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CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to search for adoption information were duly approved and adopted by this Department on December 10, 1992.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 10th day of December, 1992.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

To repeal HSS 53.05 (3)(b); to renumber HSS 53.05 (3)(c) to (g); to amend HSS 53.01(1) and (2)(a), (e), (g), (h), (i), (m), (n) and (r), 53.02(2)(c), 53.03(2)(b), (c), (d) and (f) and (3) (intro.), (b) and (c), 53.05 (3)(b) (intro.) and (c), as renumbered, and 53.06 (4) and (5)(b); to repeal and recreate HSS 53.05(1)(b) to (d), (2)(a) and (3)(a); and to create HSS 53.05 (1) (e), relating to searching at the request of a person who was adopted for information about the adoption, disclosing that information to the person, and disclosing medical and genetic information pertaining to an adopted person.

Analysis Prepared by the Department of Health and Social Services

Section 48.433(6)(a), Stats., enacted in 1982, requires that a search for identifying information about a person's adoption, at that person's request, "be completed within 6 months after the date of the request." That statute was amended by 1989 Wisconsin Act 31 to add the qualification, "unless the search falls within one of the exceptions established by the Department by rule." This rulemaking order establishes three exceptions to the six-month requirement: when the requested information is not available in the records maintained by the Department or other search agency, when a birth parent asks for additional time before signing or submitting an affidavit for release of information about his or her identity and location, and when the person seeking the information asks that the search be extended beyond six months.

The first exception allows the Department or other search agency additional time for a search when the search process depends upon the cooperation and response time of other agencies, governmental units, medical providers or other record holders. In fact, most requests for updated medical information involve other record holders. The other two exceptions afford the Department or other search agency additional time when the reason for the delay is the birth parent needing more time or a requester wanting more time to be spent on the search.

Act 31 also removed statutory language which prohibited the Department and other search agencies from charging a fee for locating, processing and providing existing medical record information, and directed the Department to charge for this. A cap of \$150 is placed on the fee which may be charged for providing existing record information. Sections HSS 53.05 and 53.06 are amended by this order to reflect the new fee authority and cap.

Finally, Act 31 substituted "adoptee," "individual," or "individual or adoptee" for "child" wherever "child" was mentioned in ss. 48.432 and 48.433, Stats., to refer to a person who was adopted. However, the application of "adoptee" was restricted to a person adopted before February 1, 1982. This has prompted the Department, through this order, to substitute a common term, "adopted person," for "adoptee" throughout ch. HSS 53.

The Department's authority to repeal, renumber, amend and create these rules is found in ss. 48.432(9) and 48.433(11), Stats. The rules interpret ss. 48.432 and 48.433, Stats.

SECTION 1. HSS 53.01(1) and (2)(a), (e), (g), (h), (i), (m), (n) and (r) are amended to read:

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

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

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

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

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

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

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

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

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

SECTION 2. HSS 53.02(2)(c) is amended to read:

HSS 53.02(2)(c) The department shall provide information to the courts and agencies regarding their responsibilities under Wisconsin statutes concerning medical and genetic information about ~~adoptees~~ adopted persons, information about birth parent identity and location and non-identifying social history information.

SECTION 3. HSS 53.03(2)(b), (c), (d) and (f) and (3) (intro.), (b) and (c) are amended to read:

HSS 53.03(2)(b) Medical and genetic information and birth parent identity and location information received from the courts for each ~~adoptee~~ adopted person whose birth parent's or parents' rights were terminated on or after May 7, 1982;

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

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

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

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

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

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

SECTION 4. HSS 53.05(1)(b) to (d) are repealed and recreated to read:

HSS 53.05(1)(b) The requester may specify that the search be restricted to only that adoption record information available within the agency's internal files.

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

(d) A request for medical or genetic information shall be given priority attention by the department or agency and search activities immediately initiated if the request is accompanied by a written statement from a physician certifying that there is a medical emergency for which the information is required.

SECTION 5. HSS 53.05(1)(e) is created to read:

HSS 53.05(1)(e) Requesters' applications shall be acted upon in the order that the applications are received, except that requests under par. (d) shall have priority over other requests.

SECTION 6. HSS 53.05(2)(a) and (3)(a) are repealed and recreated to read:

HSS 53.05(2)(a) 1. The department or agency shall diligently conduct adoption searches for birth parents. A search is not considered complete until a birth parent has been located and contacted or all reasonable means for locating and contacting a birth parent are exhausted, unless the requester has specified under sub. (1) (b) that the search be restricted.

2. A search shall be initiated by the department or agency on the date that all of the following have been completed:

- a. The completed and signed application has been received;
- b. The identity of the requester is confirmed; and
- c. The initial fee required under sub. (3) (c) for the first hour of service has been received.

3. The department or agency shall complete the search and inform the requester of the results within 6 months after initiating the search, unless:

- a. A request involves searching for information from sources outside the department or agency and not readily accessible to department or agency staff;
- b. A search is delayed by one or both birth parents who want additional time before signing or submitting an affidavit to the department or agency; or
- c. A search has been completed by the department or agency without a birth parent being located, and the requester asks that additional efforts be made by the department or agency.

(3)(a) The department or the agency designated by the department to conduct the adoption search shall charge the requester a fee to cover the costs incurred in conducting the search. The fee shall reflect the amount of

effort put into the search for the birth parents or birth parent information and not the results or amount of information the department or agency is able to gather. The fee may include the actual cost of locating, certifying, removing identifying information, copying and mailing existing information maintained in the internal files of the department or agency. The initial fee submitted under sub. (2)(a) 2 c with an application for a search shall be deducted from the fee charged under this subsection. The fee charged a requester for existing record information may not exceed a total of \$150.

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

SECTION 7. HSS 53.05(3)(b) is repealed.

SECTION 8. HSS 53.05(3)(c) to (g) are renumbered HSS 53.05(3)(b) to (f) and HSS 53.05(3)(b) (intro.) and (c), as renumbered, are amended to read:

HSS 53.05(3)(b) (intro.) The adoption search fee shall be an hourly amount and which shall represent the same costs the actual cost to the department or agency uses to compute fees for other client services that are provided on an hourly basis provide the service, except that actual costs for making copies of record information may be billed to the requester in addition to the hourly fee. The following items may be included in the fee:

(c) The department or agency shall require a minimum charge up to the amount charged for one hour of service for any adoption search activity undertaken for a client, except for a search under par. (b) including acting on a request for disclosure of existing adoption record information.

SECTION 9. HSS 53.06(4) and (5)(b) are amended to read:

HSS 53.06(4) BIRTH PARENT NONIDENTIFYING INFORMATION. On receiving a request from an adoptive parent or an adoptee adopted person over the age of 18, the department or any agency shall provide the requester without charge, except for the cost of reproduction, with nonidentifying social history information about the adoptee's adopted person's birth family which it has on file, after deleting the names and addresses of the birth parents and any provider of health care to the adoptee adopted person or the adoptee's adopted person's birth parents.

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

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Date: December 10, 1992

By: 

Gerald Whitburn
Secretary

SEAL: