

Chapter HFS 52

CHILD CARE INSTITUTIONS

Subchapter I—General Provisions and Licensing of Child Care Institutions

HFS 52.01	Introduction.
HFS 52.02	Organization and administration.
HFS 52.03	Personnel administration.
HFS 52.04	Building, grounds and equipment.
HFS 52.05	Child care and development.
HFS 52.06	Social services.
HFS 52.07	Records and reports.

Subchapter II—Determination of Need for Additional Child Care Institution Beds

HFS 52.50	Introduction.
HFS 52.51	Definition.
HFS 52.52	Certification of need requirement.
HFS 52.53	Demonstration of need.
HFS 52.54	Publication of notice—party status.
HFS 52.55	Need determination.

Note: Chapter HSS 52 was renumbered chapter HFS 52 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1999, No. 522.

Subchapter I—General Provisions and Licensing of Child Care Institutions

HFS 52.01 Introduction. (1) STATEMENT OF INTENT. The intent of these rules is to protect and promote the health, safety and welfare of children in the care of child care institutions in Wisconsin.

(2) APPLICABILITY. This chapter applies to all child care institutions.

(3) EXCEPTIONS. The department may make exceptions to any rule for licensing child care institutions when it is assured that granting such exceptions is not detrimental to the health, safety or welfare of children.

(4) DEFINITIONS. As used in this chapter:

(a) "Board of directors" means the policy-making body which governs a child care institution and is responsible for compliance with this chapter.

(b) "Child" means a person under 18 years of age, except that a person under continuing juvenile court jurisdiction who is over 17 years of age but has not yet attained the age of 21 is also considered a "child" for purposes of this chapter.

(c) "Child care institution" means a child welfare agency which regularly provides care and maintenance for children within the confines of its building.

Note: An agency having education as its primary purpose is deemed to be a child care institution when its pupils, in the ordinary course of events, do not return annually to the homes of their parents or guardians for at least 2 months of summer vacation. Exceptions to these rules may be considered for such agencies when the exceptions, in the department's opinion, do not jeopardize the health, safety and welfare of children.

(d) "Child welfare agency" means any person required to be licensed under s. 48.60, Stats.

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

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

(g) "Division of public health" means the department's division of public health.

(h) "Guardian" means the person or agency appointed by a court to make major decisions affecting a child, which may include consent to marriage, to enlistment in the armed forces, to major surgery and to adoption, or to manage the estate of a minor.

(i) "Legal custodian" means the person or agency to whom a court has transferred a child's legal custody, and who thereby has the right and duty to protect, train and discipline the child and to provide for the child's care needs. "Legal custody" has the meaning prescribed in s. 48.02 (12), Stats.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

HFS 52.02 Organization and administration.

(1) INCORPORATION. Every child welfare agency shall be incorporated. Any agency incorporated outside of Wisconsin shall secure authorization from the secretary of state to do business in Wisconsin.

(2) BOARD OF DIRECTORS. (a) Every agency shall be governed by the board of directors which is responsible for the operation of the agency according to its defined purposes.

(b) If the agency is incorporated in another state, the board of directors shall:

1. Meet in Wisconsin at least once during the period for which the license is issued; or

2. Have a subcommittee of at least 3 Wisconsin residents one of whom shall be a member of the board. This subcommittee shall be responsible to the board of directors to see that board policies are carried out and that there is adherence to licensing rules.

(c) When requested, the board, or its subcommittee if it is in the category covered by par. (b), shall meet with the licensing representative.

(d) The board shall:

1. Define its responsibilities. These responsibilities shall include:

a. The establishment of policies to be followed by the institution and regular planned review of its policies and purposes to determine that the interests of children are being served.

b. Surveillance that the institution does not discriminate in its personnel practices, intake and services on the basis of race, color and national origin.

c. The exercise of trusteeship for property, investment and protection from liability.

d. Approval of the budget and responsibility for obtaining and disbursing of funds.

e. Employment of a qualified executive and delegation to that executive the responsibility for the administration of the institution and the employment of other staff members.

2. Meet at least semiannually and keep minutes of each meeting which shall be made a part of the permanent records of the institution.

3. Keep informed to insure that the institution fulfills its functions.

4. Consult with the department prior to the establishment of a new institution or the changing of a basic program of care of an existing institution.

5. Notify the department when there is a change in the executive of the institution and/or the board chairperson.

6. Notify the department of any major changes pending or occurring in the corporate structure, organization or administration of the agency.

(3) APPLICATION. (a) All applications for a license shall be on forms prescribed by the department, shall be signed by the chief

officer of the board of directors and the institution executive and shall be submitted to the department.

(b) If the board is applying for a license for the first time a written notification indicating intent to operate shall be submitted at least 60 days prior to the date on which it proposes to begin operation.

(c) The formal application for the initial license shall be submitted before a first license is issued. The institution shall not begin operation as an institution until it receives such a license.

(d) The following material shall accompany the first application for a license:

1. A copy of the articles of incorporation and, if existent, a copy of the constitution and by-laws;
2. Evidence of the availability of funds to carry the institution through the first year of operation;
3. A statement of purposes which includes a description of the geographic area to be served, the types of children to be accepted for care, the services to be provided and the program objectives;
4. A description of the job responsibilities for each type of position proposed for the institution;
5. A proposed organization chart insuring that there will be staff in number and qualifications for the scope of the agency services;
6. A list of the board members; and
7. A copy of the certificate of need obtained under ss. HFS 52.50 to 52.55.

(e) Subsequent applications shall be submitted to the department:

1. At least 3 weeks prior to the expiration of the current licensing;
2. When an additional facility or new program which is subject to licensing is to be opened;
3. When the address of the facility is to be changed; and
4. When ownership of the institution is changed.

(f) The following material shall accompany subsequent applications for a license:

1. Copies of the annual reports published since the last license was issued;
2. The budget for the current fiscal year and the financial audit of the past year;
3. A list of the current members of the board of directors and its committees;
4. The number, names, qualifications and classifications of current staff;
5. A copy of the current staff organization chart;
6. A description of any program review and evaluation and changes in program content and purpose which have occurred since the last license was issued;
7. If the expiring license is provisional, a statement showing whether the requirements on which a provisional license was based have been met or, if not, plans for meeting them;
8. A copy of any revisions of personnel practices that have been made since the last license was issued; and
9. If the applicant desires to expand the bed capacity of an existing child care institution, a copy of the certificate of need obtained under ss. HFS 52.50 to 52.55.

(g) A written amendment to the license shall be secured from the department by the board of directors prior to any changes in the conditions of the current license.

(h) When a license is issued, the board shall display the certificate of license in a prominent place in the institution.

(i) Within 60 days after receiving a complete application for a child care institution license, the department shall either approve the application and issue the license or deny the application. If the

application for a license is denied, the department shall give the applicant reasons, in writing, for the denial.

(4) FINANCING. (a) The board, with the executives, shall be responsible for the safety and judicious use of the funds of the institution. Policies and practices shall be in accord with sound budgeting, disbursement and audit control procedures.

(b) Each institution shall:

1. Have sufficient funds assured to carry a new institution through its first year of operation and be able to furnish evidence to that effect.

2. Have a sound plan of financing to assure sufficient funds to enable it to carry out its defined purposes and to provide proper care for children, as required by the administrative rules relating to licensing child welfare agencies.

3. Provide for annual audit of all accounts by a certified public accountant who is not in the employ of the agency nor a member of the board.

4. On request, provide the department with financial records or financial statements.

(c) The financial operation of the institution shall be based on an annual budget approved by the board. This budget shall reflect anticipated expenditures and sources of income.

History: Cr Register, October, 1957, No. 22, eff. 11-1-57; r and recr Register, July, 1970, No. 175, eff. 2-1-71; renun. from PW-CY 40.51, Register, August, 1982, No. 320, eff. 9-1-82; cr. (3)(i), Register, October, 1985, No. 358, eff. 11-1-85; r. and recr. (3)(a), (d) and (f), Register, October, 1988, No. 394, eff. 11-1-88; correction in (2)(d) 5., made under s. 13.93 (2m) (b) 5., Stats., Register, June, 1995, No. 474.

HFS 52.03 Personnel administration. (1) PERSONNEL POLICIES (a) Each institution shall have a written statement of personnel practices adopted by the board. The board shall review personnel practices at least every 2 years.

1. The following items shall be included in personnel practices and shall be submitted to the department for approval with the original application:

- a. There shall be written descriptions of job responsibilities for all positions of 6 months or longer duration in the institution.

- b. There shall be staff sufficient in number and qualifications for the scope of the institution's services.

2. Within one year from original licensure and every 2 years thereafter, the institution shall submit to the department for approval, written material concerning the process and content of orientation, staff development and in-service training programs for all institution employees. These programs shall include provision for the development of a working knowledge of these rules as they pertain to individual responsibilities.

(b) There shall be written policy statements available to all employees and made known to each employee at the time of employment including:

1. The method of wage adjustments.
2. Retirement program.
3. Health and other insurance programs.
4. Vacation, sick leave, holidays and leaves of absences.
5. Probationary status.
6. Termination procedures.
7. Agency chain of command.
8. Grievance procedures.
9. Employment outside the agency.
10. For the job classification for which application is being made:
 - a. Compensation.
 - b. Hours of work.
 - c. Description of job responsibilities.
 - d. Performance evaluation.

(c) A personnel record shall be maintained for each staff member and be available to the authorized licensing staff. The record shall include:

1. Employment application showing qualifications and experience.
2. Statement from previous employers and personal references.
3. Reports of job performance.
4. Medical reports.
5. Dates of employment, separation and reasons for separation.

(d) Resident staff shall have at least 2 hours free of all agency responsibility during each 24 hour day, and at least one consecutive 24 hour period of free time per week.

(2) PERSONNEL (a) *General qualifications.* 1. All employees shall have the ability and emotional stability to carry out their assigned duties.

a. Character references from at least 2 people and references from previous employers within the last 5 years must be obtained for prospective employees.

b. References may be documented either by letter or verifications in the record of verbal contact giving dates, person making the contact and persons contacted and the contact content.

c. The institution shall review and investigate application information carefully to determine whether employment of the individual is in the best interests of children under its care.

2. Every staff member who has contact with children shall have a comprehensive physical examination, to include screening for tuberculosis and a serological test for syphilis, within one year before he or she begins work.

3. All persons shall be excluded from the institution when ill, including such conditions as serious upper respiratory infections and infectious lesions. Persons with contagious diseases such as, but not limited to mononucleosis, streptococcal and staphylococcal infections shall have a physician's release before returning to work.

4. No person with a health history of typhoid, paratyphoid, dysentery, or other diarrheal disease shall be employed in an agency until it is determined by appropriate tests that such person is not a carrier of these diseases.

(b) *Administrative staff.* 1. An administrator shall be employed who shall:

a. Possess a knowledge of child welfare services and a demonstrated actual or potential administrative skill and leadership.

b. Be a graduate of an accredited college or university with a minimum of 15 credits in the social sciences.

c. Have at least 2 years experience in an administrative or supervisory capacity.

2. The administrator's responsibilities to the board for administering the institution shall include:

a. Satisfactory management.

b. Keeping them informed of the program of the institution.

c. Preparing the annual budget for discussion and approval.

d. Responsibility for the operation of the program of child welfare in employment, supervision and discharge of staff.

3. If the executive also functions as casework or child care supervisor he or she shall meet the additional requirements for those classifications.

4. There shall be a qualified staff person to whom authority is delegated in the absence of the executive. The executive or a person to whom he or she has delegated responsibility, shall be available at all times.

(c) *Child care staff.* 1. Child care staff shall participate on an ongoing basis in either:

a. A department approved in-service training program conducted by the institution, or

b. College or university credit or non-credit courses related to child care.

2. The ratio of child care staff to children in care shall be dependent on the needs of the children, but the ratio of such staff to children shall not be less than the following schedule:

Age of child	Minimum ratio of staff to children during working hours
Infant to one year	1 to 3 children
One year to 2 ¹ / ₂ years	1 to 4 children
2 ¹ / ₂ to 3 years	1 to 6 children
3 to 4 years	1 to 10 children
4 years and over	1 to 12 children

Note: Child care staff are defined as those persons who are primarily responsible for the day to day living experience of children in care.

3. There shall be at least 2 child care staff members or persons properly substituting for them on duty in the institution at any time when there are 9 or more children present during waking hours.

4. When there are 8 or less children in care a second person who meets the qualifications for child care staff shall be available within 5 minutes.

5. At night there shall be a staff member within hearing or call of every 25 children or a fraction thereof, when they are asleep. In addition there shall be another adult who can be summoned in case of emergency.

a. If children under 6 are in care, the night time ratio of staff to children shall be no less than 1 to 15.

b. When infants under one year of age are in care, the night time ratio of staff to children shall be no less than 1 to 5.

c. When children are under 6 years of age, the staff members on duty shall be awake and remain in the immediate vicinity of the children.

6. The primary responsibility of child care staff shall be care of children. The institution shall not assign other responsibilities which interfere with this responsibility.

7. Responsibility for the supervision of child care staff shall be delegated to a person who is qualified for this position. This shall be a full time position if 8 or more child care staff are employed. Qualifications for this position shall include either:

a. The status of advanced social worker (See (d) 4.), or

b. A master's degree in a social science, or

c. Three years of experience in institutional child care plus 250 hours of documented in-service training.

(d) *Social service staff.* 1. The ratio of social service staff to children shall be dependent on the needs of the children, but, there shall be at least one social worker for every 25 children in the institution.

2. Institutions which provide care exclusively for mentally retarded children shall employ at least one social worker for every 50 children.

3. Director of social service or social work supervisor. a. Each institution shall employ as the director of social service or social work supervisor, one social worker with a master's degree from a recognized school of social work. In addition this person shall have knowledge of and skill in supervision and at least 2 years of supervised experience in a recognized child or family welfare agency.

b. The supervisory responsibility shall be handled by a full time agency employe if the institution employs 4 or more social workers. Such an employe could be carrying other functions on a limited basis if he is supervising between 4 and 8 social workers. Such a staff position shall not exceed supervision of more than 8 staff.

c. In a large program in which a director of social service is responsible for the supervision of one or more social worker supervisors, the director of social service shall have at least 2 years of supervisory experience in a recognized family or child welfare agency.

4. Advanced social worker. In agencies employing more than one social worker, at least 50% of the social workers shall be advanced social workers. An advanced social worker shall have:

a. A master's degree from an accredited school of social work, or

b. Completed one year of graduate work in an accredited school of social work and have at least 2 years of supervised experience in child or family welfare, or

c. Graduated from an accredited college or university, completed at least 3 years of supervised experience in the field of child or family welfare, acquired 12 graduate credits in social work, and completed 250 hours of documented in-service training.

5. Social worker. Social workers shall have at least a bachelor's degree with a minimum of 15 credits in the social services and within 2 years of employment shall participate in at least 180 hours of documented in-service training.

6. Consultant services. The institution shall provide consultant services as required to meet the needs of the children. Consultants shall meet the standards of their professional groups.

(e) *Education staff.* 1. The administrator shall designate a qualified staff person to be responsible for determining that the education needs of each child in residence are met.

2. If the institution operates a school program it shall maintain a classroom ratio of at least one teacher for each 15 students.

3. Teachers employed in an institution shall:

a. Hold a bachelor's degree from an accredited college or

b. Be a graduate of an approved 2 year professional teacher education course and have a 2 year experience in a full time paid teaching position.

4. If teachers' aides are employed they shall meet the requirements for child care staff.

5. Education staff shall participate on an agency basis in either:

a. The institution in-service training program approved by the department, or

b. College or university credit or non-credit courses related to education.

(f) *Recreation and activity staff.* 1. The institution shall designate a staff person to be responsible for the development and coordination of the institution's recreation and activity programs.

2. The agency shall select recreation staff on the basis of experience in working with groups of children whose recreational needs and interests vary.

3. The agency may use child care staff as recreation or activity staff only if they possess skills ordinarily expected of recreation staff.

4. Recreation and activity staff shall participate on an ongoing basis in a department approved in-service training program.

(g) *Clerical staff.* The institution shall have clerical services to maintain correspondence, records, bookkeeping and files.

(h) *Other staff.* 1. The institution shall employ staff such as cooks, kitchen help, housekeepers, gardeners, janitors, laundresses, and seamstresses to carry on the daily housekeeping functions.

2. There shall be one person on the premises awake and on duty during the night in any institution having a population of over 25 children on the premises.

(i) *Volunteers.* 1. If volunteers are used, the agency shall assign an appropriate staff member to evaluate and supervise them and to develop a plan for their operation, training and use.

2. All volunteers having regular contact with children for more than 2 hours per week shall have annual chest X-rays or negative tuberculin tests. Volunteers who are in contact with children more than 20 hours in a week shall meet the health requirements for paid staff.

History: Cr. Register, October, 1957, No. 22, eff. 11-1-57; r. and recr. Register, July, 1970, No. 175, eff. 2-1-71, renum; from PW-CY 40 52 and am. (2) (d) 6. and (h) 2. Register, August, 1982, No. 320, eff. 9-1-82; am. (2) (a) 2., Register, June, 1983, No. 330, eff. 7-1-83; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, June, 1995, No. 474.

HFS 52.04 Building, grounds and equipment.

(1) **GENERAL REQUIREMENTS** (a) All buildings of the child care institution shall comply with the state building code, chs. Comm 50 to 64, Wis. Adm. Code.

(b) Plans for new buildings or alterations which affect the structural strength, safety, or sanitary conditions of existing buildings, shall be submitted to the division of industrial safety and buildings, and to the department for approval. The agency shall have in writing the approval of both the department and the division of industrial safety and buildings before contracts are let.

(c) The institution shall comply with requirements established through the building inspections which the division of industrial safety and buildings will make at intervals not to exceed 2 years.

(d) The premises of an institution shall be used only for purposes which are compatible with the program of child care.

(e) Living and indoor recreation space to enhance physical and emotional health shall be provided. Buildings constructed or other facilities converted to child care after the effective date of these rules shall contain living and recreational space at least equal to the minimum amount of sleeping space required for licensing. This space shall be exclusive of hallways less than 7 feet in width, bathrooms, lockers, offices, storage rooms, isolation rooms, staff rooms, furnace rooms and that part of the kitchen occupied by stationary equipment.

(f) Safety glass which is resistant to shattering or screening approved by the department shall be installed in high risk areas where children are active such as recreation rooms and stair wells.

(g) There shall be telephone service in all buildings housing children.

(h) Any institution operating or using camping facilities shall comply with requirements for recreational camps established by the division of public health in ch. HFS 175.

(i) Institutions using or operating camp facilities between October and April shall comply with requirements of the building code and the heating, ventilation and air conditioning code issued by the division of industrial safety and buildings. Compliance with these requirements shall be determined through inspections of the division of industrial safety and buildings made at intervals not to exceed 2 years.

(2) **LOCATION** The location of the institution shall be beneficial to health, safety and well-being of the children.

(3) **GENERAL SANITATION** The institution shall comply with department sanitation requirements and with the recommendations of the division of public health when used as a consultant by the licensing agent.

(4) **WATER** (a) The institution shall at all times have a safe adequate supply of running hot and cold water.

(b) Drinking water shall be supplied from an approved public water supply, if available.

(c) When water is obtained from a private well, the water supply shall meet the requirements of the division of public health, and its safety shall be determined by monthly testing of samples submitted to the state laboratory of hygiene, Madison, Wisconsin, or to a laboratory certified by the department of agriculture, trade and consumer protection.

(d) The use of common drinking utensils shall be prohibited. Sanitary drinking fountains shall be installed or individual drinking cups provided.

(5) **SEWAGE.** Sewage shall be disposed of through a municipal sewage system when available. When an independent or private system is necessary, the installation shall comply with the requirements of the public safety and buildings division of the Wisconsin department of commerce.

(6) **BATH AND TOILET FACILITIES.** (a) The institution shall:

1. Maintain bathrooms, toilets and wash basins in a sanitary condition. At least one-half of the facilities shall be on the same floor as the sleeping rooms.

2. Provide at least one wash basin in every toilet room.

3. Provide separate toilets and bathrooms for boys and girls 6 years of age and over.

4. Provide privacy and bath and toilet equipment of the appropriate height for the children using it.

5. Provide at least one tub and one shower; either separate or in combination with each other, in each living unit.

(b) An institution with 8 or less occupants shall meet the requirements with one complete bathroom, provided that all children under care are of the same sex. The term "complete bathroom" is intended to include a toilet stool, wash basin, and a bath-tub or shower.

(c) An agency with 9 or more occupants shall:

1. Provide separate bath and toilet facilities for staff.

2. Provide one toilet for every 8 children, one tub or shower for every 8 children, and one wash basin for every 4 children.

3. Provide at least one toilet and wash basin near living rooms and recreation areas.

(d) All hot water pipes leading to bathing and washing facilities used for child care purposes shall be fitted with an approved temperature control device so that the water delivered does not exceed 105° F. The temperature control device shall be tamper proof and controlled only by authorized persons.

(7) **SLEEPING FACILITIES.** (a) The institution with 9 or more children shall:

1. Provide an area of at least 80 square feet within sleeping areas for one child.

2. Provide at least 60 square feet of floor space per child in sleeping areas that accommodate more than one child.

(b) The institution with 8 or less children shall:

1. Meet the requirements for space within sleeping areas with at least 35 square feet of floor space for each child occupying a bedroom if it also provides an average of 200 square feet or more of living space for each occupant of the institution including the children in care, staff and any members of the families to staff housed in the institution. The term "living space" is intended to include all areas of the house except an unfinished basement, attic or similar areas not usually occupied by the family in their daily living.

(c) Each institution shall:

1. Provide each child with his or her own bed which shall be at least 30 inches wide and adequate in length for his or her height.

2. Provide separate sleeping rooms for boys and girls 6 years and over.

3. House no more than 4 children in a sleeping area. In a remodeled setting, provide for permanent full or partial partitions at least 6 feet in height between at least every 4 beds.

4. Have beds at least 3 feet apart at the head, foot and sides. Have double decker beds, if used, at least 3 feet apart at the head and foot and at least 5 feet apart at the sides.

5. Provide each bed with level, substantial springs, a comfortable mattress, a pillow, 2 sheets and sufficient covering for comfort.

6. Provide a complete change of clean bed linen at least once a week. In addition, provide clean bed linen whenever soiled, and, provide rubber sheeting for all children under 6 years of age and for all enuretic children.

(d) Each child shall have a closet, locker or bureau for clothing and personal belongings which shall be reserved for the child alone.

(8) **HEAT, LIGHT, VENTILATION AND SCREENING.** The institution shall:

(a) Meet heat, light and ventilation requirements established for institution facilities by the division of industrial safety and buildings.

(b) Provide a heating system that will maintain the temperature in living and sleeping quarters between 70–74° F. during the day and 67–70° F. during the night.

(c) Provide appropriate coverings for windows through which sunlight enters.

(d) Provide screens for open doorways and windows.

(9) **SAFETY AND PROTECTION FROM FIRE.** The institution shall:

(a) Comply with the state building code relating to fire protection and safety.

(b) Develop a detailed plan of evacuation of buildings for use in case of fire and train staff in the use of this plan.

(c) Post printed procedures for evacuation in conspicuous places in buildings used by children and staff.

(d) Have fire drills at least once every 2 months and maintain an ongoing written record of fire drills for the past year.

(e) Train staff and children in the correct reporting of fires and in fire prevention. Train staff in how to extinguish small fires.

(f) Provide one fire extinguisher per 2000 square feet of floor area, and at least one extinguisher on each floor, including basements.

(g) Keep fire extinguishers charged and filled and have them inspected annually.

(h) Have all exits, doors, halls, and stairs well lighted and kept clear and ready for instant use. Provide exit signs and lights when required by the building code.

(i) Provide more than one exit leading to the outside of the building from each floor. Exit doors shall open outward and be equipped with panic hardware.

(j) Report to the department within 48 hours any fire on the premises which requires the services of a fire department.

(k) Provide a fire alarm system in compliance with building code requirements in all buildings used for sleeping by 20 or more persons.

(L) In buildings for more than 30 children, provide an emergency generator or other approved separate electrical supply system as required by the Wisconsin state electrical code.

History: Cr. Register, October, 1957, No. 22, eff. 11-1-57; r. and recr. Register, July, 1970, No. 175, eff. 2-1-71; renum. from PW-CY 40.53 and am. (1)(a) and (b), Register, August, 1982, No. 320, eff. 9-1-82; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, June, 1995, No. 474.

HFS 52.05 Child care and development. (1) GENERAL REQUIREMENTS. (a) *Program requirements.* The institution shall:

1. Develop programs which encourage the development of independence through avoiding regimentation of scheduling.

2. Integrate the agency program with community activities so that children have opportunities to participate in normal community living patterns.

3. Provide for the development and maintenance of constructive relationships with parents, brothers and sisters, relatives, staff and friends.

4. Incorporate in its program a balance of spiritual and moral training, work, recreation and education.

5. Make maximum use of small groups as an aid in individualizing the child and helping the child to attain a sense of personal identity.

(b) Buildings shall be so structured or arranged that groups of children can be housed under supervision of their own child care staff, without gross intrusion from other similar groups.

(c) In institutions licensed to house 9 or more children in a building, children of staff shall not be housed in the living quarters of children under care.

(2) PERSONAL HYGIENE. The institution shall:

(a) Provide every child the opportunity to develop socially acceptable habits.

(b) Establish a climate in which each child learns the values of personal hygiene.

(c) Provide each child with his or her own toilet articles, including a toothbrush and comb, and with clean towels and washcloths not less than twice a week. Prohibit use of a common towel.

(d) Provide space for individual storage of toilet articles. Allot space to permit quick drying of towels and washcloths and separation from those of other children.

(e) Provide mirrors in bathrooms and living areas at appropriate levels and numbers to be easily accessible to all children.

(3) CLOTHING. Each institution shall:

(a) Develop a list of clothing required for children and maintain the child's wardrobe at or above this level. This list shall be subject to the department's approval.

(b) Furnish each child with clothing which is individually selected and fitted, appropriate to the season and comparable to that of other children in the community. Each child's clothing shall be identified as his or her own.

(c) Have shoes fitted to the individual child and kept in good repair. Shoes already worn by one child shall not be given to another child.

(d) Arrange for children to participate in the selection and purchase of their clothing to the maximum extent feasible.

(e) Use donated clothing only if it is suitable and in good condition.

(4) WORK EXPERIENCE. Each institution shall:

(a) Provide work experience for children that is appropriate to the age, health and abilities of the individual child. Work shall be assigned and supervision provided with the view to training and contributing to growth. Work shall not interfere with the child's time for school, study periods, play, sleep, normal community contacts or visits with family.

(b) Not use the children as substitutes for staff.

(c) Comply with the rules of the department of industry, labor and human relations on child labor, especially the use of dangerous machinery and hazardous employment. Operation of such machinery shall be in the immediate presence of an adult.

(d) Differentiate between chores which children are expected to perform as their share in the business of living together, specific work assignments available to children as a means of earning money, and jobs performed in or out of the institution to gain vocational training.

(e) Give children some choice in their chores and change routine duties often to provide a variety of experience.

(f) Provide every child of school age with an allowance either by gift or by earnings which he or she is permitted to spend at his or her own discretion.

(5) EXPLOITATION. (a) No child shall be used for soliciting funds for the agency in any way which would be harmful or cause embarrassment to the child or family.

(b) The written consent of the parent of legal guardian shall be obtained prior to the agency using a child's picture or name in any form of written, visual or verbal communication system.

(6) DISCIPLINE AND CONTROL. Each institution shall:

(a) Maintain current discipline policies in writing. They shall be aimed at changing attitudes and conduct and at helping the child understand and conform to established standards of behavior through inner control rather than by external pressure.

(b) Prohibit physical and verbal abuse, corporal punishment, ill treatment and harsh and humiliating punishment.

(c) Determine discipline on an individual basis and prohibit punishment of a group for an individual's offense.

(d) Not create a negative attitude for work by using it as an inappropriate disciplinary measure.

(e) Prohibit the withholding of meals, mail, or family visits as methods of discipline.

(f) Not permit a child to punish another child or group of children.

(g) Not use confinement except as a therapeutic measure when the child is in danger of harming himself or herself or the group, or is undergoing an emotional crisis. If confinement is used:

1. Rooms used for confinement shall be constructed and equipped so that therapeutic use is maximized and risk of injury to children is minimized:

a. Windows shall be covered with psychiatric screening.

b. Steam or hot water radiators shall be covered.

c. Because confinement rooms are considered to be places of detention, the buildings in which they are located must be of fire resistant construction.

d. Doors shall be equipped with a window through which the occupant of the room can be observed.

2. Written policies for the use of confinement shall be prepared, and included in in-service training.

3. The agency shall maintain a log or record book on the use of confinement. This record shall include information on the circumstances leading to confinement, the period of time any child was confined and specific reasons for periods of confinement extending beyond one hour.

4. Periods of time during which children are confined shall be kept at a minimum. While a child is confined, periodic checks at intervals not to exceed 15 minutes shall be made on the emotional state of the child and a decision made on whether or not the child can be released from confinement.

5. The agency administrator shall designate appropriate members of the staff who may authorize confinement of a child. The administrator or designate must approve if confinement extends beyond one hour.

(7) HEALTH CARE. (a) *General health program.* Each institution shall:

1. Provide for the necessary remedial and corrective measures for every child as soon as possible after initial and periodic physical examinations.

2. Have a written planned program of health supervision and medical and dental care.

3. Prior to admission obtain from the parent or guardian of every child accepted for care a written authorization for emergency surgical and medical care, for necessary vaccinations and immunizations, for routine medical examinations and care. The authorization for emergency surgery is for use only in the event the parent or guardian cannot be reached in an emergency. Whenever non-emergency surgery is necessary, written permission for the specific surgery shall be obtained from the parent or guardian.

4. Report any serious illness or hospitalization of a child to his or her parent or guardian and legal custodian.

(b) *Health procedures on admission.* 1. A complete physical examination shall be given to each child within 90 days prior to or within 48 hours after admission. If a child has not been examined prior to admission the child shall be isolated from other children until the examination is completed. The examination shall cover items included on a department prescribed form.

2. An observation shall be made of each child on arrival for admission by a person capable of recognizing common signs of communicable diseases or other evidence of ill health. The child's temperature shall be taken and evaluated. If the child shows overt signs of communicable disease or other evidence of ill health, the institution shall make arrangements for immediate examination by a licensed physician.

(c) *Immunization.* 1. Any child who has not received primary immunization prior to admission against any of the following diseases shall be so immunized within 30 days after admission.

- a. Poliomyelitis
- b. Diphtheria
- c. Tetanus
- d. Whooping cough (to age 6)
- e. Measles (rubeola)
- f. German measles (rubella)
- g. Mumps

2. Necessary booster shots shall be administered to children on admission and while in care at time intervals recommended by the American academy of pediatrics or the division of public health.

(d) *Health examination.* 1. The institution shall provide for each child an annual health examination covering the areas included on a department prescribed form.

2. An institution with children under 6 years of age in care shall provide for them health examinations according to a schedule established by a responsible physician but not less than annually.

3. Each child shall be given a complete health examination within a week prior to discharge unless a health examination has been given within the preceding 6 months.

(e) *Medical care.* Each institution shall:

1. Arrange with a physician licensed in the state of Wisconsin or with a clinic employing such physicians to serve as the agency medical director or consultant and to be responsible for a program of medical care within the institution, including visits to the institution and office visits.

2. Establish written policies and procedures for hospitalization, first aid procedures and dispensing of medication.

3. Provide for prompt treatment of acute illness.

4. At the time of discharge, make available to the parents or to the agency responsible for planning for the future medical care of the child, a copy or summary of the child's health record.

(f) *Nursing care.* The institution shall:

1. Provide hospitalization for the ill child when need is determined by the attending physician.

2. Provide nursing care within the institution when such is prescribed by the attending physician.

3. Provide members of the child care staff with sufficient training to enable them to recognize the common symptoms of illness of children, to note any marked physical defects, and to administer simple remedial measures.

4. Give treatment and medication only upon the order of a physician, except for first aid treatment in case of emergency.

5. Keep all medication in locked cabinets.

(g) *Dental care.* Each institution shall:

1. Provide for adequate dental examinations and re-examinations and treatment, including necessary prophylaxis, repair and extraction.

2. Provide each child with a thorough dental examination either:

a. Within one month of admission if there has been no examination within the preceding 6 months, or

b. Within 6 months after the last examination prior to admission.

3. Arrange for re-examinations at intervals not exceeding 6 months after the last examination or completion of treatment.

4. Assure that X-rays recommended by the dentist working with the child are obtained.

5. Attempt to secure orthodontic and more extensive restorative dentistry when necessary to the health and well-being of the child.

6. Make available, at the time of discharge, to the parents or to the agency responsible for planning for the future dental care of the child, a copy or summary of the child's dental record.

(h) *First aid.* 1. At least one member of the child care staff who is qualified to administer first aid shall be available within the institution at all times.

2. The first aid training of staff shall be equivalent to that offered by American red cross.

3. Each institution shall have available for instant use in each living unit a first aid kit with contents to be determined by the medical director.

(i) *Health records.* The institution shall maintain on its premises a separate health record or a health section in the case record for each child which shall include:

1. The signed consent of parent or guardian. (See (a) 3.)

2. Reports of all required and additional examinations and the recommendations resulting from such examinations.

3. Previous and continuing health history of the child.

4. Record of illness, treatment and medication, and hospitalization.

5. Information concerning the following medical procedures, including dates of occurrences, results, and person administering:

- a. immunizations and laboratory tests,
- b. corrective treatments,
- c. dental examinations and treatment.

(j) *Reports.* The institution shall report any injury to a child which required hospitalization or the death of any child to the division and to the parent or guardian and the legal custodian within 48 hours.

(k) *Rest.* The institution shall provide opportunity for 8 to 10 hours of uninterrupted sleep for each child according to individual needs.

(8) FOOD AND NUTRITION (a) *Nutritional requirements.* Each institution shall:

1. Provide the children under care with wholesome appetizing food adequate to meet their daily nutritional requirements.

2. Recognize variations in appetite and encourage, but not force children to eat.

3. Provide supplementary food or modify diets as ordered by the physician for those children who have special needs.

4. Provide a dining area of at least 15 square feet per child.

5. Keep menus on file for one year and submit them on request of the department for review and evaluation by qualified nutritionists or dietitians. Menus shall specify the actual foods served. Any between meal snacks provided shall be included in the daily menu plan.

(b) *Food supply.* Each institution shall observe and apply the rules of the division of public health as they apply to food supply for restaurants.

(c) *Meal service.* Each institution shall:

1. Serve meals at recognized meal times and at least 3 times a day except when children obtain their noon meal at school.
2. Give consideration in planning meals to the religious practices and, whenever possible, the cultural pattern of the children.
3. Serve staff members who eat with the children the same food as that served to the children.
4. Help children develop good eating habits.

(d) *Personnel.* All employees who handle food or work in the food service area shall observe and follow the rules of the division of health for restaurants as they apply to personnel employed in food service areas.

(e) *Sanitation.* Each institution shall observe and apply the rules of the division of health for restaurants in relation to proper sanitation throughout the kitchen, food preparation, serving and dining areas.

(9) RELIGIOUS TRAINING. Each institution shall:

- (a) Have written policies on religious training.
- (b) Obtain parental consent for church attendance and religious instruction when the agency practice varies from that of the child or family.
- (c) Whenever possible or appropriate, arrange for children to participate in religious exercises in the community.

(10) Education. (a) The institution shall evaluate and consider each child's education status in determining whether or not the agency is appropriate for caring for him or her.

Note: see s. HFS 52.03 (2)(e)

(b) Each institution shall:

1. Be responsible for providing opportunity for academic and vocational training as required in s. 118.15, Stats., and in accordance with abilities and needs of the children. Wisconsin statutes make compulsory school attendance applicable to both public and private schools.
2. Provide opportunity for specialized training of children who are unable to benefit from a community school program because of physical, mental, or emotional reasons.
3. When the agency's educational program is conducted on campus, design such program and facilities to meet the specific needs of the children and provide competent instruction.
4. Evaluate the educational progress of the individual child at least once a semester, to be part of an overall progress evaluation.
5. Arrange for children to attend school in the community whenever possible or appropriate to enable them to have normal contacts with other children and with the general life of the community. Children shall be given the opportunity to develop friendships with school mates living in the community and to visit with them on and off the premises.
6. When approved use available community facilities for vocational counseling and training.
7. Provide suitable reading material and facilities for undisturbed reading and study for all children wishing to read or having homework assignments.
8. Provide sex education by understanding persons who are knowledgeable and skilled in presenting the subject.

(11) RECREATION AND ACTIVITY PROGRAMS AND LEISURE TIME Each institution shall:

- (a) Plan its recreation and activity programs as an integral part of its total program in order to help children learn to use leisure time constructively and to develop new personal skills.
- (b) Define recreation and activity objectives correlating them with overall program goals, indicate how these objectives are to be achieved and assign specific responsibility for implementing the recreation and activity programs.

(c) Provide for a varied recreation program under competent leadership. To bring children closer to the community, community recreational facilities shall be used when available and suitable.

(d) Consider participation for children in community youth serving groups, coeducational and camping activities.

(e) Provide indoor and outdoor recreation facilities.

(f) Provide a planned physical education program for those children who do not attend a community school.

(g) Provide that every child shall have some time to be alone if he or she wishes, places to go where he or she will not be disturbed, and an opportunity to exercise free choice of activities.

Note: See also s. HFS 52.03 (2)(f)

History: Cr. Register October, 1957, No. 22 eff. 11-1-57; r. and recr. Register, July, 1970, No. 175, eff. 2-1-71; am. (7) (c), l., Register, December, 1972, No. 204, eff. 1-1-73; renum. from PW-CY 40.54 and am. (6) (a) 2. and (7) (i), Register, August, 1982, No. 320, eff. 9-1-82; corrections made under s. 13.93 (2m) (b) 1. and 5., Stats., Register, June, 1995, No. 474.

HFS 52.06 Social services. (1) INTAKE AND ADMISSION.

(a) Each institution shall:

1. Develop intake policies in writing which clearly state types of services and specific programs offered by the agency, and procedures and information essential for application for admission.

2. Limit admission to children for whom the agency is qualified through staff, equipment, capacity and program to give adequate care.

3. Have on record, copies of the original consents, orders, agreements and authorizations retained by the referring agency, when another agency has legal custody, or guardianship, or is primarily responsible for planning for a child.

4. In other than emergency situations arrange for one or more pre-placement visits by the child, and when indicated and possible, by the parents if they retain guardianship. This requirement may be waived if the child lives more than 200 miles from the institution.

5. Obtain or develop a complete social study of the child before admission. In emergency placements, children shall be retained no longer than 60 days unless the study has been completed.

(b) The agency shall process each referral as quickly as possible. The referral agency or agent shall be informed of the decision on admission no more than one month after all required referral information has been obtained.

(c) When an institution accepts a child from another agency on a purchase of care basis, a written agreement shall be prepared outlining the respective responsibilities of each party as they concern the child and parents.

1. An institution providing temporary shelter care shall plan to keep the children in residence no longer than 60 days. No child shall remain in residence for more than 90 days. When a child's stay is expected to exceed 60 days, the agency shall report this in writing to the department, detailing plans for insuring replacement prior to the 90 day maximum.

2. This requirement shall also pertain to all children age 5 and under unless it has been determined by competent authority that the child's mental or emotional status requires residential care. Recommendation regarding acceptance of children under this condition shall be submitted to the department for approval.

(2) SERVICES TO THE CHILD IN CARE (a) Each child in care shall receive regular social services provided by qualified social workers on the staff of the institution or by arrangement with another social service agency or agencies. When social service is provided by another agency, the institution shall be responsible for the adequacy of the service.

(b) The social service program shall be a continuing service to children. It shall begin prior to admission of the child, continue through his or her residence, and after discharge when appropriate.

(c) The social service program shall be directed toward helping the child adjust to life in the institution, making the experience a period of continuing physical, mental and emotional growth, and assisting the child to understand and accept his or her family relationships.

(d) The institution shall:

1. Evaluate the progress of the child at least every 6 months. The evaluations shall be made by social service staff together with other staff members having significant contact with the child. The evaluations in summarized form shall be included in the child's record and shall be shared with the legal custodian.

2. Make provision for psychological testing, psychiatric examination and treatment, and vocational counseling according to the child's needs.

(3) **RESPONSIBILITY TO THE LEGAL CUSTODIAN.** (a) The institution shall involve the legal custodian in planning for contacts with parents.

(b) The institution shall encourage contacts between parents and child except when those would be detrimental to the child's welfare or when permanent separation is planned.

(c) When visits are held at the institution, reasonable privacy shall be made available.

(4) **DISCHARGE FROM CARE.** (a) The institution shall give advance notice to the legal custodian before discharging a child from care.

Note: Minors in need of continuing care and who are under the jurisdiction of a juvenile court may remain in the institution setting until age 21.

(b) Discharge shall be part of a planned program worked out individually with the child, the parents and/or the legal custodian, and through staff participation.

(c) The institution shall provide pertinent health information to the parents or the agency receiving the child.

(5) **CASE RECORDS.** (a) Each institution shall maintain individual case records for children accepted for care. Case records shall be confidential and shall be protected from unauthorized examination. The maintenance of the case records shall be the responsibility of a properly designated staff person.

(b) Case records shall contain the following:

1. Pertinent information such as: child's full name, birthplace and birthdate; religion of parents and child; parents' full names including the mother's maiden name; date and place of parents' marriage; if parents are deceased, date, place and cause of death; if parents are divorced or separated, date and place of same; names, addresses and birthdates of other children in the family; names and addresses of near relatives; source of referral for care; date and reason for placement; financial terms.

2. Report of the original social study and investigation. This report shall include information concerning the religious, educational, economic and cultural background of the family. It shall also contain information about the child such as developmental and health history, personality, school placement and adjustment, previous placements, attitude toward separations, and family relationships.

3. Documents pertinent to current legal custody and guardianship status.

4. Written agreements with parents, guardians or legal custodians (other than medical care authorizations which are to be kept in the health records).

5. School reports, including grades, progress and adjustment.

6. Case recording or summarized reports of the child's progress and development while under care, of the work done with the family, of plans for discharge and after care and supervision. When casework service is being provided by another agency, the institution shall see that it is provided with periodical summary reports of the casework service given and plans for continuing service, staffings and case conferences.

7. Reports of child care staff concerning the child's adjustment.

History: Cr. Register, October, 1957, No. 22, eff. 11-1-57; r. and recr. Register, July, 1970, No. 175, eff. 2-1-71; renum. from PW-CY 40.55, Register, August, 1982, No. 320, eff. 9-1-82; corrections made under s. 13.93 (2m)(b) 5., Stats., Register, June, 1995, No. 474.

HFS 52.07 Records and reports. (1) **GENERAL REQUIREMENTS.** Each institution shall maintain records and submit reports prescribed by the department. Authorized representatives of the department shall have access to all reports pertinent to licensing.

(2) **RECORDS.** (a) Each institution shall maintain:

1. A register of all children currently receiving care. Included in the register shall be information concerning the name, sex, birthdate and legal custodian.

2. Individual case records for all children accepted for care. These records shall be maintained for at least 5 years after a child is discharged from care. (See s. HFS 52.06 (5) (b)).

3. Health records of children. (See s. HFS 52.05(7)(i)).

4. Personnel records. (See s. HFS 52.03(1)(c)).

5. Financial reports and audits. (See s. HFS 52.02 (4)(b)).

6. Copies of menus of all meals served. (See s. HFS 52.05 (8) (a) 5.).

7. Records of fire drills held. (See s. HFS 52.04 (9) (d)).

8. Log on the use of isolation rooms. (See s. HFS 52.05 (6) (g) 3.).

(b) All records shall be protected against fire damage, theft, and unauthorized inspection.

(3) **REPORTS.** Each institution shall submit to the department:

(a) Reports as required under s. 48.66 (3), Stats.

(b) A special report within 48 hours after the occurrence of an unusual incident such as a major fire or the death or serious injury of any child. (See ss. HFS 52.04 (9) (j) and 52.05 (7) (j)). "Major fire" means a fire requiring the services of a fire department. "Serious injury" means an injury requiring hospitalization.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

Subchapter II—Determination of Need for Additional Child Care Institution Beds

Note: Sections HFS 52.50 to 52.52 were created as emergency rules effective 6-27-86

HFS 52.50 Introduction. (1) **AUTHORITY AND PURPOSE.** Sections HFS 52.50 to 52.55 are promulgated pursuant to s. 48.60 (3), Stats., to regulate the establishment of new child care institutions and to control the expansion of existing child care institutions in order to ensure an adequate number and variety of facilities to meet the needs of Wisconsin children who require out-of-home residential care and to prevent unnecessary expansion of child care institutions and the resulting increase in costs to Wisconsin citizens.

(2) **TO WHOM THE RULES APPLY.** This subchapter applies to all new applicants for a child care institution license and to existing child care institution licensees wishing to expand the child care capacity of their facilities.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HFS 52.51 Definition. In this subchapter, "applicant" means any person wishing to apply for a license to begin operation of a new child care institution or any person wishing to expand the capacity of an existing child care institution. "Applicant" does not include a person who by reason of consolidation or other acquisition acquires control or ownership of child care institution beds, which consolidation or other acquisition results in no increase in or a reduction of the existing state-wide child care institution bed capacity.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HFS 52.52 Certification of need requirement. (1) No person may apply for a license under s. HFS 52.02 (3) (a) to (d) to operate a new child care institution or for a license amendment under s. HFS 52.02 (3) (g) to expand the bed capacity of an existing child care institution until the department has reviewed the need for the additional placement resources which would be created and has certified to the applicant in writing that a need exists for the proposed new placement resources.

(2) The department shall give the applicant a copy of this chapter and any informational material relating to the application and evaluation of need process.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HFS 52.53 Demonstration of need. To enable the department to make a determination of need for a new child care institution or for additional beds at an existing child care institution, the applicant shall submit the following documentation materials to the department:

(1) A detailed plan for the operation of the proposed child care institution which includes:

- (a) The number, sex and age range of the children to be served;
- (b) The type or types of needs or disabilities of children to be served;
- (c) The facility staffing, including a list of full-time and part-time positions by job titles and numbers;
- (d) A description of the proposed program and treatment goals;
- (e) A proposed budget, including the current or projected per diem rate; and
- (f) The location of the facility and a drawing of the layout of the physical plant;

(2) A detailed written description of the methodology and findings which document the reasons why the unserved children under sub. (1) (a) cannot be served satisfactorily in less restrictive settings such as in their own homes with treatment services provided to the children and their families, in specialized treatment foster homes or in group homes;

(3) Documentation that existing Wisconsin child care institution placement resources are not adequate to meet the needs of Wisconsin children who require the type or types of care and treatment services the applicant proposes to provide. No beds occupied or to be occupied by children who are placed primarily for educational purposes may be considered in determining need under this section. Of the remaining beds, for purposes of determining need and establishing waiting lists, not more than 40% shall be considered available for out-of-state children; and

(4) Information that supports the probability that the new or expanded facility will be used by Wisconsin placement sources, and that an expanded facility will attain and maintain an average monthly occupancy rate of 80% or more over the first 2 years of operation and that a new facility will have an average monthly occupancy rate of not less than 80% at the end of the second year.

Note: Applicants should send their plan of operation and documentation of need for additional placement resources to: Bureau of Regulation and Licensing, Division of Children and Family Services, P.O. Box 7851, Madison, WI 53707.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HFS 52.54 Publication of notice—party status.

(1) Upon receipt of the documentation materials listed in s. HFS 52.53, the department shall publish a class 2 notice under ch. 985, Stats., in the official state newspaper designated under s. 985.04, Stats., and in a newspaper likely to give notice in the area of the proposed facility. The notice shall include a statement that the department has received an application for a certificate of need to operate a new child care institution or to expand the bed capacity of an existing child care institution. The notice shall also include the number of additional beds, the geographic location of the facility, the geographic area to be served, the types of children to be accepted for care, the services to be provided and program objectives.

(2) The notice shall invite the submission of written comments, factual data and reasons why the application should be granted or denied from any person within 30 days after the publication of the notice. The notice shall advise persons submitting written comment to indicate their interest in the application and whether the individual commentator wants to be considered for party status in any later proceedings.

Note: Persons submitting written comments on an application should send their comments to: Bureau of Regulation and Licensing, Division of Children and Family Services, P.O. Box 7851, Madison, Wisconsin 53707.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88

HFS 52.55 Need determination. (1) EVALUATION PROCEDURES. (a) The department shall review the applicant's documentation materials for completeness and may ask the applicant for additional materials or information that the department considers necessary for evaluation purposes.

(b) Except as provided under par. (c), the administrator of the department's division of community services or his or her designee shall make the need determination decision based on the following criteria:

1. The compatibility of the applicant's proposed plan of operation or expansion with the stated treatment goals for the program;
2. The validity of the research methodology used to document need for the proposed program;
3. The congruence of the conclusions reached in the applicant's needs research with department data on current county child care placement needs and available beds in existing child care institutions providing similar services;
4. The correctness of the applicant's contention that the proposed facility is more appropriate than less restrictive child care arrangements;
5. The applicant's documentation supporting the argument that existing Wisconsin child care institution placement resources are not adequate to meet the needs of Wisconsin children who require the type or types of care and treatment services the applicant proposes to provide; and
6. The applicant's documentation of the probability that the expanded facility will attain and maintain an average monthly occupancy rate of 80% or higher for the first 2 years of operation or, if a new facility, not less than an average monthly occupancy rate of 80% at the end of the second year.

(c) An application for expansion of an existing child care institution by 3 or fewer additional beds shall be presumed to meet the criteria under par. (b) unless:

1. The child care institution has submitted another application for expansion of bed capacity within a 2 year period; or
2. There is clear and convincing evidence that the criteria under par. (b) are not met.

(2) NOTICE OF DECISION. (a) Within 90 calendar days after the date on which all required documentation materials were received from an applicant, the department shall send written notice of the decision to the applicant and to anyone who commented in writing on the application. The notice of decision shall state the specific reason for the decision.

(b) Notification of a favorable decision shall include approval to submit an application for a license to operate a new child care institution or to add beds to an existing institution.

(c) The duration of the approval under par. (b) shall be limited to 18 months from the date that it is issued, except that the department may grant one 6-month extension if the institution has a good reason for the delay in becoming operational and documents to the satisfaction of the department that it will be operational within that 6-month period. Any request for extension shall be filed prior to the expiration of the initial 18-month period. If the proposed child care institution is not operational during that 18 month time period, or the extended period, the need determination shall be considered invalid and the approval shall be canceled. In

this paragraph, "operational" means in regard to a new facility that the child care institution has been licensed and has admitted one or more children, and in regard to expansion of an existing facility, that the child care institution is fully licensed to operate with additional beds. Acceptable reasons for an extension under this paragraph shall include unforeseen delay in obtaining adequate financing approval, in staffing or in construction.

(3) APPEAL (a) An applicant or a party adversely affected by the decision issued under sub. (2) (a) may request an administrative hearing under s. 227.42, Stats., within 30 days after the date

of the decision. This hearing shall be a class 1 proceeding.

(b) The standard of review for the hearing shall be whether the record contains the quantity and quality of evidence that a reasonable person could accept as adequate to support the decision.

(c) The hearing examiner may require the parties to attend a prehearing conference. The hearing examiner may issue a preliminary certification of parties at any prehearing conference.

Note: The request for a hearing should be sent to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88