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Child Welfare Provider Rate Regulation (DCF -- Children and Families)

[LFB 2009-11 Budget Summary: Page 137, #7]

CURRENT LAW

If it is determined that a child cannot remain safely at home, the child is removed from the home and placed in out-of-home care. Out-of-home care includes children in foster homes, treatment foster homes, group homes, residential care centers (RCCs), children living with a relative under a court order (court-ordered kinship care), and other placements, such as short-term placements in secure detention facilities or hospitals.

Group homes and RCCs are more restrictive out-of-home care placements than foster homes or treatment foster homes. Group homes provide care and maintenance for five to eight children, not including children of minors. RCCs provide treatment and custodial services for nine or more children, youth, and young adults up to 21 years of age. Placement into an RCC must be made before the child reaches age 18, and the child generally must have some type of disability such that they are not capable of caring for themselves to remain in an RCC after age 18.

Each incorporated group home and RCC establishes its payment rate and is required to charge every user the same rate, unless a particular county uses 75% of the beds in the facility. Such counties may negotiate a rate with the group home or RCC provider. The rates are published by the Department of Children and Families (DCF) annually to ensure that each county and tribe is aware of the agencies' rates and that each county and tribe is charged the same rate. In calendar year (CY) 2009, the average incorporated group home daily rate is $197.68, ranging from $106.73 per day to $335.01 per day. The average RCC daily rate in CY 2009 is $323.63, ranging from $204.07 per day to $885.29 per day.

In CY 2008, there were 126 regulated group homes serving 929 children. There were 36 RCCs serving 1,374 children.

Currently child welfare agencies that license treatment foster homes are not subject to any requirements to establish administrative rates, charge every user the same administrative rate, negotiate for their administrative rates, or have DCF publish their administrative rates. In CY 2008, there were 58 child placing agencies.

Funding for out-of-home care in Milwaukee is budgeted in DCF's Bureau of Milwaukee Child Welfare (BMCW). 2007 Wisconsin Act 20 budgeted $4,714,100 ($4,076,200 GPR and $637,900 FED) in 2008-09 for group homes and $2,999,600 ($2,593,800 GPR and $405,800 FED) in 2008-09 for RCCs in BMCW. Funding for foster care payments for children with special needs who are under the state's guardianship is budgeted in DCF. Base funding is $4,520,100 for all out-of-home care placements for children with special needs under the state's guardianship. Counties fund all out-of-home placement costs with their children and family aids allocation.

GOVERNOR

Reduce funding by $416,100 (-$447,600 GPR and $31,500 FED) in 2009-10 and $1,059,700 (-$1,080,700 GPR and $21,000 FED) in 2010-11 to reflect the implementation of a policy to regulate the rates charged by group homes, RCCs, and certain child welfare agencies.

Of these funds, the bill would provide $150,000 ($118,500 GPR and $31,500 FED) in 2009-10 and $100,000 ($79,000 GPR and $21,000 FED) in 2010-11 to commission an actuarial study to review provider rates during CY 2010 and implement rate regulation, beginning in CY 2011. The study would be used to establish parameters for providers to document costs and establish benchmarks for different levels of care. Federal funds are from Title IV-E of the Social Security Act. Funding reductions of $566,100 GPR in 2009-10 and $1,159,700 GPR in 2010-11 are estimates of savings generated for out-of-home care costs in the Bureau of Milwaukee Child Welfare from regulating rates for group homes, RCCs, and certain child welfare agencies.

Regulation of rates would occur in three phases. Phase I would require child welfare agencies to establish a per client administrative rate, similar to the requirement of group homes and RCCs to establish a per client rate under current law. Phase II would freeze rates at the December 31, 2009, level. The final phase would require DCF to establish rates for group homes, RCCs, and child welfare agencies based on the procedures described below.

Phase I

Agencies Establish Rates. Effective on the day after publication of the bill, require child welfare agencies to establish a per client administrative rate for the administrative portion of their treatment foster care services and charge all purchasers the same administrative rate for the same treatment foster care services. Specify that: (a) "administrative rate" would mean the difference between the rate charged by a child welfare agency to a purchaser of treatment foster care services and the rate paid by the child welfare agency to a treatment foster parent for the care and maintenance of a child; and (b) "child welfare agency" would mean a child welfare agency that is authorized to license treatment foster homes. In addition, expand the definition of "group home" to include all group homes licensed by DCF, including group homes that are not incorporated, as well as group homes that are incorporated.

Delete the requirement for child welfare agencies to establish a per client administrative rate, and for group homes and RCC's to establish a per client rate, beginning January 1, 2011.

Negotiation of Rates. Authorize DCF, a county department of human/social services, a group of county departments, or DCF and one or more county departments to negotiate for a per client administrative rate for the administrative portion of treatment foster care services with these child welfare agencies if DCF, a county department, a group of county departments, or DCF and one or more county departments agrees to place 75% or more of the residents of that child welfare agency during the period that the rate is in effect. A child welfare agency that negotiates such a rate would have to charge all purchasers of its treatment foster care services the same administrative rate for the same treatment foster care services purchased.

Delete the new authority to negotiate per client administrative rates with child welfare agencies, and the current law authority to negotiate per client rates with group homes and RCCs, beginning January 1, 2011.

Phase II

Freeze Rates in 2010. Require a child welfare agency to charge the same per client administrative rate for the administrative portion of its treatment foster care services in CY 2010 as it charged for the administrative portion of those services on December 31, 2009. Require group homes and RCCs to charge the same per client rate for their services in CY 2010 as they charged for those services on December 31, 2009. For contracts that are in effect on December 31, 2009, and that contain provisions that are inconsistent with freezing the rates, the rate freeze would first apply on the day on which the contract expires or is extended, modified, or renewed, whichever occurs first.

Phase III

Require DCF to Establish Rates. Require DCF to establish the per client rate, for services provided beginning on January 1, 2011, that a group home or RCC may charge for its services and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services following the procedure to review proposed rates described below. Specify that group homes and RCCs must charge all purchasers the same rate for the same services and that child welfare agencies must charge all purchasers the same administrative rate for the same treatment foster care services. Require DCF to establish rates for Type 2 juvenile correctional facilities, Type 2 RCCs, and other less restrictive placements for juveniles in consultation with the Department of Corrections.

For contracts in effect on December 31, 2010, and that contain provisions inconsistent with DCF establishing rates, this provision would first apply on the day the contract expires or is extended, modified, or renewed, whichever occurs first.

Proposed Rates. Require child welfare agencies to submit by October 1 annually, beginning October 1, 2010, to DCF the per client administrative rate that they propose to charge for treatment foster care services provided in the following year. Require child welfare agencies to use forms and instructions for submitting these rates that are provided by DCF.

Require group homes and RCCs to submit by October 1 annually, beginning October 1, 2010, to DCF the per client rate that they propose to charge for services provided in the following year.

Review of Proposed Rates. Require DCF to review a proposed rate submitted annually and to audit the group home, RCC, or child welfare agency to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the group home, RCC, or child welfare agency to provide those services, and the reasonable and necessary costs of providing those services. Specify that DCF must consider all of the following factors: (a) changes in the consumer price index (CPI) for all urban consumers, U.S. city average, as determined by the U.S. Department of Labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted; (b) changes in the allowable costs of the group home, RCC, or child welfare agency based on current actual cost data or documented projection of costs; (c) changes in program utilization that affect the per client rate or per client administrative rate; (d) changes in DCF's expectations relating to service delivery; (e) changes in service delivery proposed by the group home, RCC, or child welfare agency and agreed to by DCF; (f) the loss of any source of revenue that had been used to pay expenses, resulting in a lower per client rate or per client administrative rate for services; (g) changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage; (h) competitive factors; (i) the availability of funding to pay for the services to be provided under the proposed rate; and (j) any other factor relevant to the setting of a rate that DCF may determine by rule.

Specify that if DCF determines that a rate is appropriate, then DCF must approve the proposed rate. Require DCF to negotiate with the group home, RCC, or child welfare agency to determine an agreed to rate if DCF does not approve the proposed rate. Require DCF and the group home, RCC, or child welfare agency to engage in mediation under the rate resolution procedure to arrive at an agreed to rate if negotiations fail. Specify that the group home, RCC, or child welfare agency would not be allowed to provide services for which the rate was proposed if mediation fails.

Miscellaneous Provisions

Audit. Authorize DCF to require an audit of a child welfare agency for the purpose of collecting federal funds, which DCF is currently authorized to do with any group home or RCC.

Rules. Require DCF to promulgate rules regarding the implementation of these procedures, including: (a) standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a group home, RCC, or child welfare agency to provide those services, and the reasonable and necessary costs of providing those services; (b) factors for DCF to consider in reviewing a proposed rate; and (c) procedures for reviewing proposed rates, including rate resolution procedures for mediating an agreed to rate when negotiations fail to produce an agreed to rate.

Specify that DCF must submit in proposed form these rules to the Legislative Council staff no later than the first day of the seventh month beginning after the bill's general effective date. Authorize DCF to promulgate emergency rules before the effective date of permanent rules without having to provide evidence that promulgating an emergency rule would be necessary for the preservation of the public peace, health, safety, or welfare or to provide a finding of emergency.

DISCUSSION POINTS

1. As noted above, group homes, RCCs, and child welfare agencies may set their own rates charged for placements. DCF indicates that there is no consistency in what these providers charge for placements or correlation between the cost and the quality of care.

2. Currently, group homes and RCCs establish their rates based on actual costs with an allowance for the provider's reserves or profit. DCF publishes these rates and reviews audit reports to determine if rates should be adjusted to reflect actual costs. However, there are no restrictions on the amount of costs included in the rate and no review of whether the costs are appropriate. DCF indicates that these rate increases have strained budgets at both the state and county levels and have contributed to the out-of-home care budget deficit in BMCW.

History of Rate-Setting

3. Prior to the 1971-73 biennium, the Department of Health and Social Services informally negotiated rates with child caring institutions (similar to current RCCs), but each institution set its own rate. As a result of concerns regarding significant increases in these rates, the 1971-73 biennial budget act placed a 6% limit on rate increases in 1971-72 and 1972-73. The Department audited expenditures in order to determine whether a 6% rate increase was justified, so a child caring institution could have received less than a 6% increase. Under the 1975-77 biennial budget act, the Department developed rules of allowable costs to be used to determine rates. The 1979-81 biennial budget act required a study on rate determination. The study looked at a reimbursement maximum for administrative costs, guidelines for lease-purchase arrangements, and the method used for calculating profit.

4. As a result of the study, the following statutory requirements applied to the rate-setting process at the end of the 1979-81 biennium:

a. The program expenditures used to set the rate had to be allowable, as determined by the Department.

b. Salaries of child caring institution staff could not exceed salaries of comparable state positions.

c. Administrative costs could not exceed an amount equal to a uniform fixed percentage of total allowable costs up to a maximum per capita amount as determined by the Department.

d. Mid-year rate reviews could be conducted during the months of April through September and rates could be adjusted by the Department if they were too high or too low compared to actual costs.

e. Year-end adjustments resulting from excess revenues or excess expenditures were made in the following manner: (1) child caring institutions that incurred revenues in excess of expenditures during the calendar year were required to remit the excess to the Department; and (2) child caring institutions that incurred unavoidable expenditures in excess of revenues were eligible to receive a portion of any excess revenues collected.

In addition, salary increases were limited to 7.5% in CY 1980 and CY 1981, and profit was limited to a maximum of 10% of allowable costs.

5. The following table shows the average daily rate from 1975 through 1981, the percent increase over the prior year, and the CPI increase.

TABLE 1

Child Care Institutions
Average Daily Rate
CY 1975 to CY 1981

Year	Rate	Percent Increase	CPI
1975	$41.90	N.A.	N.A.
1976	47.52	13.4%	5.8%
1977	49.56	4.3	6.5
1978	56.37	13.7	7.6
1979	62.50	10.9	11.3
1980	67.20	7.5	13.5
1981	74.70	11.2	10.3
Average		10.2%	9.2%

6. In the 1981-83 biennial budget, the Governor recommended eliminating rate-setting by the Department as it existed and would have required the Department to simply establish rates based on a study that focused on methods to determine these rates. Instead, the rate-setting requirement was eliminated and replaced with the requirement that the Department be notified of the rate set by each facility. This outcome had been requested by the Department, which argued that the rate-setting process had not been effective in controlling rates and that it caused staff from child caring institutions and from the Department to spend too much time on negotiations.

Audit of Child Caring Institutions

7. Child caring institution costs continued to concern county officials, and an audit of these costs conducted by the Legislative Audit Bureau (LAB) was completed in May of 1993, *An Evaluation of Child Caring Institution Costs.* LAB evaluated: (a) costs included in child caring institution rates; (b) growth in counties' use of child caring institutions; (c) mechanisms in place to monitor whether adequate treatment was provided and significant results were achieved; and (d) efforts to develop less expensive community placement alternatives.

8. The audit was prompted by county officials after a 57.3% increase in expenditures for child caring institutions from 1988 to 1992. Over half of the increase in expenditures was due to increases in rates. The average rate increase during that time period was 6.6%, which was 2.3% more than the average CPI increase. The audit also indicated that during the time that rates were set by the Department, the average increase was 1% more than the average CPI increase. LAB noted opposition from the Department to rate-setting. Similar to its agency request during the 1981-83 biennial budget, the Department indicated that developing and maintaining a rate-setting structure was too time-consuming and resource-intensive.

9. In response to the Department's critique, LAB suggested that the Department have authorization to disallow reimbursement above certain levels, rather than actually set the rates. However, LAB also noted problems with each of the alternatives:

a. Rate increases could be limited to the rate of inflation. However, the rate increases above CPI were related to the changing treatment needs of youth and to county requests for enhanced or additional services.

b. A statutory limit on rates could be set. However, the wide range of programs and services offered could require a basic rate plus incremental amounts for increased services provided.

c. Reimbursement of overhead costs could be limited to a fixed percentage of program expenditures. However, the size difference among institutions could make this inequitable.

d. Reimbursement of overhead costs could be limited if the number of youth served was less than the level considered efficient. However, the differences in the average length of stay between programs could require determining appropriate occupancy levels for each institution.

LAB stated that any of these suggested changes could result in increased state administrative costs, which could offset any potential savings.

10. LAB indicated that it could be more practical to limit expenditure increases by reducing the use of child caring institutions, rather than set rates for these institutions. Recommendations included: (a) encouraging shorter stays in institutions by developing programs that reintegrate youth into the community sooner, but provide continuing treatment after a youth leaves the institution; (b) day treatment programs that provide education, treatment, and individual group and family counseling in one setting during the day, and allow youth to return to their homes or other residences in the evening; (c) increased use of less expensive residential programs, including group homes and treatment foster homes; and (d) early intervention and family preservation programs that provide intensive services to families in which a substantial risk of future abuse, neglect, or delinquency was identified.

Governor's Proposal

11. AB 75 would establish a process for DCF to set rates for group homes, RCCs, and child welfare agencies, beginning January 1, 2011. First, beginning on the day after publication of the bill, child welfare agencies (an agency authorized to license treatment foster homes) would establish a per client administrative rate, just as group homes and RCCs establish their per client rates, and counties would be allowed to negotiate rates if they use 75% of the beds of the facility, just as they currently do with group homes and RCCs. Second, rates for group homes, RCCs, and child welfare agencies would be frozen during CY 2010, and an actuarial study would be commissioned to review provider rates during CY 2010. The study would be used to establish parameters for providers to document costs and establish benchmarks for different levels of care. Finally, beginning January 1, 2011, DCF would establish rates based on: (a) the rates proposed by group homes, RCCs, and child welfare agencies; and (b) a review of these rates based on 10 factors that DCF would be required to consider, as well as other factors DCF establishes by rule.

12. This proposal is in response to the increasing rates of group homes, RCCs, and child welfare agencies. Table 2 shows the average daily rate for group homes and RCCs from 1998 through 2009, the percent increase over the prior year, and the CPI increase.

TABLE 2

Group Homes and Residential Care Centers
Average Daily Rate
CY 1998 to CY 2009

Year	RCC Rate	Group Home Rate	RCC % Increase	Group Home % Increase	CPI
1998	$173.88	$103.84	N.A.	N.A.	N.A.
1999	181.26	123.32	4.2%	18.8%	2.2%
2000	197.80	125.05	9.1	1.4	3.4
2001	208.68	135.72	5.5	8.5	2.8
2002	221.05	139.93	5.9	3.1	1.6
2003	226.91	139.85	2.7	-0.1	2.3
2004	236.72	148.76	4.3	6.4	2.7
2005	243.21	157.91	2.7	6.2	3.4
2006	264.91	163.39	8.9	3.5	3.2
2007	289.84	179.57	9.4	9.9	2.8
2008	312.54	188.02	7.8	4.7	3.8
2009	323.63	197.68	3.5	5.1	-1.4
Average			5.8%	6.1%	2.4%

13. Table 2 shows that although the CPI increase averaged 2.4% from 1998 through 2009, group rates averaged an increase of 6.1% and RCC rates averaged an increase of 5.8% during the same time period.

Concerns with Rate-Setting

14. Currently, rates charged by group homes and RCCs vary widely. This range in rates represents the various services offered by each of the homes and centers to be able to provide an individualized treatment plan for each child. Counties choose the home or center with the treatment program that best addresses a child's needs. Table 3 shows the minimum and maximum rates for group homes and RCCs from 1998 through 2009.

TABLE 3

Group Homes and Residential Care Centers
Minimum and Maximum Rates
CY 1998 to CY 2009

	RCC Rates		Group Home Rates	
Year	Minimum	Maximum	Minimum	Maximum
1998	$71.93	$296.48	$24.98	$211.00
1999	75.53	298.03	72.00	223.66
2000	76.29	306.98	70.58	232.59
2001	78.58	357.00	60.00	295.89
2002	81.72	374.00	81.00	335.21
2003	81.72	391.00	67.62	335.21
2004	84.17	391.00	57.67	335.21
2005	85.85	391.00	57.66	836.05
2006	88.43	594.12	89.98	300.00
2007	91.08	826.44	91.73	320.00
2008	195.00	855.36	106.73	335.01
2009	204.07	885.29	106.73	335.01

15. AB 75 would consider the following factors in determining rates: (a) changes in CPI; (b) changes in the allowable costs of the group home, RCC, or child welfare agency based on current actual cost data or documented projection of costs; (c) changes in program utilization that affect the per client rate or per client administrative rate; (d) changes in DCF's expectations relating to service delivery; (e) changes in service delivery proposed by the group home, RCC, or child welfare agency and agreed to by DCF; (f) the loss of any source of revenue that had been used to pay expenses, resulting in a lower per client rate or per client administrative rate for services; (g) changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage; (h) competitive factors; (i) the availability of funding to pay for the services to be provided under the proposed rate; and (j) any other factor relevant to the setting of a rate that DCF may determine by rule.

16. It is unclear whether DCF would set different rates for specific services provided or whether there would be across-the-board rates for group homes, RCCs, and child welfare agencies. It is also unclear whether the location of the group home, RCC, or child welfare agency would be considered. Some urban group homes, RCCs, or child welfare agencies may charge different rates than those located in rural areas. There is concern that setting rates may lead group homes, RCCs, and child welfare agencies to: (a) drop services that are too expensive to continue; or (b) shut down. Currently, treatment plans are based on a child's individual needs. With fewer services offered, either the child would not receive the necessary services, or the child would be placed in an out-of-state out-of-home placement to meet those needs. Also, if there are fewer group homes, RCCs, and child welfare agencies, there may not be the capacity to place all of the children who would need those services, which could lead to out-of-state out-of-home placements or more placements at Winnebago or Mendota.

17. In addition, the 1993 LAB audit noted that rates may exceed the rate of inflation due to the request for additional services and enhancement of existing services, which requires more intensive staffing and more highly qualified staff to serve an increased number of youth with multiple or more severe disorders. The LAB audit also suggests that regulating rates may not be the best method to reduce these out-of-home placement costs. Rather, reducing the use of group homes and RCCs in favor of foster homes and treatment foster homes may do more to lower costs.

18. The Committee could delete this proposal in light of these concerns. However, DCF would not set rates until January 1, 2011. In addition, an actuarial study and a lengthy rules process would determine the procedures for setting rates for group homes, RCCs, and child welfare agencies. Many of the concerns raised could be addressed during this process. Also, many of the options suggested in the LAB audit to lower costs without setting rates have been addressed during the last 15 years. Reducing expenditures in group homes, RCCs, and child welfare agencies may no longer generate as much savings as setting rates would.

Estimated Savings

19. AB 75 would reduce funding by $566,100 GPR in 2009-10 and $1,159,700 GPR in 2010-11 to reflect savings in BMCW from setting rates for group homes, RCCs, and child welfare agencies in Milwaukee County. The administration assumes that average rates for treatment foster homes, group homes, and RCCs would remain flat at the 2009 rate for BMCW under this proposal.

20. However, DCF indicates that approximately one-half of the treatment foster care costs are related to administration, so only one-half of these costs would remain flat due to the rate freeze. In addition, AB 75 assumes no rate increase over the biennium, but rates are only frozen through CY 2010. Therefore, it may be more realistic to assume a nominal increase of 1% in 2010-11 to show that rates would no longer be frozen and that DCF would establish new rates that would show some increase. Finally, if GPR is not expended in BMCW for out-of-home care, then it would not receive Title IV-E matching funds. As a result, there should be a corresponding reduction in federal funds to the reduction in GPR funds. The Committee could reduce funding by $423,300 GPR and $86,300 FED in 2009-10 and $656,100 GPR and $132,800 FED in 2010-11 in BMCW aids to reflect these changes. Compared to the bill, funding would increase by $142,800 GPR in 2009-10 and $503,600 GPR in 2010-11 and decrease by $86,300 FED in 2009-10 and $132,800 FED in 2010-11

21. It should be noted that if the Committee deletes this proposal, the Committee would have to provide add back in the savings assumed under AB 75 ($566,100 GPR in 2009-10 and $1,159,700 GPR in 2010-11) in BMCW to fully fund out-of-home placement costs in Milwaukee County.

ALTERNATIVES

1. Approve the Governor's recommendation to implement a policy to regulate rates charged by group homes, RCCs, and child welfare agencies. Reduce funding by $416,100 (-$447,600 GPR and $31,500 FED) in 2009-10 and $1,059,700 (-$1,080,700 GPR and $21,000

FED) in 2010-11 to fund an actuarial study ($118,500 GPR and $31,500 FED in 2009-10 and $79,000 GPR and $21,000 FED in 2010-11) and reflect savings in BMCW that result from regulating rates (-$566,100 GPR in 2009-10 and -$1,159,700 GPR in 2010-11).

2. Modify the Governor's proposal to reflect savings of $423,300 GPR in 2009-10 and $656,100 GPR in 2010-11 (compared to the bill, increase funding by $142,800 GPR in 2009-10 and $503,600 GPR in 2010-11) and reduce corresponding federal Title IV-E matching funds by $86,300 FED in 2009-10 and $132,800 FED in 2010-11 in BMCW aids.

ALT 2	**Change to Bill** Funding
GPR	$646,400
FED	- 219,100
Total	$427,300

3. Delete provision.

ALT 3	**Change to Bill** Funding
GPR	$1,528,300
FED	- 52,500
Total	$1,475,800

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