

Department of Children and Families

Summary of Public Hearing

Supporting Normalcy for Children in Out-of-Home Care

DCF 52, 54, 56, 57, and 59

CR 16-051

The department held a public hearing in Madison on November 1, 2016. Comments were received from the following:

Kathy Markeland
Wisconsin Association of Family and Children's Agencies
Madison

Nicole Grice
SaintA
Milwaukee

Susan Hubbell
Bethany Christian Services
Waukesha

The following people observed for information only:

SaintA-Milwaukee

--Melinda Dombrowski-Boling
--Rebecca Connell
--Denise Pilz

Waukesha County DHHS

--Sara Wald
--Tracy Clark
--Chelsey Nisbet
--Laura Jahnke

Hopgood Group Home-Milwaukee

--Willie Hopgood
--Robert Isabell

Rogers Memorial Hospital-Milwaukee

--Lucas Grancorvitz

Grant County DSS

--Amber McKelvey

Rock County Human Services

--Becky Boylan

Markeland/WAFCA comments

1. a. On-site designated decision makers

The department is narrowly interpreting the statutory requirement that residential care centers, groups homes, and shelter care facilities employ on the site of the facility a staff member designated to make decisions that require application of the reasonable and prudent parent standard. The intent of the federal law is that a qualified person designated by the on-site facility be accessible, not that the person actually be on-site when making the decision. This overly prescriptive interpretation results in a standard for congregate care that does not apply in foster homes. (Sections 8, 9, 43, 57, and 64 of the proposed rules)

b. 3-month requirement

If the department does not change the on-site requirement, we request that the department eliminate the requirement that resident care staff be employed for at least 3 months or 240 hours before they are eligible to be a designated decision maker.

Department response

The department agrees to eliminate the requirement that resident care staff and shelter care workers be employed 3 months or 240 hours before making reasonable and prudent parenting decisions.

The department disagrees that its interpretation of “on-site” in the proposed rules is more restrictive than federal or state statute.

- Section 48.67 (5), Stats., requires that out-of-home care facilities “employ on the site of the center, group home, or shelter care facility at all times a staff member designated” to make decisions applying the reasonable and prudent parent standard.
- 42 USC 671 (a) (10) (B) provides that States shall require as a condition of funding “the presence on-site of at least 1 official” in child caring institutions to make reasonable and prudent parenting decisions.
- The proposed rules require out-of-home care facilities to “ensure the presence on-site of at least one RPPS decision maker at all times.”

2. Positive policy statement

Section 31 of the proposed rules prohibits agencies from creating policies that “interfere” with a foster parent’s ability to make reasonable and prudent parenting decisions. We recommend a more positive policy statement such as, “An agency supervision policy shall support a foster parent’s ability to make reasonable and prudent parenting decisions.”

Department response

The commenter’s suggested language might be sufficient for most agencies, but it is not sufficient for all. The department has already relied on this provision in the emergency rule to address an agency policy that was overly restrictive.

3. Appeals of licensing decisions

The proposed rules require that an out-of-home care facility request an appeal of license denials, revocations, or sanctions within “10 days after the date on the notice.” This is not

enough time, particularly since the notices are not always delivered in a timely manner. (Sections 11, 14, 57, and 69 of the proposed rules)

Department response

This provision is statutory. Section 48.72, Stats., provides that “the aggrieved person shall send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the department’s refusal or failure to issue, renew, or continue a license or the department’s action taken under s. 48.715.”

4. Prohibited factor when making reasonable and prudent parenting decisions

The proposed rules prohibit a foster parent from making a reasonable and prudent parenting decision “solely for the foster parent’s own convenience or based solely on the foster parent’s own values.” The out-of-home care facility rules prohibit a designee from making a reasonable and prudent parenting decision “solely for convenience or a personal reason not applicable to the decision-making factors.” These provisions are unnecessary and do not reflect our collective expectations and respect for foster parents and other professionals charged with this responsibility. (Sections 9, 32, 57, and 64 of the proposed rules)

Department response

This prohibition may not be necessary for many caregivers, but agencies need authority to respond if there are issues. In particular, providing transportation to numerous activities can be very demanding for caregivers.

Grice/SaintA and Markeland/WAFCA comment

The requirement to document every reasonable and prudent parenting request and decision made for residents in the communication log is overly broad and unworkable.

Department response

Following the public hearing, the department met with providers to come up with workable language on documentation of reasonable and prudent parenting requests in the communication log. The change agreed upon is to require documentation in the communication log of reasonable and prudent parenting requests and decisions made for residents for activities that do not take place in the out-of-home care facility and are not supervised by a staff person.

Hubbell/Bethany comment

The reasonable and prudent parent standard should not apply to child-placing agencies that license foster parents who are prospective adoptive parents of infants. The reasonable and prudent parent standard does not make sense in this context because the rights of the biological parents are terminated prior to placement of the child and the adoption is finalized after 6 months of foster care.

Department response

The department agrees that there are some provisions in the rules on the reasonable and prudent parent standard that will not be applicable for these foster parents, but does not agree that an exemption is appropriate. Also, the reasonable and prudent standard helps these foster parents. Without the reasonable and prudent standard, the foster parents would need to request permissions from the agency that has guardianship of the child.