



2009 SENATE BILL 567

February 26, 2010 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Children and Families and Workforce Development.

1 **AN ACT to amend** 49.34 (5m) (b) 1. and 2., 49.34 (5m) (em), 49.343 (2) (b) (intro.),
2 49.343 (2) (b) 5., 49.343 (2) (c), 49.343 (3), 49.343 (4) (a) and 49.343 (4) (c); and
3 **to create** 49.343 (1d) (cg), 49.343 (1d) (cr), 49.343 (2) (b) 1m., 49.343 (2) (b) 6.,
4 49.343 (5) and 49.343 (6) of the statutes; **relating to:** elimination of surplus
5 retention limitations for residential care centers for children and youth, group
6 homes, and child welfare agencies that provide rate-based services for the
7 Department of Children and Families or a county department of human
8 services or social services; determination of the rates charged by those
9 providers; establishment of a performance-based contracting system for those
10 providers; and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in
the bill.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Child Welfare Provider Rate Implementation.

Surplus Revenue

Under current law, all children and family support services and child welfare services purchased by the Department of Children and Families (DCF) or a county department of human services or social services (county department) must meet certain statutory standards. Under one of those standards, if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the service provider may retain from the surplus generated by that rate-based service up to 5 percent of the contract amount. A provider that retains a surplus must use it to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate-based service that generated the surplus or to address the programmatic needs of clients served by the same rate-based service that generated the surplus. Also under current law, a provider may accumulate funds from more than one contract period except that, if at the end of the contract period the amount accumulated from all contract periods for a rate-based service exceeds 10 percent of the amount of all current contracts for that service, the provider must, at the request of a purchaser, return to the purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's rate for that service in the next contract period. If a provider has held for four consecutive contract periods an accumulated reserve for a service that is equal to or exceeds 10 percent of the amount of all current contracts for that service, the provider must apply 50 percent of that accumulated amount to reducing its unit rate per client for that service in the next contract period.

This bill exempts child welfare agencies, group homes, and residential care centers for children and youth (RCCs) from the current law that limits the amount that a child welfare agency, group home, or RCC (provider) may retain from the surplus generated by a rate-based service in a contract period to 5 percent of the contract amount. The bill also permits DCF, upon request of a provider, to grant an exception to the requirements that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10 percent of the amount of all current contracts for that service.

Rates for Out-of-Home Care

2009 Wisconsin Act 28, the Biennial Budget Act, requires a RCC or a group home to annually submit to DCF the per client rate that it proposes to charge for services provided in the next year. Also, a child welfare agency must submit to DCF the proposed per client administrative rate it proposes to charge for foster care services provided in the next year. DCF must review the proposed rate and audit the provider to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the provider to provide those services, and the reasonable and necessary costs of providing those services. Current law sets forth the factors that DCF must consider in reviewing a proposed rate. If DCF determines that a proposed rate submitted is appropriate, DCF must approve the proposed rate. If DCF does not approve the

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proposed rate, DCF must negotiate with the provider to determine an agreed to rate. If after negotiations a rate is not agreed to, DCF and the provider must engage in mediation under a rate resolution procedure promulgated by DCF by administrative rule to arrive at an agreed to rate. If after mediation a rate is not agreed to, the provider may not provide the service for which the rate was proposed.

The bill adds two factors that DCF must consider in reviewing a proposed rate. First, DCF must consider changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group. Second, DCF must consider whether the provider is accredited by a national accrediting body that has developed child welfare standards.

The bill also provides that if after mediation, a rate is not agreed to, DCF must order a rate for the service after considering the factors set forth under current law, as affected by the bill, for reviewing a proposed rate. Under the bill, a provider may appeal the rate set by DCF as a contested case under ch. 227, stats., by filing a request for a hearing with DCF within 30 days after the date of the order.

Performance-Based Contracting System

Finally, the bill establishes a performance-based contracting system for providers that will be implemented over a three-year period beginning on January 1, 2011. The bill requires DCF, in consultation with an advisory committee created by the secretary of children and families, to identify measurements by which to evaluate the performance of providers in meeting the goals for children placed in their care and goals for the out-of-home care system, develop payment levels that correspond to the achievement of those measurements based on the assessed level of care of a child, and, by November 1, 2010, submit a report that outlines a plan for implementing the performance-based contracting system to the standing committees of the legislature that are concerned with child welfare issues.

In the year beginning on January 1, 2011, DCF must select a representative sample of providers and evaluate the performance of those providers in attaining the measurements identified by DCF in cooperation with the advisory committee. By the end of 2011, DCF, in consultation with the advisory committee, must adjust those measurements as needed.

In the year beginning on January 1, 2013, DCF must evaluate the performance of all providers in the state in attaining the measurements identified by DCF in cooperation with the advisory committee. By the end of 2013, DCF, in consultation with the advisory committee, must adjust those measurements as needed. Thereafter, adjustments in the measurements may be made on an as-needed basis.

1 **SECTION 1.** 49.34 (5m) (b) 1. and 2. of the statutes are amended to read:
2 49.34 (**5m**) (b) 1. Subject to subds. 2. and 3. and par. (em), if revenue under a
3 contract for the provision of a rate-based service exceeds allowable costs incurred in
4 the contract period, the provider may retain from the surplus generated by that
5 rate-based service up to 5% of the contract amount. A provider that retains a surplus
6 under this subdivision shall use that retained surplus to cover a deficit between
7 revenue and allowable costs incurred in any preceding or future contract period for

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1 the same rate-based service that generated the surplus or to address the
2 programmatic needs of clients served by the same rate-based service that generated
3 the surplus. This subdivision does not apply to a child welfare agency that is
4 authorized under s. 48.61 (7) to license foster homes, a group home, as defined in s.
5 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02
6 (15d).

7 2. Subject to subd. 3. and par. (em), a provider may accumulate funds from more
8 than one contract period under this paragraph, except that, if at the end of a contract
9 period the amount accumulated from all contract periods for a rate-based service
10 exceeds 10% of the amount of all current contracts for that rate-based service, the
11 provider shall, at the request of a purchaser, return to that purchaser the purchaser's
12 proportional share of that excess and use any of that excess that is not returned to
13 a purchaser to reduce the provider's unit rate per client for that rate-based service
14 in the next contract period. If a provider has held for 4 consecutive contract periods
15 an accumulated reserve for a rate-based service that is equal to or exceeds 10% of
16 the amount of all current contracts for that rate-based service, the provider shall
17 apply 50% of that accumulated amount to reducing its unit rate per client for that
18 rate-based service in the next contract period. The department may grant an
19 exception to this subdivision upon request of a provider that is a child welfare agency
20 that is authorized under s. 48.61 (7) to license foster homes, a group home, as defined
21 in s. 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02
22 (15d).

NOTE: Under current law, if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the service provider may retain from the surplus generated by that rate-based service up to 5 percent of the contract amount. Also under current law, a provider may accumulate funds from more than one contract period except that, if at the end of the contract period the

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amount accumulated from all contract periods for a rate-based service exceeds 10 percent of the amount of all current contracts for that service, the provider must, at the request of a purchaser, return to the purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's unit rate per client for that service in the next contract period. If a provider has held for four consecutive contract periods an accumulated reserve for a service that is equal to or exceeds 10 percent of the amount of all current contracts for that service, the provider must apply 50 percent of that accumulated amount to reducing its unit rate per client for that service in the next contract period.

This SECTION exempts providers from the current law that limits the amount that a provider may retain from the surplus generated by a rate-based service in a contract period to 5 percent of the contract amount. This SECTION also permits DCF, upon request of a provider, to grant an exception to the requirements that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10 percent of the amount of all current contracts for that service.

1 **SECTION 2.** 49.34 (5m) (em) of the statutes is amended to read:

2 49.34 **(5m)** (em) Notwithstanding par. (b) 1. and 2., a county department under
 3 s. 46.215, 51.42, or 51.437 providing client services in a county having a population
 4 of 500,000 or more or a nonstock, nonprofit corporation providing client services in
 5 such a county may not retain a surplus under ~~par. (b) 1. generated by a rate-based~~
 6 service or accumulate funds under ~~par. (b) 2. from more than one contract period for~~
 7 a rate-based service from revenues that are used to meet the maintenance-of-effort
 8 requirement under the federal temporary assistance for needy families program
 9 under 42 USC 601 to 619.

NOTE: This SECTION clarifies that although under the bill providers are exempt from s. 49.34 (5m) (b) 1., stats., and may be granted an exception from s. 49.34 (5m) (b) 2., stats., providers are still subject to s. 49.34 (5m) (em), which prohibits retaining a surplus generated by a rate-based service or accumulating funds from more than one contract period for a rate-based service from revenues that are used to meet the maintenance-of-effort requirement under the federal Temporary Assistance for Needy Families Program.

10 **SECTION 3.** 49.343 (1d) (cg) of the statutes is created to read:

11 49.343 **(1d)** (cg) "Performance-based contracting system" means a system of
 12 paying a provider for services based on the achievement of specified measurable
 13 outcomes.

NOTE: SECTIONS 3 and 4 create definitions for "performance-based contracting system" and "provider."

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1 **SECTION 4.** 49.343 (1d) (cr) of the statutes is created to read:

2 49.343 (1d) (cr) “Provider” means a residential care center for children and
3 youth, a group home, or a child welfare agency.

4 **SECTION 5.** 49.343 (2) (b) (intro.) of the statutes, as created by 2009 Wisconsin
5 Act 28, is amended to read:

6 49.343 (2) (b) (intro.) The department shall review a proposed rate submitted
7 under par. (a) and audit the ~~residential care center for children and youth, group
8 home, or child welfare agency~~ provider submitting the proposed rate to determine
9 whether the proposed rate is appropriate to the level of services to be provided, the
10 qualifications of the ~~residential care center for children and youth, group home, or
11 child welfare agency~~ provider to provide those services, and the reasonable and
12 necessary costs of providing those services. In reviewing a proposed rate, the
13 department shall consider all of the following factors:

NOTE: This SECTION deletes “residential care center for children and youth, group home, or child welfare agency” and substitutes “provider,” which is defined in the bill as a residential care center for children and youth, group home, or child welfare agency.

14 **SECTION 6.** 49.343 (2) (b) 1m. of the statutes is created to read:

15 49.343 (2) (b) 1m. Changes in the consumer price index for all urban
16 consumers, U.S. city average, for the medical care group, as determined by the U.S.
17 department of labor, for the 12 months ending on June 30 of the year in which the
18 proposed rate is submitted.

19 **SECTION 7.** 49.343 (2) (b) 5. of the statutes, as created by 2009 Wisconsin Act
20 28, is amended to read:

21 49.343 (2) (b) 5. Changes in service delivery proposed by the ~~residential care
22 center for children and youth, group home, or child welfare agency~~ provider and
23 agreed to by the department.

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NOTE: This SECTION deletes “residential care center for children and youth, group home, or child welfare agency” and substitutes “provider,” which is defined in the bill as a residential care center for children and youth, group home, or child welfare agency.

1 **SECTION 8.** 49.343 (2) (b) 6. of the statutes is created to read:
2 49.343 (2) (b) 6. Whether the agency is accredited by a national accrediting
3 body that has developed child welfare standards.

NOTE: SECTIONS 6 and 8 add factors DCF must consider in reviewing a per client rate proposed by a group home or an RCC or an administrative rate proposed by a child welfare agency. Under SECTION 6, DCF must consider changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group and whether the provider is accredited by a national accrediting body that has developed child welfare standards.

4 **SECTION 9.** 49.343 (2) (c) of the statutes, as created by 2009 Wisconsin Act 28,
5 is amended to read:

6 49.343 (2) (c) If the department determines under par. (b) that a proposed rate
7 submitted under par. (a) is appropriate, the department shall approve the proposed
8 rate. If the department does not approve a proposed rate, the department shall
9 negotiate with the ~~residential care center for children and youth, group home, or~~
10 ~~child welfare agency~~ provider to determine an agreed to rate. If after negotiations
11 a rate is not agreed to, the department and ~~residential care center for children and~~
12 ~~youth, group home, or child welfare agency~~ the provider shall engage in mediation
13 under the rate resolution procedure promulgated by rule under sub. (4) to arrive at
14 an agreed to rate. If after mediation a rate is not agreed to, the ~~residential care center~~
15 ~~for children and youth, group home, or child welfare agency~~ may not provide the
16 ~~service for which the rate was proposed~~ department shall order a rate for the service
17 after considering the factors under par. (b). A provider may appeal the rate set by
18 the department as a contested case under ch. 227 by filing with the department a
19 request for a hearing within 30 days after the date of the order.

NOTE: This SECTION provides that DCF must order a per client rate for a group home or an RCC or an administrative rate for a child welfare agency if the provider’s

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proposed rate is not approved by DCF and if DCF and the provider do not agree to a rate after negotiations and mediation. Under this SECTION, a provider may appeal the rate set by DCF as a contested case under ch. 227, stats., by filing a request for a hearing with DCF within 30 days of the order.

1 **SECTION 10.** 49.343 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 49.343 (3) AUDIT. The department may require an audit of any ~~residential care~~
4 ~~center for children and youth, group home, or child welfare agency~~ provider for the
5 purpose of collecting federal funds.

NOTE: This SECTION deletes “residential care center for children and youth, group home, or child welfare agency” and substitutes “provider,” which is defined in the bill as a residential care center for children and youth, group home, or child welfare agency.

6 **SECTION 11.** 49.343 (4) (a) of the statutes, as created by 2009 Wisconsin Act 28,
7 is amended to read:

8 49.343 (4) (a) Standards for determining whether a proposed rate is
9 appropriate to the level of services to be provided, the qualifications of a ~~residential~~
10 ~~care center for children and youth, group home, or child welfare agency~~ provider to
11 provide those services, and the reasonable and necessary costs of providing those
12 services.

NOTE: This SECTION deletes “residential care center for children and youth, group home, or child welfare agency” and substitutes “provider,” which is defined in the bill as a residential care center for children and youth, group home, or child welfare agency.

13 **SECTION 12.** 49.343 (4) (c) of the statutes, as created by 2009 Wisconsin Act 28,
14 is amended to read:

15 49.343 (4) (c) Procedures for reviewing proposed rates, including ~~rate~~
16 ~~resolution~~ procedures for ~~mediating an agreed to~~ ordering a rate when negotiations
17 and mediation fail to produce an agreed to rate.

NOTE: This SECTION requires DCF to promulgate administrative rules for reviewing proposed per client rates for group homes and RCCs and administrative rates for child welfare agencies, including procedures for ordering a rate when negotiations and mediation fail to produce an agreed to rate.

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1 **SECTION 13.** 49.343 (5) of the statutes is created to read:

2 49.343 (5) **ADVISORY COMMITTEE.** The secretary shall create an advisory
3 committee under s. 15.04 (1) (c) consisting of representatives of purchasers; county
4 departments; the department, in a county having a population of 500,000 or more;
5 tribes; consumers; and a statewide association of private, incorporated family and
6 children's social service agencies representing all groups of providers that are
7 affected by the rate regulation process. The committee shall advise the department
8 on all of the following:

9 (a) The development of administrative rules under sub. (4).

10 (b) The implementation of rate regulation for providers as authorized under
11 this section.

12 (c) The identification of the measurements specified in sub. (6) (a) and the
13 development of the payment levels specified in sub. (6) (a).

NOTE: This SECTION requires the secretary of children and families to create an advisory committee and specifies the membership of the committee. Under the SECTION, the committee is required to advise DCF on the development of administrative rules relating to rate setting, the implementation of rate regulation for providers, and the identification of performance-based measurements and payment levels that correspond to the achievement of those measurements.

14 **SECTION 14.** 49.343 (6) of the statutes is created to read:

15 49.343 (6) **PERFORMANCE-BASED CONTRACTING SYSTEM.** (a) For purposes of
16 implementing a performance-based contracting system, the department, in
17 cooperation with the advisory committee created under sub. (5), shall do all of the
18 following:

19 1. Identify measurements by which to evaluate the performance of providers
20 in meeting both the goals for the children placed in their care and the goals for the
21 out-of-home care system in this state and adjust, as needed, those measurements.

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1 2. Develop payment levels that correspond to the achievement of the
2 measurements identified under subd. 1. based on the assessed level of care of a child.

3 (b) By November 1, 2010, the department shall submit a report that outlines
4 a plan for implementing a performance-based contracting system to the standing
5 committee of each house of the legislature that is concerned with child welfare issues.
6 The report shall describe the measurements identified under par. (a) 1. and the
7 payment levels developed under par. (a) 2.

8 (c) Beginning on January 1, 2011, the department shall select a representative
9 sample of providers and evaluate the performance of those providers in attaining the
10 measurements identified under par. (a) 1. Based on that evaluation, the department,
11 in consultation with the advisory committee created under sub. (5), shall adjust, as
12 needed, those measurements by December 31, 2011.

13 (d) Beginning on January 1, 2013, the department shall evaluate the
14 performance of all providers in this state in attaining the measurements identified
15 under par. (a) 1. Based on that evaluation, the department, in consultation with the
16 advisory committee created under sub. (5), shall adjust, as needed, those
17 measurements by December 31, 2013, and in subsequent years as determined
18 necessary by the department.

NOTE: This SECTION requires DCF, for purposes of implementing a performance-based contracting system, to identify measurements by which to evaluate the performance of providers in meeting both the goals for the children placed in their care and the goals for the out-of-home care system in this state and to adjust, as needed, those measurements, in cooperation with the advisory committee created under this bill. This SECTION also requires DCF to develop payment levels that correspond to the achievement of those measurements based on the assessed level of care of a child.

In addition, this SECTION requires DCF, by November 1, 2010, to submit a report that outlines a plan for implementing the performance-based contracting system to the standing committee of each house of the legislature that is concerned with child welfare issues. The report must describe the measurements identified and the payment levels developed by DCF in cooperation with the advisory committee.

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NOTE: Finally, this SECTION requires DCF, beginning on January 1, 2011, to select a representative sample of providers and evaluate the performance of those providers in attaining the measurements identified by DCF in cooperation with the advisory committee. The SECTION also requires DCF, beginning on January 1, 2013, to evaluate the performance of all providers in this state in attaining those measurements.

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(END)