NOV 15 1999

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET
P.O BOX 7850
MADISON WI 53707-7850

TELEPHONE: (608) 266-8428
FAX: (608) 267-1434
www.dhfs.state.wi.us

Tommy G. Thompson
Governor

Joe Leean
Secretary

**State of Wisconsin**

Department of Health and Family Services

November 12, 1999

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

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

Re: Clearinghouse Rule 95-140
HFS 52, relating to residential care centers for children and youth, currently called child care institutions.

Gentlemen:

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

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

If you have any questions about these rules, please contact Patty Hammes at 267-7933.

Sincerely,

Paul E. Menge
Administrative Rules Manager

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

PROPOSED ADMINISTRATIVE RULES -- HFS 52
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19(3), STATS.

Need for Rules

In Wisconsin 38 privately-owned residential care centers for children and youths provide treatment to children and youth, and to some young adults ages 18 to 20 who are under continuing juvenile court jurisdiction. A child, adolescent or young adult served by a center will have one or more of the following problems: an emotional disturbance, difficulty in acquiring life skills, an alcohol abuse or drug use or abuse problem or a developmental disability. Placements into residential care centers take place from youth correctional institutions and field supervision, mental health agencies and institutions, county human service and social service agencies and the interstate compact for placement of children under ss. 48.988 and 48.989, Stats., or are made by courts as protective placements under ch. 55, Stats., or by parents. The Department is responsible under ss. 48.60, 48.66 and 48.67, Stats., for licensing and supervising residential care centers on the basis of minimum requirements for issuance of a license and minimum standards for operation of a center. These requirements and standards are set out in ch. HFS 52, Wis. Adm. Code.

Chapter HFS 52 consists of standards for the administration and operation of residential care centers for children and youth, formerly called child care institutions, licensed under ss. 48.60, 48.66 and 48.67, Stats., as "child welfare agencies." The Department made some minor revisions in the rules while renumbering them from s. PW-CY 40.50 to ch. HSS 52 in 1983. However, no significant revisions have been made in the rules since 1971.

This order updates ch. HFS 52 to bring it into compliance with current drafting standards, statutes and other rules and to add new provisions to protect the health, safety and welfare of residents. The major new provisions added to ch. HFS 52 are:

1. Requirements for resident admission screening with formal assessment and treatment planning following admission.

2. A section on the applicability of resident rights under s. 51.61, Stats., and ch. HFS 94 to children and youth in residential care centers.

3. Incorporation by reference of the requirements in ch. HFS 12, relating to caregiver background checks and bars of persons with certain offenses or criminal acts from working for, contracting with, or residing at a residential care center.

4. Policy and procedural requirements for the administration of medications, including psychotropic medications.

5. Stipulation that for residential care centers the Wisconsin Department of Public Instruction will establish and monitor compliance with educational standards.

6. Requirements relating to behavior management and control and the use of crisis intervention, physical hold restraint and physically enforced separation.

7. Prohibition of locked living units at a center except with approval of the Department and for purposes and under conditions specified in the rules.

8. Professional staff credentials more related to population served by the center.

9. Certain physical plant requirements, including Department approval for installation of psychiatric screening and magnetic or time delayed door locks.

10. Requirements for transporting residents.

11. Approval criterion for short-term (up to 90 days) and respite care (up to 9 days) programs operated by residential care centers.

12. Recognition that, if designated by the Wisconsin Department of Corrections, a residential care center may operate a program for type 2 status juveniles placed by a court under s. 938.34 (4d), Stats., or by the Department of Corrections under s. 938.357 (4), Stats.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse were accepted, except the following:

1.b. Comment: Under HFS 52.12(2)(b) the qualifications for a social work case supervisor are set forth. However, under ch. 457, Stats., relating to social worker certification, qualifications for social workers are different. Will the supervisor be a certified social worker?

Response: The rules intentionally do not require social worker certification, to permit a broader pool of experience and background.

5.c. Comment: It would seem useful in the rules to define "child" and "youth." Youth would appear to mean a person who resides in a residential care center but is age 18, 19 or 20. This is necessary because in many places in the rules youths are treated differently due to the fact that they legally are adults.

Response: No change. The term "young adult" is used to refer to residents age 18, 19 or 20. The "child" and "youth" terms are used, respectively, for younger children, say, through age 12, and older children, that is, adolescents. The distinction has no real rule significance. It is simply the adoption of conventional terms for younger and older children.

It is a way of avoiding calling a 17-year old a child, although legally that is what a 17 year old is.

5.i. Comment: In HFS 52.12(5)(d), it is not clear how much experience an "experienced center resident care worker" needs to have.

Response: No change. An experienced resident care worker is one who knows what he or she is doing on the basis of having done it many times.

5.p. Comment: In HFS 52.22(8), is a youth age 18, 19 or 20 permitted to designate someone in the register besides the parent, guardian or legal custodian?

Response: No. A principal use of the register is to identify who has legal authority for a resident. For an 18, 19 or 20 year old, it would no longer be a parent. It could be the court, the Department of Corrections, a county agency responsible for aftercare supervision or a guardian making a placement under ch. 55, Stats.

5.v. Comment: In HFS 52.42(7)(a)3.d., insert "if applicable" after the word "resident," because for residents 18 and over the informed consent of the parent, guardian or legal custodian presumably would not be needed. The same in par (d)2.

Response: Instead, "if the resident is a minor" has been inserted after "resident," and a phrase has been at the end of the sentence concerning older residents.

5.w. Comment: In HFS 52.45(3)(a)1. the center is required to refer pregnant residents or residents who are mothers with babies to the Women, Infants and Children (WIC) Program. However, this is an income-based program for which all persons may not be eligible. Clarify.

Response: No change. The WIC program determines eligibility. The facility is expected only to refer for eligibility determination.

5.ac. Comment: In HFS 52.62(1)(f), how much time will an applicant have to come into compliance?

Response: Since this is an application for an initial license, the applicant is left to decide how quickly to come into compliance.

Public Hearings

The Department held three public hearings on the proposed rules in September and October 1995 and one public hearing on the proposed rules, as amended, in October 1995. The first three hearings were held in Eau Claire on September 25, 1995, Wausau on October

2, 1995 and Pewaukee on October 5, 1995. Seven persons attended those hearings, and either testified on the rules or submitted comments in writing. The hearing record was left open for a week after the last hearing for receipt of additional written comments. Five persons submitted additional written comments before expiration of the public review period.

The fourth hearing was held in Madison on October 26, 1999. Four persons attended and three of them testified on the proposed rules, as amended. The hearing record was left open until October 29, 1999 for receipt of written comments. Seven persons submitted written comments before expiration of the public review period.

A list of public hearing participants and a summary of their comments, with the Department's responses, are included in attachments to this document.

Modifications Made in the Rules Following Public Review

In response to **comments received in September and October 1995** during public review of the proposed rules, the Department made several changes in the proposed rules. These included:

- Permitting centers to keep service agreements or contracts made with parents or placing agencies in an administrative file as an alternative to keeping them in resident files;

- Adding required center notification of the Interstate Compact for the Placement of Children state office about discharges, placement changes and residents who are AWOL;

- Adding references to ch. 938, Stats., at several places in the rules in recognition of the recent split of the Children's Code into two chapters of the statutes;

- Changing the requirement for a center to make the services of both a psychiatrist and psychologist available to making the services of one or the other available;

- Adding a requirement that a center send a copy of a new resident's final treatment plan to the placing agency and, on request, to other persons who participated in the assessment and treatment plan development;

- Replacing a requirement that a center give a copy of its operating plan to parents, guardians and placing agencies with a requirement to give this only on request;

- Providing that restitution to a center for damages be coordinated with any court-ordered restitution;

- Adding a rule part relating to time-delayed locked doors;

- Adding more detail to the requirements that centers do criminal background checks on prospective new hires and carry out background character verification procedures;

- Adding a sentence that center staff whose behavior or mental or physical condition leads to reasonable concern for the safety of residents may not be in contact with residents; and

- Adding "fit and qualified" criteria to be met by license applicants.

In response to **comments received in October 1999** during public review of the amended proposed rules, the Department made the following changes in the proposed rules:

-Clarified that the square footage requirements for resident living space at centers has not changed from the current rules.

-Broadened the educational qualifications requirement for center director by adding the option of a degree in business or public administration;

-Reduced the number of hours of required inservice training in supervisory skills and personnel administration for a person to be qualified to work as a resident care worker supervisor at a center, under one of the options for meeting qualifications to work in that capacity;

-Deleted under requirements for staff supervision by a social work case work supervisor or by a resident care worker supervisor the standard of 5 hours of supervision time for each staff person supervised, which was in addition to no more than a 1:8 ratio of (full-time) supervisor to staff members supervised;

-Clarified conditions for a staff member to use physically enforced separation in the case of multiple episodes involving a resident;

-Deleted a requirement that a staff member assisting a resident needing help in toileting or taking a bath be "of the same gender" as the resident;

-Deleted rule language at two places under "license continuation requirements" relating to action the Department may take when a license continuation application is not received when it is due and action the Department takes when it finds that the applicant for license continuation is not in substantial compliance with ch. HFS 52, since the relevant statutes are clear about the Department may do;

-Amended the list of reasons why the Department may deny or revoke a license to make this subsection consistent with revocation language in ch. 48, Stats., and the group day care rules;

-Amended language on summary suspension of a license and on the time limit for appealing an adverse decision of the Department to make the stated requirements consistent

with the statues and, in the case of summary suspension of a license, with the group day care rules; and

-Added a provision to prohibit new admissions to a center upon notice to a center that its license is revoked, except by written approval of the Department's licensing representative.

After the October 1999 public hearing, Department program staff made one change in the proposed rules that may be considered significant. That was to modify s. HFS 52.55 (8) (intro.) to require all center staff, and not only resident care workers, to receive fire safety training. That training is to be received by a new staff member within 6 months after the new staff member begins work at the center, which makes this requirement consistent with the fire safety training requirement for resident care workers under s. HFS 52.12 (5) (c) 9.

Final Regulatory Flexibility Analysis

These revised rules apply to 38 privately owned residential child care institutions in Wisconsin, a few of which are small businesses as defined in s.227.114(1)(a), Stats.

The facilities are being re-named residential care centers for children and youth.

The rules have not been generally updated since 1971. They are revised by this order to bring them into compliance with current drafting standards, statutes and rules, to add new provisions to protect the health, safety and welfare of residents and to permit centers to operate short-term programs (up to 90days) and respite care programs (up to 9 days) and programs for type 2 status juveniles.

There are new requirements relating to notification of parents and the Department; staff training; preadmission screening; initial assessment of a new resident within 30 days of admission; development of a treatment plan for each new resident; a center program statement; conditions for use of behavior management and control techniques; use of locked living units only with approval of the Department, and for purposes and under conditions specified in the rules; resident rights; transportation of residents; medication administration; fire safety; and conducting criminal records checks on prospective new employes.

No adjustments were made in the rules for the specific purpose of reducing the impact of new provisions on small businesses. This is because the rules are minimum requirements to protect the health, safety and welfare of center residents. Center residents are children, youth and young adults who have an emotional disturbance, difficulty in acquiring life skills or a developmental disability, or have been abusing alcohol or involved with drugs. It is also because many of the new requirements are widely recognized in the industry as representing good management practice or, in the case of enforcement provisions, the statutes have changed or the Department has gained experience with the enforcement provisions in the group day care center rules revised in 1997.

Only one center organized as a small business testified during the first (1995) public review of the proposed rules. The director of that center expressed concerns about the amount of paperwork required by the rules and the increased cost of compliance. In response, the Department pointed out that the rules have not been significantly updated in 25 years, that DILHR and DHFS do not duplicate building inspections and that the increase in the license fee was done by statute, not by rule.

# 1995 PUBLIC HEARING COMMENTS & DHFS RESPONSES

## Proposed Chapter HFS 52, Residential Care Centers for Children and Youth

Public hearings were held in Eau Claire on September 26, 1995, Wausau on October 2, 1995, and Pewaukee on October 5, 1995.

Seven persons attended the hearings and either testified on the proposed rules or submitted written comments on them. Five other persons submitted comments in writing after the hearings but before expiration of the public review period.

Hearing participants were the following (the numbers preceding names are used in the attached summary of public hearing comments to indicate who made the particular comment):

1. Dennis Tucker, Director
   Northwest Passage, Lmt.
   Webster, WI

2. Charles W. Anger
   Eau Claire Academy
   Eau Claire, WI

3. Joel Feist
   Sunburst Youth Homes
   Neillsville, WI

4. Thomas Hughes, Director
   Tomorrow's Children, Inc.
   Waupaca, WI

5. Jim Weyenberg
   Tomorrow's Children, Inc.
   Waupaca, WI

6. Kenneth Czaplewski
   St. Rose Residence
   Milwaukee, WI

7. John Holzer, Clinical Director
   Willow Glen Academy
   Hartford, WI

8. Gary Erdmann, Director
   Lad Lake, Inc.
   Dousman, WI

9. Joy Schwert
   Middleton, WI

10. David and Selma Herbst
    Madison, WI

11. Silvia Jackson, Administrator
    DHSS Division of Youth Services
    Madison, WI

12. Marcia VanBeek, Director
    Eau Claire Academy
    Eau Claire, WI

13. Legal Counsel
    DHFS
    Madison, WI

**SUMMARY OF 1995 PUBLIC HEARING COMMENTS ON PROPOSED CH. HFS 52**
**Residential Care Centers for Children and Youth**

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| The rules were changed in a very positive direction since the first draft. The chapter is much more functional for residential treatment centers. Also, rather than taking a generic institutional view it does make allowances now for unique programs. After all each program is slightly different from the other and serves a different population. Overall, the new rules are functional and provide latitude for individual programmatic expression. | 1. | Acknowledged. |
| The old rules heave a real strong focus on health, safety and welfare of the children and the new rules seem focused more on control and monitoring as evidenced by number of state approvals that we have to go through and such things as clothing lists, training and construction and remodeling. | 4. | The focus has not changed. Required approvals listed are in the current rules. |
| Objects to having to file contracts in the children's files because of need to get to them as a business organization. | 4. | Agreed. Changed to allow keeping the service agreement or contract in an administrative file on the licensed premises where the child is located. See HSS 52.22(3) |
| There is excessive paperwork. There is duplication of other state agency requirements such as DILHR's. We've got building inspectors, fire inspectors and all kinds of inspectors coming in and now licensing has people in there inspecting buildings. | 4. | ILHR only inspects building for 9 or more residents. The Department does inspections for buildings housing 8 or less. Fire departments do not always do fire inspections; therefore, licensing staff do them. This is current rule and process. |
| The number of requirements, both direct and indirect, have increased as can be seen by the number of pages. costs have increased. Direct costs are for such things as heat sensors. Indirect costs would be the licensing fee that's goes from $350 to $500. | 4. | Heat sensors, important as part of the fire safety system, cost up to $39.00 and are required in kitchens and attics. Licensing fees are set by statute. Many of the new requirements bring the rules, which have not been significantly revised since 1971, up to current thinking about what is appropriate. |
| What is the intent of the rules? Is it that the Department is exploring ways to reduce the numbers of licensed beds and child caring institutions over the next 5 years? What is the intent? Spell it out. | 4. | There is no hidden agenda. The types of children centers are admitting and the severity of their problems have greatly changed since the rules were last revised 25 years ago. |
| The amount of detail in the proposed rules is going to be very costly to the state because current staff who do licensing and certification are not likely to have the time to verify everything. | 7. | Length of time since last complete revision (25 years) and rule interpretation problems with current rules due to lack of rule clarity or rule specificity explain change in content of proposed rules. |

# SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
## Residential Care Centers for Children, Youth and Young Adults

| GENERAL COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| At several places the rules require things to be prominently posted. It seems like we're getting a lot of stuff that has to be posted and that we're coming into information overload where there's a huge bulletin board filled with things, where there are so many mandatory postings that nobody reads them any more. There should be a little more discretion in what has to be put up on the walls to make notices useful and effective and not overwhelming. | 7. | Requirements of posting of resident rights, emergency fire evacuation procedures and emergency numbers and daily menus should not be viewed as excessive. |
| As a general guideline for how to organize and operate a residential care center for children and youth, the proposed rules are excellent. As a blueprint for licensing and subsequent enforcement I believe they will prove impossible to follow for most organizations, particularly the smaller ones. | 8. | Making the rules clearer was of primary importance in revising the rules as current rule interpretations remain problematic. The basic expectations for service delivery to residents should not depend on size of the facility. |
| We have come along way in arriving at rules that address our mutual needs and concerns. I remain confident and expectant that shortly we will have completed the job we set out to do almost 3 and a half years ago to our joint satisfaction. | 8. | Acknowledged |
| CCIs should:<br><br>1. Be required to send a monthly list of closings, discharges, etc., to Wisconsin's Interstate Compact on Placement of Children (ICPC) Office to better enable tracking of children from out-of-state.<br><br>2. Notify the ICPC office within 24 hours of an AWOL or absence. This would permit coordination with the other state and provide us with information so that the child can be returned, if picked up, and so that we can communicate with the authorities if necessary on the status of the child as an ICPC placement who, if charged and convicted, would then become Wisconsin's responsibility.<br><br>3. Notify the ICPC office before a placement change in Wisconsin is made. | 9.<br><br>9.<br><br>9. | Agreed.<br><br>1. Language has been added that requires notification at the end of each month only when there are discharges. Refer to HSS 52.24(4).<br><br>2. Language was added to notify the ICPC office within 48 hours. Refer to HSS 52.42 (9) (d).<br><br>3. Language was added requiring this where a placement change occurs directly from the center. Refer to HSS 52.24 (4). |

# SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
## Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| When children are involved in an off-ground activity, ( e.g., rope courses, out adventures/rock climbing, canoeing, etc.), there must be qualified staff with either proven experience and/or certification to lead those events. | 10. | Agreed. Language was added. at HSS 52.56 (24). |
| Due to the split of the Children's Code between ch. 48, Stats., and the new ch. 938, Stats., there are a number of references in the rule to ch. 48, Stats., where references also should be added to ch. 938, Stats. Some examples: definitions of "legal custody" and "legal custodian" in HSS 52.03 (10) and (11) and confidentiality requirements in HSS 52.12 (7) (d). | 11. | Agreed. Language was added cross referencing ch. 938, where appropriate. |
| HSS 52.01 For consistency with changes to the juvenile code, add the phrase "consistent with treatment needs and public safety" after the reference to least restrictive conditions. | 11. | No change. HSS 52 is statutorily authorized under ch. 48, Stats., and its purpose is specified only under ch. 48 which is to protect the health, safety and welfare of children. |
| HSS 52.03 (3) Include the Department of Corrections in the definition of a placing agency due to the assumption of juvenile corrections functions by DOC effective July 1, 1996. | 11. | Agreed. |
| HSS 52.03 (19) Consider specifically referencing state-licensed social workers in the definition of "professional", since under the grandfathering provisions there may be licensed social workers in the state who do not have a bachelor's degree. | 11. | Agreed. HSS 52.03(19) now (20) is amended. |
| HSS 52.03 (22) and (26) Effective January 1, 1996, 1995 Act 27 lowers the age of juvenile court jurisdiction to 16. Should the ages in these definitions be modified to reflect this change? | 11. | The phrase, "means a person placed while under 18 years of age" is all inclusive and would include a 16 or 17 year old under juvenile court jurisdiction. |
| HSS 52. 11 (1) (b) Administrative staff scheduling conflicts with the exempt, non-exempt policy of U.S. Department of Labor because the exempt people are not suppose to be required to abide by a schedule that could burden people with overtime. | 4. | The staffing schedule is intended to address when staff in their various functions are normally expected to be present. We do not specify whether such staff must be paid hourly or are to be salaried, which would be the issue for hourly wage laws. |
| HSS 52.11 (2) (a) Insert under licensee responsibilities "ensure that resident care centers for children and youth protect and promote the health, safety and welfare of residents." | 13. | Agreed. |
| HSS 52.11 (2) (b) 2., Is it the licensing offices of health and social services that must be notified regarding changes in organizational structure program or significant change in administration? What is meant by organizational restructure? Specify. | 6. | This has been clarified. |

# SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
## Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.11 (2) (e) requires a center to establish and maintain a community advisory committee as required by s. 48.68 (4), Stats. If this means we need to have another community advisory committee besides our board of directors this would be extremely redundant. | 6. | The statues in fact require a "good faith" effort at establishing such an advisory committee, and so the rule requirement has been modified accordingly. Also, if governing board members of a nonprofit agency who did in fact live near the facility were on the board, a Department exception to this rule requirement could be requested. |
| HSS 52.11 (2) (h) What is meant by "relocation of resident off center grounds?" If you mean we have to close and move all the residents to a temporary place that's reasonable. If you're talking about one resident being transferred to another facility or whatever, then I think that's unnecessary. | 6. | It just means that when a resident is injured, depending on the type of injury, it may be necessary to move the resident off-grounds to be properly cared for and so the parties should be notified. |
| HSS 52.11 (2) (h) Reporting abuse and neglect to the Department is unnecessary if a child strikes another child and abuses that child. This is reported to the county and ultimately to the police, probably, and the parent, and the placing agency. It is not clear why the Department needs to be notified of that type of abuse. If a child is being abused by an adult or staff, certainly it is reasonable to notify the Department but there's a lot of abuse that occurs among kids. | 6. | If there is abuse from child to child, the Department does indeed want to know about it. |
| HSS 52.11 (2) (i) Regarding notification of the Department about incidents where police intervention is necessary: Police are called for a variety of reasons. Rely on center judgment for notification. An incident may be just a skirmish, minor, one of the residents getting out of control and by the time the police are there he or she is in control. Should time be taken to notify the Department of that type of police intervention? | 6. | Where police intervention is necessary, it is serious enough to warrant notification of the Department. Frequent police intervention, whether because of severe incidents or not, would indicate a problem. |
| HSS 52.11 (2) (i) Requirements that Department be notified of any fire requiring fire department or any incidents requiring police intervention are excessive. Limit to serious incidents. | 8. | Serious incidents would only have Department involved when it is too late. |
| HSS 52.12 (1) (b) 3. This provision requires services of a psychiatrist and services of a psychologist. Both should not be required. Replace "and" with "or." | | Agreed. |
| HSS 52.12 (1) (c) 3. Correct this provision which allows each resident care worker working a 24 hour shift where staff are not allowed to sleep, to have at least 2 hours of free time. That is too much to expect of anyone who is supposed to be effective in caring for children. | 7. | Agreed. The intent was not to encourage 24 hour shifts. The language has been significantly modified to require at least 15 minutes of free time during each additional 2-hour period after an 8-hour shift. |
| HSS 52.12 (2) (b) and (c) Consider requiring social work supervisor and resident services case manager to have state professional certification or licensure as well as the required degrees. | 6., 11. | No change. Limiting requirements to a degree in human services or a behavioral science along with an employment background in child welfare services is intended to broaden the pools of candidates for the positions. |

# SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
## Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.12 (2) (c) Raise the qualifications of the resident services case manager. These are really advanced social workers. Yet at a time when centers are getting more difficult children, the rules do not require qualifications that are sufficient to ensure that they will be effective with disturbed children in a counseling or therapy session. A degree in a "behavioral science" is not good enough. | 6., 11. | More detail has been added to this paragraph on qualifications of a resident care case manager in order to tighten up the statements of requirements. |
| HSS 52.12 (2) (c) 1.b. Delete this provision. It states that a bachelor's degree with 500 hours of supervised client contact therapy could be substituted for a Masters degree. That conflicts with the Social Work Certification law which says that bachelor's level people cannot do therapy. Grandfather in persons currently working as a resident services case manager who have provided that service in the past and might have the training and expertise to continue but do not have the degree to back it up. | 7. | No change. These do not have the title of "social worker." Current staff are grandfathered under s. HSS 52.12 (2) (intro.). |
| HSS 52.12 (3) (d) and (e) More detail is needed regarding background character verification procedures and criminal records check procedures. Add language under (d) and (e). | 13. | Agreed. |
| HSS 52.12 (3) (e) states that a center shall obtain a state criminals record check on an applicant before allowing that person to work for the center. It takes 3 to 4 weeks from the time a center sends a request to the Department of Justice until it receives that information. This presents a problem for a center in trying to hire staff. | 5. | The turnaround time is a problem. Language has been added to the rules to permit hiring an individual who has submitted a notarized background character verification form which indicates no past criminal history. However, the individual may not work with residents without direct supervision of other resident care worker staff until the criminal records check is received and confirms the claim of no criminal history. |
| HSS 52.12 (5) (c) on initial training spells out specific areas in which training is required in the first 6 months of employment. This is a very minimal requirement. It is not adequate training for residential care workers. | 6. | No change. The current rules require only Department approval of a center' s in-service training and say nothing about resident care worker qualifications. The revised rules add minimum resident care worker qualifications, including the requirement to work a certain number of hours with an experienced resident care worker, depending on qualifications, and standardizes the areas to be covered in initial training. |
| HSS 52.12 (5) (f) 2., on continuing training has at the end of the sentence a phrase "may be counted towards the required 24 hours of annual training but not training received by a staff member from a previous employer." If the employee worked for another center licensed under HSS 52, that training should be counted toward the 24 hour requirement. | 1. | This provision is meant to require an employer to train a new staff person who has not worked in another center in basic topics found under orientation and initial training. Adding 24 hours of continuing training on top of orientation and initial training in the first year would be excessive. If staff have come from another setting and have already received initial training on topics listed in the rule, it does not make sense to count it as continuing training. |

# SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
## Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.12 (6) (a) 1. says a supervision time provided by the case work supervisor shall be the equivalent of 5 hours of supervision for each full time resident service case manager per week. If you mean 5 hours of one on one or even group with each resident case manager, where did you come up with that standard of supervision? It is not realistic. | 6. | This is not a standard of supervision. This provision does not require 5 hours one-on-one, but rather only that the center has staffed the case work supervisor position for time equivalent to at least 5 hours for each social worker on staff. |
| HSS 52.12 (6) (a) 2. Clarify how much supervision time must be provided by the resident care worker supervisor for resident care workers. | 7. | This is a staffing standard. It requires only the equivalent of 5 hours of resident care worker supervision time per resident care worker staff. |
| HSS 52.12 (8) (a) 3., Permit centers to ask rather than require external professional service providers to provide written reports to the center on the resident's progress. We try to extricate those from private mental health providers whenever possible, but in an area like Northwestern Wisconsin where there are few private providers we can ask them but requiring them is probably a little strong. | 1. | No change. Since the center is contracting or arranging the services with the service provider, the service provider is obligated to provide assessment and progress reports. |
| HSS 52.13 Require documentation of center policies and procedures as an administrative record in this section, as polices and procedures are referenced throughout the rules. | 11. | Agreed. See HSS 52.13 (1) (l). |
| HSS 52.21 (2) requires that staff complete a written pre-admission screening and then it goes on to describe this. This is duplicatory of the admissions statement or referral materials. A professional staff member will be asked to write just another report. A written pre-admission screening process puts pressure on the intake process. There should be an intake process but why a written pre-admission screening? | 1., 6., 8. | No change. Centers should be making informed decisions about the appropriateness of placement prior to admission intake. |
| HSS 52.22 (2) (d) In subd. 1., should the phrase be "5 or over" rather than "if over 5"? | 11. | Agreed. |
| HSS 52.22 (7) (b) requires observation of new residents for health problems. What staff people will be qualified to make an assessment of whether there's a sexually transmitted disease present and in this initial intake period whether there's sexual abuse? Through a resident's complete time in a program there will be contact with a variety of professionals that probably are better qualified than just the general agency staff. Specify at an initial intake exam for a medical professional to do it. | 1., 8. | The current rules contain this language. However, the current rules refer to persons capable of recognizing common signs of communicable diseases or other evidence of ill health. This language has been reinserted. |

SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.22 (5) says a center shall arrange whenever possible with the placing person or agency a pre-placement visit for the young person and whenever possible have the parent or person participate. This standard is far too low as current licensing rules require pre-placement visits by both the child and the family, with an exception for distance. To have children just be dumped in centers without any pre-placement visit with and have the family cooperate with that center without visiting ahead of time is not good practice. | 6. | A pre-placement visit is not always possible. It may be that the placement is a juvenile placement by the Department of Corrections or that, depending on the permanency planning goals, a pre-placement visit with parents is not always in the interests of the child. |
| HSS 52.23 Most agencies incorporate their assessment in the initial treatment plan. Requiring two separate reports increases paperwork. | 8. | The assessment report does not have to be separate from the treatment plan. The rule does not say it does, only what is required for each. |
| HSS 52.23 (2) Add requirement that a copy of the final treatment plan be sent to persons who participated in developing the plan or, at minimum, to the placing agency. | 11. | Agreed. HSS 52.23 (2) (c) 2., has been added to require that a copy of the assessment and treatment plan be given to the placing agency and, upon request to anyone else who participated in the assessment and planning process. |
| HSS 52.23 (2) (b) Add permanency planning goal language of "to support the integrity of the family and help each resident return as quickly as possible to his or her family or attain another placement providing long term stability." | 13. | Agreed. This language appears in HSS 52.01. Similar language has been added to HSS 52.23(2)(b)1. |
| HSS 52.24 Recognize in the rules that CCIs can make suggestions to aftercare providers but do not have much control of aftercare. It is okay to say that CCIs should formulate an aftercare plan, but it consists of recommendations. Once a child leaves the facility, whether the plan is implemented or not is out of our control. | 1. | Continuum of care is important. The discharging agency should work with the new receiving agency or person in developing an aftercare plan for the resident. The rule does not oblige the center to make sure the aftercare plan is followed. |
| HSS 52.24 (2) (a) Substitute, in regard to documentation in the resident's treatment record, "what steps were taken by center staff" for "that center staff made efforts", to make the requirement more specific. | 11. | Agreed. |
| HSS 52.31 (3) (a) Add the phrase, "consistent with treatment needs and public safety" to the language on personal and physical freedom. | 11. | Agreed. |
| HSS 52.31 (3) (a) Under a resident's right to receive services, consider replacing "least restrictive" with "most appropriate." Treatment and therapeutic centers really cannot necessarily meet the "least restrictive" standard, but can more than adequately provide the "most appropriate" services. | 1. | No change. Given that the rules allow the use of locked units and time-out rooms, the phrase "least restrictive" needs to be retained for guidance of center staff. |

SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.31 (3) (c) Freedom from discrimination should include all of the protected classes of persons in Wisconsin law, rather than only the subset in the draft. Also there are other rights that potentially could be added, such as freedom of personal religious practice, reasonable accommodation for disabling conditions, and availability of information in the youth's primary language. | 11. | Agreed. All protected classes are now listed. HSS 52.31 (1) (c) implies that rights are to be explained in the youth's primary language. Freedom of personal religious practice and reasonable accommodation for disabling conditions are specified elsewhere in the rules. |
| HSS 52.31 (4) (e) 2. Change the requirement for informal hearing by the center director or professional designee to within 3 working days after receipt of a request. | 8. | No change. HSS 94.05 (5) relating to patients rights states 3 days after receipt of the request for informal hearing. It does not specify working days. |
| HSS 52.41 (1) (a) requires that a copy of the center's program statement and operating plan be given to parents or guardians or to placing persons or agencies if not the same. Okay for a copy of the center's program statement but it is excessive and burdensome to be made to give a copy of a center's operating plan to each of these parties. | 8. | Agreed in part. A copy of the center's program statement will be given and "upon request" a copy of the center's operating plan. |
| HSS 52.41 (1) (b) 4. states that the casework supervisor or resident service case manager shall ensure that a report of the resident's educational assessment and progress is given to the school or persons responsible for the individual's education following discharge from the center. Why do you specify the case work supervisor or the manager? In Wisconsin there are rules that require and govern the exchange of information between schools and residential centers operating private schools. Centers have to follow procedures for the exchange of information between schools and that's how records transmission should be handled for educational purposes between the school district they are going to and the center school program. So this is unnecessary. | 6. | Agreed. Last sentence has been modified to make this the responsibility of center education staff. |
| HSS 52.41 (1) (c) 5. What does "mental health treatment" mean here? Who is qualified to provide it? | 6. | The phrase "mental health" has been dropped. |
| HSS 52.41 (1) (c) 5. Drop the requirement of consultants as this suggests that mental health services can only be provided by a psychiatrist or psychologist. | 8. | Although the phrase "mental health" has been dropped, the requirement to have a psychiatrist or psychologist for consultation in relation to a resident's treatment plan is necessary and appropriate |
| HSS 52.41 (1) (c) 6. MA has now reduced dental examinations for children to one time in a 12 month period, yet this rule specifies 2 times. Many dentists in our area do not take MA so 2 times will be difficult. If the standard is left at one, then if the dentists requires a second one before the client leaves, that probably would work for reimbursement | 8. | Medical Assistance "Healthcheck" will provide two dental examinations with the second dental examination a referral. While getting MA providers to cooperate may be difficult, it is not the purpose of this rule to allow substandard care because of systems problems. |
| HSS 52.41 (2) (a) Qualify this requirement for a written daily program of activities so that it refers to a general provision of activities, as it could be narrowly interpreted to include all activities including unplanned ones. | 6., 8. | Language added to HSS 52.41(2)(a)1. Instead, because of the vagueness of general, "and leaves room for adding unplanned activities" has been added to the rule. |

SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.41 (2) (b) 6. states that the program of activities should include interpersonal relations with peers, family, friends and members of the opposite sex. If that is required, I think that needs to be reconsidered. There are facilities that exist in the state just for boys or just for girls where it would sometimes be difficult to accomplish that if it is a requirement. | 7. | Agreed. A phrase, "where possible and appropriate" has been added. |
| HSS 52.41 (2) (e) The statement, "a center may not segregate residents on the basis of handicap." is pretty broad and should be clarified. In particular, if you're providing specialized services you want to segregate on the basis of particular handicaps. For example, hearing impaired kids, are brought together for speech therapy and sign language; kids treated for ADHD may be grouped together because of the similarity of their disabilities and the types of services that they require; and the DD/MR population may be grouped differently because they have substantially different issues and treatment needs than the more cognitively able kids. Make clear that the rule concerns general activities, not treatment activities. | 7. | No change. The rule is simply saying that the center may not prevent a child from being part of the normal center living environment because of the child's handicap. Of course there is grouping for specialized treatment. |
| HSS 52.41 (8) (b) Add that restitution to the center should be coordinated with any other restitution ordered by a court or as part of an agreement under ch. 938, Stats., as created by 1995 Wisconsin Act 77. | 11. | Agreed. Language has been added. |
| HSS 52.42 (3) (e) The record keeping requirement is appropriate for overnight visits but for other temporary reasons is excessive. | 8. | Agreed. Language has been narrowed. |
| s. HSS 52.42 (4) Delete the words, "to manage resident behavior." | 13. | Agreed. |
| HSS 52.42 (4), Add a new paragraph: Center staff whose behavior or mental or physical condition gives reasonable concern for safety of residents may not be in contact with residents in care. | 13. | Agreed but this language has been included instead in HSS 52.12 (3) (g). |
| HSS 52.42 (5) (b) A key-locked door poses a significant risk to a child in case of fire or another emergency which could possibly take staff away from the room the child is in. Clarification is needed as to what constitutes a locking device and what types are allowed. | 10. | Agreed. For locked time-out rooms dead bolt or locks requiring the turning of a knob to unlock will be permitted. Key locks, padlocks or other locks of similar design will be prohibited. |
| HSS 52.42 (5) (b) Magnetic door locks could be an option under (5) (b) 5. e. | 8. | Agreed. |
| HSS 52.43 Given the need for continuity of educational programming, add an explicit requirement that a center must coordinate a youth's educational programming with his sending school upon admission and as part of discharge planning. | 11. | Although implicit in s. HSS 52.41 (1) (b) 4., this language has been added to HSS 52.41(1)(b) (intro.) to clarify the intent. |

## SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.43 (3) Centers should be required to accommodate youth who have dietary needs related to cultural or religious beliefs, such as providing a substitute for pork for a Muslim youth or a Jewish youth. | 11. | Agreed in part. Language had been added to require substitutes where food items are prohibited by religious beliefs. However, cultural differences may be difficult to accommodate. For instance, adding dishes usual in Hmong, Laotian, Vietnamese, or Native American households. |
| HSS 52.45 (3) Consider adding requirements for treatment of pregnant and parenting residents, including parent skills training and involvement of the father in treatment and activities. | 11. | No change. The rules address in general the delivery of services meeting the needs of various populations, e.g., alcohol/drug abusers, developmentally disabled, etc. It is assumed that the needs of pregnant and parenting residents in any population group served will be addressed by a center's program. See also s. HSS 52.45 (3). |
| HSS 52.46 (5) (c) In subd. 2. a., it is not clear if this is a blanket authorization or one that is written on a resident-specific basis. | 11. | The language is resident-specific. |
| HSS 52.46 (1) (c) Clarify what is meant by "staff monitoring of self-administration" of medications. It is defined as handing the proper dosage to the resident and watching the resident consume it. But the resident left on his own would have no idea how to take the medication if not out of a bottle. Tighten up the definition | 7. | The definition has been slightly modified. The word "proper" has been inserted before ingestion, injection, application or inhalation of the medication by the resident. Additionally, sub. (2) (b) 2. has been modified to require the prescribing physician or the center medical consultant to authorize self administration of medications including injectables. It is a medical decision. The delivery of medications can take place under a number of different situations, e.g., pill boxes, unit pack dose, out of the bottle, needle syringes, etc. Approval of medically licensed personnel and good sense dictate the individual circumstances for each situation of self- administration. |
| HSS 52.46 (2) (a) 3. and 4. requires new training and identification of staff people documented as authorized to distribute medication and requiring that a medication be administrated by center staff for a resident and that the resident's attending physician or center medical consultant provide center staff with clear written instructions and authorize specific center staff. Center staff are already pre-authorized to do that, and so some of the physicians or psychiatrists are not likely to take the time to do it. | 1. | The definition of "general supervision" in this section suggests that a physician or nurse would know the center staff not medically licensed to administer medications and, therefore, would have to approve and authorize their administration of medications to residents. |

# SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
## Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.47 (4) (c) states before a driver may transport residents, the center shall check the driver's driving record for reckless driving, safety violations under s. 346.62, Stats., or operating under an intoxicant or other drug under s. 346.63, Stats. A driver having any of these violations in the last 12 months may not transport residents. This makes a good driving record an essential function of any staff member who will drive clients. Most of our youth trainer counselors drive clients. So in order to work with the kids everybody would need to have a good drivers record. That is expecting too much. A center should not be prevented from hiring someone or should not have to terminate staff members for something done that has nothing to do with working with children and that was not done while employed by the center. | 5. | No change. The rule does not prohibit hiring. It prohibits the person hired from transporting a resident until a 12 month period has passed from the last reckless driver or intoxicated driver violation. |
| If for certain positions a center must make sure that a new hire has a good driving record, the time to get that information will impede being able to recruit staff in a timely fashion. | 5. | The safety of children being transported requires screening of driver records. |
| HSS 52.47 (6) (a) 1. This section, as specified in HSS 52.47 (1), applies to all transportation of residents, whether by center vehicles or vehicles owned by staff, volunteers or student interns if used to transport residents. Under sub. (6), the center shall have on file evidence of a vehicle's safe operating condition. So it puts the center in the role of having to go out and inspect employe, volunteer and student intern vehicles if used to transport or pick some kid up at the bus or take some kid home for dinner or other activity. It's okay for a center-owned vehicle. But it becomes a policing operation for all other vehicles. It would be quite difficult to provide those kinds of inspections and safety requirements. Perhaps narrow the applicability of that particular requirement. | 6. | No change. All vehicle used for regular resident transport, whether center-owned or not, must be in proper operating condition for the protection of the residents. |
| HSS 52.48 Include a provision allowing the center to have rules about suitable clothing, for example to restrict clothing that would signify gang affiliation. These rules could be applied to all youth, not just on the narrow exception basis in HSS 52.31 (4) (c). | 11. | This is allowed under s. HSS 52.31 (4) (d). |
| HSS 52.49 (2) (b) In subd. 4., require a center to retain records related to resident funds under HSS 52.41 (8) and in 4. d. change to: "Documentation of applicable court status including current custody and guardianship arrangements", since in delinquency-related placements custody is no longer transferred. | 11. | Agreed. |

SUMMARY OF PUBLIC HEARING COMMENTS ON PROPOSED CH. HSS 52
Residential Care Centers for Children, Youth and Young Adults

| SPECIFIC COMMENTS | | |
|---|---|---|
| Comment/Issue/Concern | Commentator | Department Response |
| HSS 52.49 (2) (b) 1. h. This should read locked "unit" not locked "room" for consistency with required written consent under HSS 52.42 (7) (a) 3.d. | 11. | Agreed. |
| HSS 52.51 (3) It seems excessive to require an automatic release or one that opens with one hand without the use of a key on the inside of a closet, and in particular depending on the nature of the closet. What about sliding doors? | 7. | All interior doors must be openable from both sides. Sliding doors must slide open from the inside as well. No change. |
| HSS 52.51 (3) Delete the term "key" locked and just say locked. | 8. | Agreed. Key locked deleted. Language changed. |
| HSS 52.56 Include a separate part which addresses time-delayed door locks. | 8. | Agreed. See HSS 52.56 (5) (b). |
| HSS 52.61 (5) Require an applicant for a certificate of need to state in the application whether the new or expanded facility will include a locked unit. | 11. | No change. Demonstration of need is for whether additional beds are needed. If a locked unit is anticipated, this would be part of the basis for need. |
| HSS 52.62 Add the following: "The department "may issue a residential care center license to an applicant based upon receipt and department approval of a properly completed application, satisfactory department investigation and determination that the applicant is fit and qualified. In determining whether an applicant is fit and qualified, the department shall at least consider any history of civil or criminal violation of statutes or regulations of the United States, this state or any other state substantially related to the care of children or youth by the applicant, owner, manager representative, employe, household member or other individual directly or indirectly participating in the operation of the residential care center. | 13. | Agreed. See HSS 52.62 (1). |
| HSS 52.62 Add the following: "An applicant shall complete all application forms truthfully and accurately and pay all fees and forfeitures due and owing prior to receiving a license." | 13. | Agreed. See HSS 52.62(1). |
| HSS 52.62 (3) Require a license amendment if a facility at some future date seeks to add a locked unit. | 11. | By statute, a license amendment is only needed when one of the provisions of a license, e.g., sex, age, or number of beds, changes. In the rules, a locked unit requires Department approval. |
| HSS 52.62 (4) (a) ..Add "or chapter 48, Stats." | 13. | Agreed. |
| s. HSS 52.62 (7) (a) 2. Change 30 days to statutorily set "10 days." | 13. | Agreed. |

## 1999 PUBLIC HEARING COMMENTS & DEPARTMENT RESPONSES

## PROPOSED CHAPTER HFS 52 – RESIDENTIAL CARE CENTERS FOR CHILDREN AND YOUTH

A public hearing was held in Madison on October 26, 1999.

Staff in attendance:

Patty Hammes, Director, DCFS Bureau of Regulation and Licensing : Hearing Officer and Resource Person
Beth Furay, Chief, Western Region, DCFS Bureau of Regulation and Licensing: Resource Person

The hearing record was left open until October 29, 1999 for written comments.

| | |
|---|---|
| Registered: | 3 |
| Testified: | 3 |
| Observed: | 1 |
| Written Comments: | 7 |

Public hearing participants on proposed HFS 52 are listed below. The numbers preceding the names are used in the attached summary of hearing comments to indicate who made the particular comment.

Persons present who gave either *verbal and/or written testimony at the hearing.

| | | |
|---|---|---|
| 1. | Mark Wolf, Program Director<br>Oconomowoc Developmental<br>Training Center<br>Oconomowoc WI | Testified |
| 2. | Richard MacNall, Director<br>Oconomowoc Developmental<br>Training Center<br>Oconomowoc WI | Testified |
| 3. | Nona Miller<br>Oconomowoc Developmental<br>Training Center<br>Oconomowoc WI | Testified |
| 4. | John Grace, Director<br>Wisconsin Association of<br>Family and Children's Agencies<br>Madison WI | Observed only |

The persons listed below submitted written comments to the Department on the proposed rules during the public review period ending October 29, 1999.

5. Jeanie Schoen
Homme Youth and Family Programs
Wittenberg WI

6. James Weyenberg, Administrator
Tomorrow's Children
Waupaca WI

7. Mark Krueger, Professor
University Outreach
Outreach and Continuing Education Extension
Milwaukee WI

8. Gary Erdmann, Executive Director
Lad Lake, Inc.
Dousman WI

9. David Perhach, President of Operations
Terry Mauss, Program Director
Willowglen Academy
Sheboygan WI

10. David Fritsch, President
Clinicare Corporation
West Allis WI

11. Sandra Esrael
Department of Health and Family Services
Office of Legal Counsel
Madison WI

## SUMMARY OF 1999 PUBLIC HEARING COMMENTS ON PROPOSED CH. HFS 52
## Residential Care Centers for Children and Youth

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| General comment: Commends everyone who participated in the process of rewriting the rules, for the many hours of time and deliberation put into this effort. I believe the proposed rules represent a good faith effort to ensure the health and safety of residents that come into care in these licensed programs, provide the necessary treatment and educational services to meet their individual needs, and respond to community concerns for added means of supervising and managing behaviors of residents in care.<br><br>The proposed rules go beyond minimum standards to address in many areas what can best be described as "best practices." While this is desirable, it potentially raises the bar insofar as enforcement and issues of non-compliance are concerned beyond what has previously existed. Hopes the Department will distinguish between legitimate areas of non-compliance related to the health and safety of residents or the community and areas where there is need for quality improvement and technical assistance.<br><br>With rules of this magnitude and detail it is impossible to ascertain the full impact of their implementation. While every effort has been made to reflect current practices in the field and take into consideration the many operating practices and organizational differences that exist from licensed program to licensed program, there is no way to be fully comfortable with every provision and requirement until the new rules go into effect and we begin to identify problems and make necessary adjustments. Hopes that all of this will occur in the same spirit of cooperation in which the chapter was drafted. | 8. | Acknowledged. |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| General comment: In regards to residential care workers and the daily environment, I think this is a vast improvement from previous rules, but there is still a long way to go. Although great strides have been made in developing a profession of child and youth care and education programs, levels of competence, supervision, support and pay among workers remain extremely low in comparison to other fields. So if there is anything we can do to promote higher standards and/or support for workers, we are eager to help. | 7. | Acknowledged. |
| HFS 52.03 (24) Resident Living Space. This definition change eliminates a significant number of qualifying square feet at our Sheboygan County and Milwaukee CCI sites. This rule change will also effect our other seven homes, which are 8 and 7 beds. | 9. | The proposed rules do not reduce the countable living space requirements in the current rules. To make this clear, the definition in HFS 52.03 (24) has been deleted as not necessary and the rule language in HFS 52.52 has been modified to better distinguish resident living space requirements for buildings housing 9 or more residents from buildings housing 8 or fewer residents. |
| HFS 52.12(1)(a)3. and 5. How is a resident services case manager being defined? How is a resident care worker being defined? | 3. | No change. These are defined at those places in terms of their responsibilities and duties. A resident services case manager must meet the qualifications set out in HFS 52.12 (2) (c), and a resident care worker must meet the qualifications set out in HFS 52.12 (2) (e). |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| HFS 52.12(2)(a). Broaden the required qualifications for a center director. The proposed qualifications are too limited. They would eliminate many qualified individuals. For instance, someone with a B.S. and M.S. in education who holds a Principal's license would not be eligible. The same would be true for someone with a degree in either finance or administration. Since the person who oversees the social work department must have a degree in either social work or a related behavioral science, the need for the center director to have a bachelor's degree in one of those fields is not as great. | 6. | Agreed. HFS 52.12(2)(a) is amended to require a bachelor's degree from a college or university in business or public administration, a social or behavioral science or a social services or human services field, along with 2 years of successful related work experience in administration or supervision. |
| This requirement specifically excludes a degree in business administration, health care or public administration. The complexity of licensed child welfare programs in today's environment increasingly demands a set of managerial and administrative skills and a knowledge base not typically developed in the above areas of study. Quality of care arguably is enhanced through a well-administered, and financially stable organization. As someone with a Master's in Business Administration and 21 years of experience running a licensed child welfare program, I believe I represent the positive benefits of such an alternative approach.<br><br>Recommends that this requirement read as follows: "The center director…shall be an employe of the center, have a bachelor's degree from a college or university in business or public administration or in a social or behavioral science and have 2 years of successful related work experience in administration or supervision in the human services field." | 8. | Agreed. |
| HFS 52.12(2)(d)2. The training qualification for a resident care worker supervisor is a matter of concern. What is included under "supervisory skill | 3. | The rule has been modified to require 3 years of experience in public or private |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| development and personnel management"? With a requirement for 250 hours of training in supervisory development and personnel management, how will a center find individuals who are qualified? | | institutional child care for the type of population the center serves, and one year of experience as a supervisor or satisfactory completion of at least one course for credit in supervisory skill development and personnel management or have 40 hours of documented in-service training involving supervisory skill development and personnel management. "Supervisory skill development" and "personnel management" have the general meanings of the terms. |
| HFS 52.12 (2) (e)3. Supports certification of youth counselors. However, the UW-M Learning Center holds a monopoly on this certification. The "national organization" is the UW-M Learning Center. How can a center comply with certification without utilizing the Learning Center? Currently only the UW Learning Center certifies child and youth care workers . Is the Department going to have standards for certification for youth counselors and will the Department then authorize other agencies such as residential care centers to certify them? That would be good for the flexibility it would afford providers and for cost containment. | 1. | No change. HFS 52.12(2)(e) provides a range of options for meeting the resident care worker qualifications. Certification is one option. Another, HFS 52.12(2)(e)4., is for the new resident care worker to complete a supervised traineeship program operated by the center under (5)(g). The initial training for new staff members under HFS 52.12(2)(5) (c) is provided by the center when the new staff member has not already received the training. The center has the ability to provide the training to its staff. |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| Add a process for the Department to authorize a residential care center to certify youth care workers something like the process used for approving CBRF training. This would help to deal with the turnover, much of which is at the entry level. | 2. | No change. HFS 52.12(5) requires the center to submit to the Department for approval a description of the process and content of orientation and initial training at the time of initial licensure and every 2 years thereafter. However, the Department does not certify individual youth care workers nor is it appropriate for it to authorize centers to do more than provide the training necessary for a person to be employed as a resident care worker. |
| What other Department-recognized alternatives are there? | 3. | If in the future other agencies, institutions or organizations offer certification under standards of the Association for Child and Youth Care Practice, or that are equivalent to those standards, the Department will review those programs and advise centers of other acceptable certifying authorities. |
| The National Organization of Child Care Workers Association is now called the Association for Child and Youth Care Practice, although it might be okay to leave reference to "national organization" as-is because it seems to be referring to a national professional association without specifically naming it. | 7. | Acknowledged. No change. |
| | | |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| HFS 52.12 (5) (c). Initial Training. This spells out specific areas in which training is required in the first 6 months of employment. This is a very minimal requirement. It is not adequate training for residential care workers. | 7. | No change. Residential care workers do not have the title of "social worker." Moreover, current staff are grand-fathered-in under s. HSS 52.12 (2) (intro.). |
| HFS 52.12(5)(d) and (g), Working with a Monitor; Traineeship. Is it possible to say anything more about the monitor other than that the staff person must be experienced? Should he or she have completed the 40-hour training program and have had positive annual performance evaluations? The person new workers learn from is very important. This person has to have the skill and attitudes that are essential to competent practice. Sometimes new workers are stuck alongside people who can't stand the place and/or are incompetent and this has a long-term impact on new workers – so anything that can be done to make sure the monitors are qualified would be helpful. | 7. | No change. HFS 52.12(5) requires the center, prior to implementing training required under this subsection, to submit to the Department for approval a description of the process and content of orientation and initial training at the time of initial licensure and every 2 years. It is up to the center to make sure that the experienced staff person is competent and has a good attitude. |
| HFS 52.12(5)(g). This rule provides that staff without the appropriate degrees must have 160 hours of training with an experienced staff member prior to assuming independent responsibility. – several of our overnight staff are non-degreed. Does this mean that they cannot work alone until they have worked for160 hours with residents under the guidance of an experienced staff. member? | 5. | Under HFS 52.12(2) staff hired or contracted for on or after the effective date of the revised chapter to carry out the responsibilities under sub. (1)(a) need to meet the training requirement under HFS 52.12(5)(g). The traineeship program is an option for a center to use with a new employe who is not otherwise qualified under HFS 52.12 (2) (e) to work as a resident care worker. The provision of having the trainee work a minimum of at least the first 160 hours with an experienced resident care worker is essential if the person is not otherwise |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| | | qualified, such as by having a degree. |
| HFS 52.12(6)(a)1. Staff Supervision. Can a casework supervisor supervise more than 8? If so, how many hours of supervision time is required per week for each full-time resident service case manager? If it must be 8 or less, the number of supervision hours (5) per week for each case manager would seem very difficult to manage. Better to decrease that number. How is supervision defined? | 5. | Under HFS 52.12(6)(a)1. there must be at least one full-time equivalent social work case work supervisor for no more than 8 full-time resident services case manager staff. The last sentence of HFS 52.12 (6) (a)1., which was the 5 hours of supervision staffing standard, has been deleted. |
| HFS 52.12(6)(a)1. Staff Supervision. This requirement states that supervision time provided by the casework supervisor shall be the equivalent of 5 hours of supervision for each full time resident service case manager per week. If by this is meant 5 hours of one-on-one or even group supervision with each resident case manager, it is not realistic. | 6. | |
| HFS 52.12 (6) (a) 2. Staff Supervision. Can a resident care worker supervisor supervise more than 8 resident care workers? If so how many hours of supervision time is required per week for each full-time resident care worker? | 5. | No. HFS 52.12(6)(a)2. requires at least one full-time resident care worker supervisor for no more than 8 full-time equivalent resident care workers. |
| Why is the Department dictating that a resident care worker supervisor may only supervise 8 resident care workers, as this is only good practice? By providing | 2. | Adequate supervision of resident care workers directly impacts on services for residents in care. Experience has |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| more coverage for supervision of staff, this gives less coverage for supervision of the kids. | | demonstrated to the Department that inadequate supervision of resident care workers has contributed to cases of improper care and treatment of residents and injuries or other incidents resulting from resident care workers not being familiar with or failing to follow center policies and procedures. |
| If it must be 8 or under, the number of supervision hours, 5 hours per week for each resident care worker, is, in our opinion, very difficult to manage. Better to decrease that number. How is supervision defined? | 5. | The last sentence of HFS 52.12 (6) (a) 2., which was a staffing standard requiring 5 hours of resident care worker supervision time for each resident care worker per week, has been deleted. "Supervision" has the dictionary meaning of directing and guiding the behavior and activities of employes. |
| HFS 52.41(2)(c)1. This rule, which requires centers such as ours to group residents by age, developmental levels and social needs, says that it is preferable for the difference in age between any 2 residents in the same group to be no more than 4 years and that it is unacceptable for the difference in age between any 2 residents in the same group to be 6 years or more. Since many of our clients have had unpleasant experiences with each other at other facilities before they came to us, this restrictive age grouping may force us to place clients together who should not be placed together. | 6. | No change. The rule is intended to prevent harm to or exploitation of younger children by older children. This has long been Department regulatory policy based on incidents at centers where younger children have been injured or harmed due to inappropriate age grouping of children. HFS 52.02(2) permits a center to request an exception |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| | | and authorizes the Department to grant an exception if the Department determines that the exception will not jeopardize the health, safety or welfare of any child or young adult served by the center. |
| HFS 52.42(5)(a)1. Physically enforced separation is a treatment technique that can be used as part of a safe and effective treatment approach. The rule language here unnecessarily limits the appropriate use of that technique to crisis intervention. Children/adolescents come to our program after they have consistently failed in less restrictive settings. In these settings the more traditional type of treatment has proven unsuccessful. In effect, they have been placed in a CCI as a last resort placement. Allow the use of physically enforced separation as a part of a consistent, appropriate treatment approach. | 6. | No change. The rules do allow for physical crisis intervention and include conditions for using physically enforced separation for crisis intervention. The purpose of this section is to permit the use of physical hold restraint or physically enforced separation only as a crisis response when the resident's behavior is imminently dangerous to self or others. The rules put protocols in place tied to treatment pursuant to which a center must assess and document incidents in response to which physical hold restraint or physically enforced separation of a resident was used during crisis intervention. |
| HFS 52.42(5)(a)7. While it is important to record when and for how long a physical hold or a physically-enforced separation is used on a resident, it is excessive to require, as this rule does, a written incident report each time a physical hold or a physically-enforced separation is used. It would make more sense to require a written incident report only when the physically enforced separation was at least an hour in length or when the physical hold or the physically enforced separation took place in unusual circumstances. | 6. | No change. The requirement is intended to ensure that the professional staff member who has the responsibility to monitor and review the use of all center behavior management measures is aware of the use and frequency of physical hold restraint and physically enforced separation and evaluates the appropriateness of its use in crisis |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| | | intervention. The frequency of incidents has implications for treatment as well as resident management issues. |
| HSS 52.42(5)(b)3. This rule gives the impression that if a client needs to spend more than 2 hours in physically enforced separation, the placement is not appropriate. In our extensive experience, clients who have been very successful in our program have spent more than 2 hours in one day using the quiet room at different stages of treatment. It is a very normal treatment progression that initially a client may try to outlast an adult by behaving in such a way as to hope that the adult will relent. This is an important stage of treatment and needs to be handled consistently. It does not mean that the child is inappropriate for the program. | 6. | This rule language reflects behavior management guidelines found in federal regulations, Department policy and industry standards, such as for intermediate care facilities or ICF/MRs for the use of physically enforced separation lasting up to one hour. Use of physically enforced separation for more than 2 hours for a resident as part of crisis intervention should prompt a review of the appropriateness of the resident's placement. |
| HFS 52.42(5)(b)3. Crisis Intervention. Clarify what is meant by this rule – Except as otherwise provided for a locked unit under sub. (7)(a)2.b. a resident under subd. 2. experiencing multiple episodes in a day prompting use in a single incident lasting more than 2 hours or a cumulative use during a day of more than 2 hours shall be followed by center staff review of the need to arrange another more appropriate placement for the resident. | 5. | Some clarification has been made in the rule language. The intended meaning is that when a center is using physically enforced separation with a resident for episodes resulting in more than 2 hours per day of use or cumulative use during a day of more than 2 hours and the center does not meet the conditions under (7) for use of a locked unit, the center staff needs to review the continued appropriateness of the placement of that resident in the center and consider whether a different placement is needed. The center has the option of applying for Department approval to operate a locked unit which is |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| | | intended to serve youth with more intensive needs in a controlled treatment environment. |
| HFS 52.42(5)(b)7. This rule, which says that a room used for the purpose of giving a resident a time-out must be at least 6 feet by 8 feet by 8 feet, actually makes it more likely than not that a client placed in a time-out room will injure himself for the simple reason that a room 6 feet on one side and 8 feet on the other gives a person enough room to run or dive at the wall with enough force to injure himself or herself. A room with smaller dimensions would be safer. | 6. | No change. A time-out room is not intended to enclose a child or youth in a small space that would have a punitive effect but rather to provide a quiet area in which the resident can calm down. The size of the room in itself will not preclude self-abusive behavior. The rule requires staff observation of a child or youth placed in a time-out room. Part of the purpose of the requirement is for staff to be alert and vigilant to this type of behavior and to intervene as necessary when abusive behaviors are present. |
| HFS 55.42(7) Use of Locked Units. The rule language under this subsection appears not to allow us the latitude to therapeutically do what we feel necessary from a clinical and behavioral modification standpoint. There needs to be further discussion and consideration of use of locked units for behavior management and control programming. | 5. | No change. Department staff met with providers for months to develop the language. |
| HFS 52.53(4). This rule, which says that a resident who needs assistance to get to the toilet or to take a bath should be assisted by a staff member of the same sex as the resident, will cause hardships for some facilities. Since our facility has more male clients than female clients and since we usually have many more female applicants for staff positions than male applicants, this rule would often | 6. | Agreed. The phrase, "of the same gender," has been deleted. |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| make it difficult for us to see that the most qualified staff members were assigned to residents who needed assistance getting to the toilet or taking a bath. There is no guarantee that a client will be safer with an assistant of the same sex than the client would be with an assistant of the opposite sex. Finally, there is reason to worry that this rule might well cause facilities such as ours to discriminate illegally against a staff member on the basis of the staff member's sex. | | |
| HFS 52.62(3)(b)2.b. Omit the language entirely. The statute clearly provides that DHFS may revoke if the application is not timely filed. Since the statute is discretionary, DHFS also has full authority to issue a forfeiture or other sanction. It is most expeditious to issue a revocation in these cases. There is no need for a rule here and may just complicate issues. | 11. | Agreed. It has been deleted. |
| HFS 52.62(3)(b)2.c. The Department has full authority under s. 48.70, Stats., to add "special conditions as the department may prescribe," and that language is interpreted to mean that the Departmentt may add conditions to a license. Currently conditions are added to an existing license by 1) agreement with the provider (a new license with conditions is issued in place of regular license); 2) orders are issued stating new conditions, perhaps as imposed plans of correction, with those orders being appealable and, if appealed, conditions may be added by stipulation; or 3) stipulation. There is no need to add this language by rule. | 11. | Agreed. It has been deleted. |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| HFS 52.62(5) License Denial or Revocation. Language on "substantial compliance" should be made consistent with other revocation language in ch. 48, Stats., and the group day care rules (HFS 46). For example, the language in HFS 46.12(7) "has violated any provision of this chapter or ch. 48, Stats. or fails to meet the minimum requirements of this chapter", is clearer language under rule than "substantial compliance." Also need to add back in language on substantiated findings of abuse or neglect pursuant to s. 48.981, Stats.<br><br>Language on revocation should include "immediate revocation, subject to appeal, or 30 day revocation, subject to appeal, if uncorrected." Section 48.717(4)(a) and (d), Stats., provide for revocation if conditions are uncorrected after 30 days, pursuant to s. 48.7125(4m)(a), Stats., and s. 48.715(4)(b) and (c), Stats., permits immediate revocation if there is no appeal. For ease of interpretation, the more consistent the rules are with statutory language, the better. | 11. | Agreed. Changes have been made so that the rules are consistent with statutes and rules applying to other children's facilities regulated under ch. 48, Stats., with some modifications. |
| HFS 52.62(7) Summary Suspension of a License. Change summary suspension language to be consistent with group day care rules, HFS 46. The language here in the proposed rules adds new deadlines for the Division of Hearings and Appeals, something DHFS cannot do by rule. The language from the HFS 46 group day care rules should be incorporated. | 11. | Agreed. Changed to be consistent with other children's facility licensing rules and statutory requirements under ch. 48, Stats. |
| HFS 52.62(8)(a)1. Appeal Time for Actions. Make the rule language consistent with the statute. The draft rule states that the appeal must be sent so that it is received within 10 days after the date of notice. The statute requires that the appeal "shall be [sent] ... within 10 days after the date of the department's refusal or failure to issue or renew or continue, etc." The statute supersedes the rule but the difference in the rule language gives the provider slightly less time to appeal. | 11. | Agreed. Changed to conform to statute. |

| Comment/Issue/Concern | Commentator | Department Response |
|---|---|---|
| HFS 52.62(8)(a)2. Eliminate provision for a two-part hearing following a summary suspension and modify HFS 52.62(7)(c) accordingly. | 11. | Agreed. The language has been modified. |
| HFS 52.62 (6). Add language to prohibit new admissions upon notice of revocation. The following language should be added: "Upon receipt of the notice and during any revocation procedures which may result, a residential care center for children and youth may not accept for care any child not enrolled as of the date of receipt of the notice without the written approval of the department." | 11. | Agreed. The language has been added at HFS 52.62 (6) (b). |

Data:e-mail:PBHCCI1

11-12-99a

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

To repeal and recreate chapter HFS 52, relating to residential care centers for children and youth, formerly called child-care institutions.

Analysis Prepared by the Department of Health and Family Services

In Wisconsin 38 privately-owned residential care centers for children and youths provide treatment to children and youth, and to some young adults ages 18 to 20 who are under continuing juvenile court jurisdiction. A child, adolescent or young adult served by a center will have one or more of the following problems: an emotional disturbance, difficulty in acquiring life skills, an alcohol abuse or drug use or abuse problem or a developmental disability. Placements into residential care centers take place from youth correctional institutions and field supervision, mental health agencies and institutions, county human service and social service agencies and the interstate compact for placement of children under ss. 48.988 and 48.989, Stats., or are made by courts as protective placements under ch. 55, Stats., or by parents. The Department is responsible under ss. 48.60, 48.66 and 48.67, Stats., for licensing and supervising residential care centers on the basis of minimum requirements for issuance of a license and minimum standards for operation of a center. These requirements and standards are set out in ch. HFS 52, Wis. Adm. Code.

Chapter HFS 52 consists of standards for the administration and operation of residential care centers for children and youth, formerly called child care institutions, licensed under ss. 48.60, 48.66 and 48.67, Stats., as "child welfare agencies." The Department made some minor revisions in the rules while renumbering them from s. PW-CY 40.50 to ch. HSS 52 in 1983. However, no significant revisions have been made in the rules since 1971.

This order updates ch. HFS 52 to bring it into compliance with current drafting standards, statutes and other rules and to add new provisions to protect the health, safety and welfare of residents. The major new provisions added to ch. HFS 52 are:

1. Requirements for resident admission screening with formal assessment and treatment planning following admission.

2. A section on the applicability of resident rights under s. 51.61, Stats., and ch. HFS 94 to children and youth in residential care centers.

3. Incorporation by reference of the requirements in ch. HFS 12, relating to caregiver background checks and bars of persons with certain offenses or criminal acts from working for, contracting with, or residing at a residential care center.

4. Policy and procedural requirements for the administration of medications, including psychotropic medications.

5. Stipulation that for residential care centers the Wisconsin Department of Public Instruction will establish and monitor compliance with educational standards.

6. Requirements relating to behavior management and control and the use of crisis intervention, physical hold restraint and physically enforced separation.

7. Prohibition of locked living units at a center except with approval of the Department and for purposes and under conditions specified in the rules.

8. Professional staff credentials more related to the population served by the center.

9. Certain physical plant requirements, including Department approval for installation of psychiatric screening and magnetic or time delayed door locks.

10. Requirements for transporting residents.

11. Approval criteria for short-term (up to 90 days) and respite care (up to 9 days) programs operated by residential care centers.

12. Recognition that, if designated by the Wisconsin Department of Corrections, a residential care center may operate a program for type 2 status juveniles placed by a court under s. 938.34 (4d), Stats., or by the Department of Corrections under s. 938.357 (4), Stats.

The Department's authority to repeal and recreate these rules is found in s. 48.67 Stats. The rules interpret ss. 48.60, 48.66 and 48.67, Stats.

SECTION 1. Chapter HFS 52 is repealed and recreated to read:

Chapter HFS 52

RESIDENTIAL CARE CENTERS FOR CHILDREN AND YOUTH

Subchapter I - General Provisions



Subchapter II - Administration



Subchapter III - Admission, Treatment Planning and Discharge



Subchapter IV - Resident Rights



Subchapter V - Program Operation



Subchapter VI - Physical Environment and Safety

Subchapter VII – Specialized Programs

HFS 52.57 Exceptions and Additional Requirements for Type -2 Programs
HFS 52.58 Exceptions and Additional Requirements for Short -Term Care Programs
HFS 52.59 Exceptions and Additional Requirements for Respite Care Services Programs

Subchapter VIII - Need Determination and License Application

HFS 52.61 Determination of Need for Additional Beds
HFS 52.62 Licensing Administration
HFS 52.63 Inspections and Complaint Investigations

## SUBCHAPTER I - GENERAL PROVISIONS

**HFS 52.01 Authority and purpose.** This chapter is promulgated under the authority of s. 48.67, Stats., to ensure that residential care centers for children and youths protect and promote the health, safety and welfare of residents, respect the rights of individual residents, provide the most appropriate conditions possible for each resident, help each resident develop socially acceptable patterns of behavior, develop resident treatment plans consistent with the state's permanency planning policy to support the integrity of the family, and help each resident return as quickly as possible to his or her family or attain another placement providing long-term stability.

**HFS 52.02 Applicability.** (1) SCOPE. This chapter applies to the department, to applicants for a license to operate a residential care center for children and youth and to all licensed residential care centers for children and youth, except as provided in s. HFS 52.57 for type 2 residential care center programs, in s. HFS 52.58 for short-term programs and in s. HFS 52.59 for respite care service programs.

(2) EXCEPTIONS. (a) The department may grant an exception to a nonstatutory requirement of this chapter if the department determines that the exception will not jeopardize the health, safety or welfare of any child or young adult served by the center. A request for an exception shall be made in writing. The request shall justify the exception and describe the alternative provision that meets the intent of the requirement.

**Note**: A request for an exception to a requirement of this chapter should be sent to the licensing representative of the Department's Division of Children and Family Services. See Appendix D for the address of the field office for your area.

(b) The department may impose one or more specific conditions on any exception granted under this subsection to protect the health, safety or welfare of residents. Violation of a condition is a violation of this chapter.

**HFS 52.03 Definitions.** In this chapter:

(1) "Aftercare" means follow-up services provided to a young person after he or she is discharged from a center.

(2) "Center" means a residential care center for children and youth.

**Note**: Residential care centers for children and youth were formerly called child care institutions (CCI) and in ch. 48, Stats., are referred to as child welfare agencies.

(3) "Child-placing agency" or "placing agency" means any agency that is required to be licensed under s. 48.60, Stats., and ch. HFS 54, to place children into adoptive homes, foster homes or group homes, to accept guardianship of children or to license foster homes, or a county department with powers and duties as defined under s. 48.57, Stats., the department or the Wisconsin department of corrections or any other lawful placement authority.

(4) "County department" means a county department of social services under s. 46.21. 46.215 or 46.22, Stats., or a county department of human services under s. 46.23, Stats.

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

(6) "Full-time staff" means a center staff member who works 40 or more hours per week in the same staff position or 2 or more part-time staff members who together work in the same staff position 40 or more hours per week.

(7) "Guardian" means a person appointed by a court under ch. 880, Stats., to have the duties and authority of guardianship described under s. 48.023, Stats., or ch. 880, Stats., or as defined under s. 938.02 (8), Stats.

(8) "HealthCheck provider" means a provider of health assessment and evaluation services certified under s. HFS 105.37 (1) (a).

(9) "Informed consent" or "consent" means signed written consent which is voluntary and based on understanding by a person 18 years of age or older or a minor resident as provided under law who is competent and who understands the terms of the consent, and as otherwise provided under law by the resident's parent, guardian or legal custodian or as provided under a court order or other lawful authority.

(10) "Legal custodian" has the meaning specified in s. 48.02 (11), Stats., or in s. 938.02 (11), Stats.

(11) "Legal custody" has the meaning specified in s. 48.02 (12), Stats., or in s. 938.02 (12), Stats.

(12) "License" means written permission of the department for a center to operate, consisting of a license certificate which shows the location of the center, identifies the licensed premises and lists licensing provisions, and a licensing letter of transmittal that includes any special conditions.

(13) "Licensee" means the person, partnership, sole proprietorship, corporation or other legal entity to which a license is issued under this chapter and which has final responsibility and authority to operate the center.

(14) "Licensing representative" means a department employe responsible for licensing residential care centers.

(15) "Medical assistance" means the assistance program operated by the department under ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108.

(16) "NFPA" means the National Fire Protection Association.

(17) "Parent" has the meaning specified in s. 48.02 (13), Stats., or in s. 938.02 (13), Stats.

(18) "Permanency plan" means a plan required under s. 48.38 (2), Stats., that is designed to ensure that a child placed in a residential care center is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(19) "Physician" has the meaning prescribed in s. 448.01 (5), Stats.

(20) "Professional" means a person who is a Wisconsin certified alcohol or drug abuse counselor or a person with at least a bachelor's degree from an accredited college or university who has specialized training to do therapy or counseling or to provide other treatment services or a social worker licensed under s. 457.08,Stats.

(21) "Psychiatrist" means a physician licensed under ch. 448, Stats., to practice medicine and surgery who has satisfactorily completed 3 years of residency training in psychiatry or child psychiatry in a program approved by the accreditation council for graduate medical education and is either certified or eligible for certification by the American board of psychiatry and neurology.

(22) "Resident" means a person placed while under 18 years of age or a person placed when 18, 19 or 20 years of age and under juvenile court jurisdiction or a person under age 18 and placed under a contract or agreement with a parent or guardian or placed under a court order, who was admitted to and resides in a center.

(23) "Residential care center for children and youth" or "center" or "RCC" means a residential facility required to be licensed as a child welfare agency under s. 48.60, Stats., that provides treatment and custodial services for children, youth and young adults ages 18, 19 or 20.

(24) "Staff person" means a person who is either employed by a center or under contract for a center to perform the functions identified in s. HFS 52.12 (1) (a) or (2) (i).

(25) "Treatment plan" means a written plan of services to meet the specific treatment goals and needs of an individual resident.

(26) "Type 2 residential care center" means a center designated by the department of corrections as a type 2 child caring institution that is approved by the department to operate under its residential care center license to provide care and maintenance for juveniles who have been placed in the residential care center under the supervision of the department of corrections or a county department under s. 938.34 (4d), Stats.

(27) "Type 2 status" has the meaning specified under s. 938.539, Stats., and includes the status given by the court to a youth who is placed by the court in a type 2 residential care center.

## SUBCHAPTER II - ADMINISTRATION

**HFS 52.11 Licensee responsibilities.** A licensee shall protect and promote the health, safety and welfare of children, youth and young adults served and meet all applicable requirements under this chapter. If this chapter does not specify who should complete a task or function, the licensee shall make the necessary arrangements to achieve and maintain compliance. The licensee shall do all of the following:

(1) TABLE OF ORGANIZATION. Maintain an up-to-date table of organization showing the center's administrative and staffing structure with position titles and lines of authority.

(2) STAFFING SCHEDULE. Maintain an up-to-date staffing schedule showing usual staffing patterns for each day of the week for all staff who work with residents and for all staff responsible for the administration of center operations.

(3) OPERATION OF CENTER. (a) Operate the center in accordance with the provisions of the center's license and in compliance with this chapter.

(b) Comply with all applicable federal, state and local laws as determined by those authorities.

(4) NOTIFICATION OF DEPARTMENT (a) Notify the department in writing within one week after there is a change in the person filling the center director position.

(b) Notify the department in writing before making any general change affecting center organization, administration or operation or in the center's treatment program as described in the center's program statement and operating plan under s. HFS 52.41 (1). A general change is one that affects the overall structure of how a center is organized, administered or operated or in how a treatment program or approach is delivered.

(c) Notify the department in writing and receive approval from the department before serving a resident population that has different needs or disabilities than the resident population described in the agency plan under s. HFS 52.41 (1) (a) 3.

(5) BONDING OF CERTAIN EMPLOYES. Carry a bond on any staff person who has access to the center's financial accounts and on persons permitted to sign checks or manage funds.

(6) FINANCIAL MANAGEMENT. Establish rates according to department budget instructions and guidelines, arrange for an annual audit report for the center from an independent certified public accountant in accordance with s. 46.036, Stats., and that is acceptable to the department and, on request of the department, provide the department with center financial records.

(7) COMMUNITY ADVISORY COMMITTEE. Make a "good faith effort" to establish and maintain a community advisory committee, pursuant to s. 48.68 (4), Stats.

(8) MEETING WITH THE DEPARTMENT. Meet with the department at the department's request.

(9) KEEPING COPIES OF WRITTEN COMPLAINTS, GRIEVANCES. Keep copies of all written complaints and grievances received under ss. 48.745 and 51.61, Stats., and reports of investigations made and of resolutions of complaints and grievances.

(10) NOTIFICATION OF PARENTS AND DEPARTMENT RELATED TO RESIDENTS. (a) Notify a resident's parent or guardian, legal custodian, placing person or placing agency and the department as soon as possible of any injury requiring the resident's hospitalization or causing

the death of the resident or relocation of the resident off center licensed premises or any reported incident of abuse or neglect under s. 48.981, Stats.

(b) Report to the department on a form prescribed by the department within 24 hours after the death of a resident when reasonable cause exists to believe that the death was related to the use of a physical restraint or a psychotropic medication or was a suicide, as required under s. 48.60 (5) (a), Stats.

(11) FIRE REPORTING. Notify the department as soon as possible of any fire that requires the services of the fire department or incidents which require police intervention.

(12) INCIDENT REPORTING. Provide a report in writing to the department describing the events leading up to and including the occurrence of any incident under sub. (10) (a)or (11), within 48 hours after occurrence of the incident. The center shall retain a copy of the report.

(13) FILING PLAN WITH DEPARTMENT BEFORE CLOSING. When the center is being closed, notify and file a plan with the department at least 60 days before the closing date for the placement of center residents. The plan shall include procedures for terminating operations and time limits for notifying parents or guardians and county departments or other agencies responsible for the residents in care.

(14) OTHER NOTIFICATIONS AND REPORTING REQUIRED BY DEPARTMENT. Comply with all other notifications and reporting the department determines appropriate such as for an incident involving the death or serious injury of a resident, a serious incident involving law enforcement, a reported incident of child abuse or neglect, a suicide attempt by a resident or a medication error adversely affecting a resident.

(15) LIABILITY INSURANCE COVERAGE. Carry general and professional liability insurance coverage with limits of not less than $250,000 per person, $500,000 per occurrence for bodily injury and $100,000 for property damage.

(16) COMPLIANCE WITH PROGRAM STATEMENT AND OPERATING PLAN. Follow all policies and procedures in the center's program statement and operating plan under s. HFS 52.41 (1) and as otherwise required in this chapter or required by the department to fulfill the intent of this chapter.

(17) COMPLIANCE WITH CAREGIVER BACKGROUND CHECK LAW. Ensure that the center complies with ch. HFS 12, relating to background information checks on persons who will have access to center residents, and not hire, contract with or otherwise retain a person to work in any position where the person would have direct, regular contact with residents, if the person because of a specified past action is prohibited from working with residents.

**Note**: Make all notifications to the Department required under this subsection and send all reports and plans required under this subsection to the appropriate field office of the Division of Children and Family Services listed in Appendix D.

**HFS 52.12 Personnel.** (1) STAFFING. (a) A center shall have all of the following personnel:

1. A director employed by the center who is responsible for center operations.

2. One or more social work case work supervisors responsible for assessment and supervision of case work, service coordination and case management activities of resident services case managers through resident treatment planning reviews, case staffings and treatment record reviews.

3. One or more resident services case managers responsible for individual and group counseling of residents and individual counseling of residents and their families along with case work efforts involving residents and their families in planning, implementing and coordinating services and resources.

4. One or more resident care worker supervisors responsible for supervising and assessing resident care workers as they interact with residents and provide for the day-to-day care and supervision of residents.

5. One or more resident care workers responsible for direct care, nurturing and supervision of the residents.

6. Staff responsible for the center's recreation program.

7. Staff responsible for educational services when the center has an on-grounds education program.

(b) A center shall have the following services available for residents, either provided by professionals on staff or under agreement with professionals who are consultants for the center:

1. Health care needs assessment and supervision of the delivery of center health care services by a physician.

2. Dental care needs assessment by a dentist.

3. Services of a psychologist licensed under ch. 455, Stats., or a psychiatrist.

4. Services of other appropriately qualified professionals such as speech communication or hearing impairment specialists or occupational or physical therapists as necessary to carry out resident treatment plans.

(c) The work schedule of a resident care worker shall:

1. Specify the worker's routine and regular hours.

2. Not allow for the regular scheduling of more than 40 hours of direct care responsibilities with residents each week, exclusive of resident sleeping time, or more than 50 hours per week exclusive of resident sleeping time when the resident care worker is covering for sick leave, vacations, resignations or terminations of other staff.

3. Allow each resident care worker working longer than an 8 hour shift to have at least 15 minutes of free time during each additional 2 hour period.

(2) STAFF QUALIFICATIONS. Staff hired or contracted for on or after the effective date of this chapter [revisor to insert effective date] to carry out the responsibilities under sub. (1) (a) shall have the following qualifications:

(a) The center director under sub. (1) (a) 1. shall be an employe of the center, have a bachelor's degree from a college or university in business or public administration or a social or behavioral science or in a social services or human services field and have 2 years of successful related work experience in administration or supervision.

(b) The social work case work supervisor under sub. (1) (a) 2. shall be an employe of the center, have a master's degree in social work from a school of social work or in a behavioral science with 2 years of supervised work experience in a family or child welfare agency, have experience in working with the kind of populations the center serves and provide evidence of supervisory knowledge and skills.

(c) The resident services case manager under sub. (1) (a) 3. shall have education and experience which are specifically related to the client population to be served. That education and experience shall consist of the following for the type of population served:

1. Under this subdivision social or behavioral science field includes a degree in social work, sociology, psychology, speech communication or special education with certification for emotional disturbance or learning disabilities. For work with residents who are receiving services primarily for correctional aftercare or emotional disturbance, the resident services case manager shall have one of the following qualifications:

a. A master's degree in a social or behavioral science field with field work experience or employment experience working with children or families.

b. A bachelor's degree in a social or behavioral science field and either 2 years of employment experience in human services counseling involving children and families or at least 500 hours of supervised family or child contact therapy hours.

2. Under this subdivision a social or behavioral science field includes a degree in those fields specified under subd. 1. For work with residents who are receiving services primarily for alcohol or drug problems, the resident services case manager shall have one of the following qualifications:

a. A bachelor's degree in a social or behavioral science field and Wisconsin certification as an alcohol and drug counselor or meeting the qualifications of a registered alcohol and drug counselor I from the Wisconsin alcohol council certification board.

b. An advanced professional degree in a social or behavioral science field from a college or university with at least 6 credits in courses offering content in alcohol and drug abuse treatment and counseling practicum or field experience.

c. A bachelor's degree in a social or behavioral science field from a college or university and 6 credits in courses offering content in alcohol and drug abuse treatment and counseling practicum or field experience.

d. A bachelor's degree in a social or behavioral science field from a college or university and 2 years of experience working with children in alcohol and drug abuse counseling.

3. For work with residents who are receiving services primarily for a developmental disability, the resident services case manager shall have the following education and experience qualifications:

a. A degree in a social or behavioral science field. Under this subparagraph a social or behavioral science field includes a degree in social work, sociology, psychology, speech communication, special education, physical therapy or occupational therapy.

b. Specialized training or one year of employment experience in treating or working with developmentally disabled persons.

(d) The resident care worker supervisor under sub. (1) (a) 4. shall be an employe of the center and meet one of the following qualifications:

1. Possess the qualifications described under par. (c) for working with the type of population served.

2. Have 3 years of experience in public or private institutional child care for the type of population the center serves, and have one year of experience as a supervisor or satisfactory completion of at least one course for credit in supervisory skill development and personnel management or have 40 hours of documented in-service training involving supervisory skill development and personnel management.

3. Have 2 years of experience in licensed institutional child care and be certified as a child and youth care worker meeting standards of the national organization of child and youth care workers association.

(e) A resident care worker under sub. (1) (a) 5. shall be an employe of the center, have a high school diploma or equivalent and be at least 18 years old and at least 2 years older than the oldest resident. The resident care worker shall also meet one of the following qualifications:

1. Have a bachelor's or associate degree from a college or university with a focus on child and youth care work or in a social or behavioral science field.

2. Have at least one year of successful experience working in a recognized child welfare residential setting for the type of resident population served by the center.

3. Be certified as a child and youth care worker under the standards of the national organization of child and youth care workers association or other department-recognized certifying authority.

4. Have completed a supervised traineeship program under sub. (5) (g).

(f) A person under sub. (1) (a) 6. responsible for center recreational programming under s. HFS 52.41 (4) shall meet the qualifications of a resident care worker under par. (e) and have

demonstrated proficiency and at least 3 months experience conducting activities in one or more recreational program areas appropriate for populations served by the center.

(g) Education staff under sub. (1) (a) 7., shall meet Wisconsin department of public instruction qualifications for the students served.

(h) Each staff person working for a center shall, where a college or university degree is required under this subsection, have the degree from an accredited college or university.

**Note**: For a list of accredited institutions of higher education in the Midwest, see "NCA Quarterly - Accredited Institutions of Post-Secondary Education" available from the North Central Associates of Colleges and Schools, 159 North Dearborn St., Chicago, Illinois 60601

(i) A center that hires or contracts for staff not identified under sub. (1) (a) having direct care or service involvement with residents shall, for those staff, also meet the requirements for employment applications under sub. (3), job descriptions and standards and confidentiality notification under sub. (4), staff training under sub. (5), staff supervision under sub. (6), child abuse and neglect reporting under sub. (9) and personnel records under sub. (10).

(3) EMPLOYMENT APPLICATIONS AND GENERAL QUALIFICATIONS. (a) Before a center hires or contracts for any new staff, the center shall verify and document the qualifications of applicants considered for employment or service.

(b) A center shall require an applicant for employment to complete and sign an application form. From the required application materials, the center shall obtain:

1. The names of 2 persons not related to the prospective staff person who can vouch for the good character of the prospective staff person.

2. Employment references. The center shall verify that the applicant was employed by persons listed as employers during the past 5 years.

3. A completed HFS 64 background information disclosure form and background record checks as required under s. 48.685, Stats., and ch. HFS 12.

4. Educational background information.

(c) Upon receipt of an application, a center shall check references either by letter or phone and shall document the date of contact, the person making the contact and the person contacted and shall summarize the conversation concerning the character and experience of the person that would permit a judgment to be made about hiring or contracting, and what the relationship of the reference is to the prospective staff person or how the reference knows that person.

(d) The center shall comply with the background records check provisions under ch. HFS 12 for the hiring or contracting of center staff who will have access to residents, including, as applicable, not hiring or contracting with a person to work in any position where the person would have direct, regular contact with residents if the person answers "yes" to any question on the HFS 64 background information form which would bar that person.