

Chapter DCF 21

RE-ENTRY INTO OUT-OF-HOME CARE FOR YOUTH 18 YEARS OF
AGE OR OVER, BUT UNDER 21 YEARS OF AGE

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DCF 21.01 Purpose. This chapter provides conditions and procedures for re-entry into out-of-home care for youth under ss. 48.366 and 938.366, Stats.

History: EmR1414: emerg. cr., eff. 8–1–14; CR 14–054: cr. Register April 2015 No. 712, eff. 5–1–15.

DCF 21.02 Definitions. In this chapter:

(1) “Administrative law judge” means an administrative hearing examiner employed by the division of hearings and appeals.

(2) “Agency” means a county department of social services under s. 46.22, Stats.; a county department of human services under s. 46.23, Stats.; the department; or the department of corrections.

(3) “Aging out” means, except as provided under ss. 48.368 and 938.368, Stats., a youth is discharged from out-of-home care due to termination of an order under s. 48.355, 48.357, 48.365, 48.427, 938.355, 938.357, or 938.365, Stats., made before the youth reaches 18 years of age that places or continues the placement of the youth in out-of-home care; termination of a voluntary transition-to-independent-living agreement; or termination of a voluntary placement agreement on the date of any of the following:

(a) The date that the youth reaches 18 years of age.

(b) The date that the youth is granted a high school or high school equivalency diploma or the date on which the child reaches 19 years of age, whichever occurs first, if the youth is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age.

(c) The date that a youth who is 18 years of age or over makes a decision to leave out-of-home care and the order is dismissed, the voluntary-transition-to-independent-living agreement is terminated, or the voluntary placement agreement is terminated.

(d) The date of termination of an order under s. 48.355, 48.357, 48.365, 48.427, 938.355, 938.357, or 938.365, Stats., that provides for termination one year or less after the date on which the order was entered.

(4) “Division of hearings and appeals” means the division of hearings and appeals within the department of administration.

(5) “Foster home” means any facility operated by a person licensed under s. 48.62 (1), Stats., and ch. DCF 56.

(6) “Group home” means a facility operated by a person licensed by the department under s. 48.625, Stats., and ch. DCF 57 to provide 24-hour care for 5 to 8 residents.

(7) “Hearing” means a de novo proceeding before an impartial administrative law judge in which the youth or the youth’s representative presents the reasons why the agency action or inaction in the youth’s case should be corrected.

(8) “Independent living-transition-to-discharge plan” means a plan for each youth exiting care on or after the age of 18 that contains provisions to ensure that basic resources are in place for the youth’s transition to adulthood, including all of the following:

(a) The youth’s anticipated date of and age at discharge from out-of-home care.

(b) Information on how the youth will obtain and secure housing.

(c) Information on how the youth will manage health care needs.

(d) Information on whether the youth intends to continue with formal education and how the youth will attain his or her educational goals.

(e) Techniques for building relationships with supportive adults.

(f) Employment services that are available to the youth.

(g) Workforce support that is available to the youth.

(h) The continuation of necessary supportive independent living services after the youth leaves out-of-home care.

(i) Information on how the youth can obtain essential documents.

(9) “Out-of-home care” means care and maintenance provided to a youth in a foster home, group home, residential care center for children and youth, in the home of a relative other than a parent, or in a supervised independent living arrangement under an order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365, Stats., or in the guardianship and custody of an agency specified in s. 48.427 (3m) (a) 1. to 4. or (am), Stats., under an order under s. 48.43, Stats.

(10) “Residential care center for children and youth” means a facility operated by a child welfare agency licensed under s. 48.60, Stats., and ch. DCF 52 for the care and maintenance of children residing in that facility.

(11) “Voluntary placement agreement” means a written agreement between a county department of social services under s. 46.22, Stats.; a county department of human services under s. 46.23, Stats.; the department; or a child welfare agency licensed under s. 48.60, Stats., and the child or youth’s parent or guardian and the child, if the child or youth is 12 years of age or older, for the placement of the child or youth in a foster home or group home under s. 48.63 (1), Stats.

(12) “Voluntary transition-to-independent-living agreement” means a voluntary agreement under s. 48.366 (3) or 938.366 (3), Stats.

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DCF 21.03 Eligibility. (1) A youth who was discharged from out-of-home care by aging out on or after August 1, 2014, and who did not immediately enter a voluntary transition-to-independent-living agreement or by termination of a voluntary transition-to-independent-living agreement may be eligible to re-enter out-of-home care if all of the following conditions are met:

(a) The youth is 18 years of age or over but under 21 years of age.

(b) The youth is a full-time student at a secondary school or its technical or vocational equivalent.

(c) There is an individualized education program under s. 115.787, Stats., in effect for the youth.

(2) The agency shall allow a youth who meets the eligibility criteria to re-enter out-of-home care at least 2 times.

(3) The agency may use its discretion in determining whether to allow a youth who meets the eligibility criteria to re-enter out-of-home care more than 2 times.

Note: Issues the agency may want to consider include whether the youth is homeless or at imminent risk of becoming homeless, is pregnant or parenting, or has significant mental health issues. The agency may also want to consider whether the youth's last discharge from out-of-home care was pursuant to an independent living-transition-to-discharge plan that was agreed to by the youth and the agency.

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DCF 21.04 Youth's request to re-enter out-of-home-care and agency determination. (1) A youth who was discharged from out-of-home care by aging out on or after August 1, 2014, and who did not immediately enter a voluntary transition-to-independent-living agreement or by termination of a voluntary transition-to-independent-living agreement may submit a written request for a determination of eligibility to re-enter out-of-home care that contains all of the following information:

(a) The youth's full name.

(b) The youth's date of birth.

(c) The youth's contact information and contact information for another person who will know where the youth is and be able to contact him or her.

(d) The agency that had placement and care responsibility for the youth when he or she last left out-of-home care.

(e) The secondary school or its technical or vocational equivalent where the youth is enrolled or an attestation by the youth that he or she does not have a high school diploma and wants to re-enroll in secondary school or its technical or vocational equivalent.

(f) The youth attests that he or she has an individualized education program under s. 115.787, Stats., in effect.

(g) If known, contact information for a person at the youth's secondary school or its technical or vocational equivalent who is on the youth's individualized education program team under s. 115.787, Stats.

(2) If a youth requests that an agency assist the youth with writing the request for determination of eligibility, the agency shall assist the youth.

(3) A youth may submit a written request for a determination of eligibility to re-enter out-of-home care to any of the following agencies:

(a) The county department of social services under s. 46.22, Stats., or the county department of human services under s. 46.23, Stats., in the county where the youth resides.

(b) The agency that had placement and care responsibility for the youth when the youth's most recent out-of-home care placement terminated or the youth aged out.

(4) The agency that receives the youth's request for determination of eligibility shall provide the youth with a written explanation of the youth's appeal rights under s. DCF 21.08 if the application is denied or, if determined eligible, if eligibility is later terminated under s. DCF 21.07.

(5) The agency under sub. (3) (b) shall determine the youth's eligibility for re-entry to out-of-home care under s. DCF 21.03. If a youth submits a request to re-enter out-of-home care to the agency in the county where the youth resides and that agency is not the agency under sub. (3) (b), that agency shall forward the youth's request to the agency under sub. (3) (b) on the same day.

(6) Within 5 working days after receiving the youth's request, the agency under sub. (3) (b) shall make an eligibility determina-

tion and send a written notice to the youth. If the youth is not enrolled in school, the agency under sub. (3) (b) shall assist the youth with re-enrollment in school.

(7) If the agency under sub. (3) (b) is not the agency in the county where the youth resides, the agency where the youth resides shall assist the agency under sub. (3) (b) with all of the following:

(a) Verifying the youth's enrollment in a secondary school or its technical or vocational equivalent.

(b) Verifying that an individualized education program under s. 115.787, Stats., is in effect for the youth.

(c) Interviewing the youth.

(d) Obtaining signatures from the youth and, if needed, the youth's guardian.

(8) (a) If the agency under sub. (3) (b) determines that the youth is eligible under s. DCF 21.03, the agency shall enter into a voluntary transition-to-independent-living agreement with the youth within the same 5 working days that eligibility is determined under sub. (6). If the agency under sub. (3) (b) determines that the youth is not eligible, the agency shall send a written notice within 5 working days after the determination is made that specifies the reasons for the denial and informs the youth of his or her right to appeal under s. DCF 21.08.

(b) Notwithstanding par. (a), if the agency determines that the youth is eligible and makes efforts to contact the youth using the contact information provided by the youth and the youth does not respond, the agency shall enter into a new voluntary transition-to-independent-living agreement with the youth as soon as practicable.

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DCF 21.05 Voluntary transition-to-independent-living agreement. The voluntary transition-to-independent-living agreement shall be on a form prescribed by the department and include all of the following conditions:

(1) The youth is 18 years of age or over but under 21 years of age.

(2) The youth is a full-time student at a secondary school or its technical or vocational equivalent.

(3) There is an individualized education program under s. 115.787, Stats., in effect for the youth.

(4) The youth will participate in activities assigned by the agency to prepare the youth for independent living.

(5) The youth will comply with school attendance requirements in the youth's individualized education program under s. 115.787, Stats., school district policies, and truancy laws and ordinances.

(6) The youth will not be missing from his or her out-of-home care placement for more than 2 weeks without contact with the agency.

(7) If there is any change in the youth's circumstances that affects a provision of the voluntary transition-to-independent-living agreement, the youth will notify the agency within 10 calendar days after the effective date of the change.

Note: Form DCF-F-5030-E, *Voluntary Transition-to-Independent-Living Agreement*, is available in the forms section of the department website, <http://dcf.wisconsin.gov>, or by writing to the Division of Safety and Permanence, P.O. Box 8916, Madison WI 53708-8916.

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DCF 21.06 Placement and supervision. (1) Within 24 hours after the voluntary transition-to-independent-living agreement is signed, the agency under s. DCF 21.04 (3) (b) shall place the youth in out-of-home care or the home of a person not a relative under s. 48.207 (1) (f) or 938.207 (1) (f), Stats., or shall make other arrangements for housing for the youth. The agency under s. DCF 21.04 (3) (b) shall place the youth in a long-term out-of-

home care placement within 10 days after the voluntary transition-to-independent-living agreement is signed.

(2) If the youth resides in a county other than the county where the agency under s. DCF 21.04 (3) (b) is located, the agency in the county where the youth resides shall supervise the youth jointly with the agency under s. DCF 21.04 (3) (b). The agency in the county where the youth resides shall conduct monthly face-to-face contacts with the youth and shall provide the agency under s. DCF 21.04 (3) (b) with documentation of the contacts and other updates necessary to support the care and supervision of the youth.

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DCF 21.07 Termination. (1) The agency shall terminate a voluntary transition-to-independent-living agreement with a youth who is no longer eligible under s. DCF 21.03 or who fails to comply with the voluntary transition-to-independent-living agreement under s. DCF 21.05, except as provided in sub. (2).

(2) The agency shall not terminate the voluntary transition-to-independent-living agreement with a youth who is not in compliance with the voluntary transition-to-independent-living agreement if the noncompliance is with s. DCF 21.05 (2), (4), (5), or (6) and the youth actively participates in the development of a plan to address the concern and demonstrates a willingness to comply with the plan that is developed.

(3) To terminate a voluntary transition-to-independent-living agreement with a youth, an agency shall send the youth a notice of termination that will become effective 10 days after the date of the notice. If the agency sends the notice of termination and the youth files a timely appeal as provided in s. DCF 21.08 (1), (3), or (4), the adverse action shall be stayed and the youth shall remain eligible pending the decision of the agency, division administrator, or administrative law judge or expiration of the right to appeal under s. DCF 21.08 (1), (3), or (4).

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DCF 21.08 Appeal rights. (1) A youth may submit a written request for an appeal of an agency denial of the youth's request to re-enter out-of-home care or an agency termination of the voluntary transition-to-independent agreement between the youth and the agency. The request shall be sent to the director of the agency or his or her designee within 10 days after the date of the agency's notice of denial or termination. If the youth does not request an appeal within 10 days after the date of the agency's notice of denial under s. DCF 21.04 (8) or termination under s. DCF 21.07 (3), the denial or termination becomes final.

(2) The director of the agency or his or her designee shall make a determination on the youth's appeal request for appeal and send a written decision no later than 3 working days after the agency received the youth's request for appeal under sub. (1).

(3) If the director of the agency or his or her designee upholds the denial or termination, the youth may submit a written request for an appeal to the administrator of the department's division of safety and permanence within 10 days after the date of the agency's written decision under sub. (2). The division administrator or his or her designee shall consider the recommendation on whether to uphold the denial or termination made by a panel designated by the director of the bureau of permanence and out-of-home care in the division of safety and permanence. The division administrator or his or her designee shall make a determination and send the written decision to the youth within 5 working days after the department received the request. If the youth does not submit a written request for an appeal to the department's division of safety and permanence within 10 days after the date of the agency's written decision under sub. (2), the denial or termination becomes final.

Note: An appeal to the division administrator may be sent by mail to the Extended Out-of-Home Care Panel, Division of Safety and Permanence, 201 E. Washington Ave., P.O. Box 8916, Madison WI, 53701 or by email to OHCExtensionAppeal@wisconsin.gov.

(4) (a) A youth may request a hearing with the division of hearings and appeals under ch. 227, Stats., and ch. HA 3 if the division administrator or his or her designee upholds the agency denial or termination under sub. (3).

(b) A request for a hearing shall be in writing, addressed to the division of hearings and appeals, and filed within 45 days after the date of the notice from the division administrator or his or her designee upholding the denial or termination under sub. (3). A request for a hearing mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark. If the youth does not request a hearing by the division of hearings and appeals within 45 days after the date of the notice from the division administrator or his or her designee upholding the denial or termination under sub. (3), the denial or termination becomes final.

Note: A request for a hearing may be mailed to Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875 or faxed to (608) 264-9885.

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DCF 21.09 Reapplication following denial or termination. If the youth reapplies following a denial of the youth's application to re-enter out-of-home care under s. DCF 21.04 (8) or a termination of the youth's eligibility under s. DCF 21.07, the agency may suspend processing of the application if it determines that the situation related to the rationale for the denial or termination has not changed. Within 2 working days after the agency decides to suspend processing of the application, the agency shall send the youth a written notice of its decision. The notification of suspension shall include a statement of the youth's right to appeal the decision.

History: EmR1414: emerg. cr., eff. 8-1-14; CR 14-054: cr. Register April 2015 No. 712, eff. 5-1-15.