, clerical staff, and supervisory personnel);
2. A proportionate share of overhead expenses attributable to the search activity; and
3. Special documentable expenses such as travel expenses and long distance telephone costs if these expenses are not included in the regular rate. These expenses shall be the actual amount paid out by the agency or the department for the special item.

Note: Examples of overhead expenses that can be taken into account when computing fees are rental of space and equipment, utility costs, local telephone costs, depreciation of buildings and equipment, interest payments, materials, supplies and postage.

(d) The department or agency shall require a minimum charge up to the amount charged for one hour of service for any adoption search activity undertaken for a client, except for a search under par. (b).

(e) Each agency shall inform the department of the hourly fee that it charges for adoption search services. Agency and department fees may be adjusted whenever costs for providing the service change. Fees shall be recomputed at least once a year.

(f) The department or agency may require an advance payment of not more than \$100 for the initiation of an adoption search. If the advance payment exceeds the fee times the number of hours of service plus special expenses, the department or agency shall refund any overpayment to the requester. When the hours of service plus special expenses equal the advance payment, the requester shall be notified that he or she has the option of either accepting the adoption search information obtained to date or making an additional advance payment for continuation of adoption search activities.

(g) The department or agency may waive all or part of any fees described in this subsection when the department or agency finds that the requester does not have the sufficient means to pay for the search.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

HSS 53.06 Release of adoption information. (1) CONFIDENTIALITY. The department and agencies shall comply with Wisconsin statutes, administrative rules and federal regulations governing confidentiality of adoption records and consider all adoption information to be confidential information that may only be released as provided under ss. 48.432, 48.433, and 48.93, Stats., and this chapter.

(2) NOTIFICATION OF THE DEPARTMENT. Any agency disclosing identifying information shall inform the department regarding the types of information released and the persons to whom this information was released.

(3) MEDICAL AND GENETIC INFORMATION. The department or agency shall release medical and genetic information as follows:

(a) On receiving an eligible request, the department or agency shall compile any existing medical and genetic information from files main-

tained at the department or agency into a medical and genetic history and provide a copy of the information to the requester without charge except for the actual cost of reproduction. Any updated medical and genetic information obtained as a result of a requested search of additional sources shall also be compiled into a medical and genetic history and reported to the eligible requester, and a fee may be charged for the cost of the search;

(b) When the department or agency receives any updated medical and genetic information pertaining to the birth parents or adoptee, the department or agency shall make a reasonable effort to forward that information to the birth parent or to the adoptive parent, or to the adoptee after he or she has reached age 18, and the agency shall also forward that information to the department;

(c) On receiving a report from a physician that an adoptee, birth parent or another child of a birth parent has or may have a genetically transferable disease, the department or agency shall disclose that information directly to the adoptee, if the adoptee is 18 years of age or older, or to the guardian, custodian or adoptive parents, if the adoptee is under age 18, and to the birth parent, as required by s. 48.432 (7) (a) and (b), Stats.; and

(d) On receiving a court order, the department or agency shall release information listed in par. (a) or (b) as specified by the court order.

(4) **BIRTH PARENT NONIDENTIFYING INFORMATION.** On receiving a request from an adoptive parent or an adoptee over age 18, the department or any agency shall provide the requester without charge, except for the cost of reproduction, with nonidentifying social history information about the adoptee's birth family which it has on file, after deleting the names and addresses of the birth parents and any provider of health care to the adoptee or the adoptee's birth parents.

(5) **BIRTH PARENT IDENTIFYING INFORMATION.** (a) The department and agencies conducting searches under an interagency agreement may release birth parent identifying information only to requesters who are 21 years of age or over and whose birth parents' rights have been terminated in this state or who have been adopted in this state with consent of the birth parent or parents before February 1, 1982, and only after the birth parent has filed an affidavit granting authorization for release of identifying information or pursuant to a court order.

(b) If the department or agency may not under this subsection disclose the information requested and the requester is an adoptive parent or an adoptee over age 18, the department or agency shall provide the requester with any nonidentifying social history information about the adoptee's birth family that it has on file as required under sub. (4).

(6) **INFORMATION FROM A RECORD OF FINAL ADOPTION.** When an agency receives a request for information from a record of final adoption, the agency shall forward the request and the requested information to the department, except that the agency shall disclose the information directly to the requester in response to a court order, as authorized by the department under an interagency agreement, pursuant to subs. (3), (b),

(c) and (4) or when the request is for existing medical and genetic information under sub. (3) (a).

Note: Requests for updated medical and genetic information relevant to adoptees and for identifying information about birth parents should be sent to: Adoption Search Program, Division of Community Services, P.O. Box 7851, Madison, WI 53707.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

HSS 53.07 Adoption records. (1) **PERMANENCE.** The department and agencies shall maintain adoption records permanently.

(2) **DEPARTMENT ACCESS TO AGENCY RECORDS.** Agencies shall make adoption records available to department staff who are conducting searches or monitoring the agencies authorized to conduct searches.

(3) **SAFEKEEPING FOLLOWING AGENCY TERMINATION.** Agencies shall have written policies providing for retention and safekeeping of adoption records in the event that an agency discontinues operation. The policies shall include:

(a) A provision for transfer of the adoption records into the safekeeping of the agency's governing body and for notification of the department regarding access to the transferred records; and

(b) A provision that if no governing body exists or if the governing body does not accept the transfer of records, the adoption records shall be transferred to the department for inclusion in the central birth record file.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

HSS 53.08 Complaints. Any requester or birth parent not satisfied with an action taken by the department or agency regarding the implementation or interpretation of this chapter may ask the secretary of the department or that person's designee to review the action. Following review, the secretary or designee shall respond to the complainant.

Note: Requests for a review should be addressed to: Administrator, Division of Community Services, P.O. Box 7851, Madison, Wisconsin 53707.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.