

State of Wisconsin



1997 Assembly Bill 601

Date of enactment: **June 30, 1998**
Date of publication*: **July 14, 1998**

1997 WISCONSIN ACT 308

AN ACT to *renumber and amend* 48.975 (3) (a), 48.975 (4) and 48.975 (5); to *amend* 46.10 (14) (cm) 1. and 2. and 48.975 (2); and to *create* 48.975 (3) (a) 3., 48.975 (3) (a) 4., 48.975 (3m), 48.975 (4) (b), (bm), (c) and (d) and 48.975 (5) (a) to (e) of the statutes; **relating to:** adoption assistance, granting rule-making authority and making an appropriation.

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

[Enrolling Note: This bill was prepared for the joint legislative council's special committee on adoption laws (special committee). The original bill, as introduced, has extensive NOTES that relate to the bill as introduced, but are not retained in enrolling because the bill was changed by amendment.]

SECTION 1. 46.10 (14) (cm) 1. and 2. of the statutes are amended to read:

46.10 (14) (cm) 1. Except as provided in subd. 2., if a parent who is required to pay child support under par. (b) or (c) is receiving adoption assistance under s. 48.975 for the child for whom support is ordered, the amount of the child support payments determined under par. (b) or (c) may not exceed the amount of the adoption assistance maintenance payments under s. 48.975 (3) (a). If an agreement under s. 48.975 (4) is in effect that provides for a payment of \$0 under s. 48.975 (3) (a), the payment of \$0 shall be considered to be an adoption assistance maintenance payment for purposes of this subdivision.

2. Subdivision 1. does not apply if, after considering the factors under par. (c) 1. to 11., the court finds by the greater weight of the credible evidence that limiting the amount of the child support payments to the amount of the adoption assistance maintenance payments under s.

48.975 (3) (a) is unfair to the child or to either of the parents.

SECTION 3. 48.975 (2) of the statutes is amended to read:

48.975 (2) APPLICABILITY. The department may provide adoption assistance only for a child with special needs and only when it the department has determined that such assistance is necessary to assure the child's adoption.

SECTION 4. 48.975 (3) (a) of the statutes is renumbered 48.975 (3) (a) 1. and amended to read:

48.975 (3) (a) 1. ~~For~~ Except as provided in subd. 3., for support of a child who was in foster care or treatment foster care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the amount of that child's foster care or treatment foster care payment. ~~For at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.~~

2. Except as provided in subd. 3., for support of a child not in foster care or treatment foster care immediately prior to placement ~~with a subsidy~~ for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the uniform foster care rate in effect

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

SECTION 5. 48.975 (3) (a) 3. of the statutes is created to read:

48.975 (3) (a) 3. For support of a child who is defined under rules promulgated by the department under sub. (5) (b) as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems, the initial amount of adoption assistance for maintenance shall be \$0.

SECTION 6. 48.975 (3) (a) 4. of the statutes is created to read:

48.975 (3) (a) 4. The amount of adoption assistance for maintenance may be changed under an amended agreement under sub. (4) (b) or (c). If an agreement is amended under sub. (4) (b) or (c), the amount of adoption assistance for maintenance shall be the amount specified in the amended agreement but may not exceed the uniform foster care rate that would be applicable to the child if the child were in foster care during the time for which the adoption assistance for maintenance is paid.

SECTION 7. 48.975 (3m) of the statutes is created to read:

48.975 (3m) DURATION. The adoption assistance may be continued after the adoptee reaches the age of 18 if that adoptee is a full-time high school student.

SECTION 8m. 48.975 (4) of the statutes is renumbered 48.975 (4) (a) and amended to read:

48.975 (4) (a) –A– Except in extenuating circumstances, as defined by the department by rule promulgated under sub. (5) (a), a written agreement to provide adoption assistance shall be made prior to legal adoption. An agreement to provide adoption assistance may be made only for children a child who, at the time of placement for adoption, is in the guardianship of the department or other agency authorized to place children for adoption or for children in the guardianship of an American Indian tribal agency in this state. The adoption assistance may be continued after the child reaches the age of 18 if that child is a full-time high school student.

SECTION 10. 48.975 (4) (b), (bm), (c) and (d) of the statutes are created to read:

48.975 (4) (b) If an agreement to provide adoption assistance is in effect and if the adoptive or proposed adoptive parents of the child who is the subject of the agreement believe there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c), the adoptive or proposed adoptive parents may request that the agreement be amended to increase the amount of adoption assistance for maintenance. If a request is received under this paragraph, the department shall do all of the following:

1. Determine whether there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c) and whether there has

been a substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

2. If there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, offer to increase the amount of adoption assistance for maintenance based on criteria established by the department by rule promulgated under sub. (5) (d).

3. If an increased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, amend the agreement in writing to specify the increased amount of adoption assistance for maintenance.

(bm) Annually, the department shall review an agreement that has been amended under par. (b) to determine whether the substantial change in circumstances that was the basis for amending the agreement continues to exist. If that substantial change in circumstances continues to exist, the agreement, as amended, shall remain in effect. If that substantial change in circumstances no longer exists, the department shall offer to decrease the amount of adoption assistance for maintenance based on criteria established by the department under sub. (5) (dm). If the decreased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, the department shall amend the agreement in writing to specify the decreased amount of adoption assistance for maintenance. If the decreased amount of adoption assistance for maintenance is not agreed to by the adoptive or proposed adoptive parents, the adoptive or proposed adoptive parents may appeal the decision of the department regarding the decrease under the procedure established by the department under sub. (5) (dm).

(c) The department may propose to the adoptive or proposed adoptive parents that an agreement to provide adoption assistance be amended to adjust the amount of adoption assistance for maintenance. If an adjustment in the amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, the agreement shall be amended in writing to specify the adjusted amount of adoption assistance for maintenance.

(d) An agreement to provide adoption assistance may be amended more than once under par. (b) or (c).

SECTION 11. 48.975 (5) of the statutes is renumbered 48.975 (5) (intro.) and amended to read:

48.975 (5) RULES. (intro.) The department shall promulgate rules necessary to implement this section, which shall include all of the following:

SECTION 12. 48.975 (5) (a) to (e) of the statutes are created to read:

48.975 (5) (a) A rule defining the extenuating circumstances under which an initial agreement to provide adoption assistance under sub. (4) (a) may be made after adoption. This definition shall include all circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assist-

ance are available to the state if an initial agreement is made after adoption, but may not include circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assistance are not available if an initial agreement is made after adoption.

(b) A rule defining a child with special needs, which shall include a child who the department determines has, at the time of placement for adoption, moderate or intensive difficulty-of-care problems, as defined by the department, or who the department determines is, at the time of placement for adoption, at high risk of developing those problems.

(c) A rule defining the substantial change in circumstances under which adoptive or proposed adoptive parents may request that an agreement made under sub. (4) be amended to increase the amount of adoption assistance for maintenance. The definition shall include all of the following:

1. Situations in which a child who was defined as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems has developed those problems.

2. Situations in which a child's difficulty-of-care problems have increased from the moderate level to the intensive level as set forth in the department's schedule of difficulty-of-care levels promulgated by rule.

(d) Rules establishing requirements for submitting a request under sub. (4) (b), criteria for determining the amount of the increase in adoption assistance for maintenance that the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, and the procedure to appeal the decision of the department regarding the request.

(dm) Rules establishing the criteria for determining the amount of the decrease in adoption assistance for maintenance that the department shall offer under sub. (4) (bm) if a substantial change in circumstances no longer exists and the procedure to appeal the decision of the department regarding the decrease. The criteria shall provide that the amount of the decrease offered by the department under sub. (4) (bm) may not result in an amount of adoption assistance for maintenance that is less than the initial amount of adoption assistance for maintenance provided for the child under sub. (3) (a) 1., 2. or 3.

(e) A rule regarding when a child must be photolisted with the adoption information exchange under s. 48.55 in order to be eligible for adoption assistance. The rule may not require photolisting under any circumstances in

which photolisting is not required by federal statutes, regulations or guidelines as a prerequisite for the state to receive federal matching funds for adoption assistance.

SECTION 9122. Nonstatutory provisions; health and family services.

(1) The department of health and family services shall submit in proposed form the rules required under section 48.975 (5) (a) to (e) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than January 1, 1999.

(3m) The authorized FTE positions for the department of health and family services are increased by 0.5 FED positions on July 1, 1998, to be funded from the appropriation under section 20.435 (3) (n) of the statutes, for the purpose of administering the adoption assistance program.

SECTION 9222. Appropriation changes; health and family services.

(2) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of health and family services under section 20.435 (3) (a) of the statutes, as affected by the acts of 1997, the dollar amount is increased by \$54,300 for fiscal year 1998-99 to increase the authorized FTE positions for the department by 1.0 GPR position for the purpose of administering the adoption assistance program.

SECTION 9228. Appropriation changes; joint committee on finance.

(1m) In the schedule under section 20.005 (3) of the statutes for the appropriation to the joint committee on finance under section 20.865 (4) (a) of the statutes, as affected by the acts of 1997, the dollar amount is decreased by \$54,300 for fiscal year 1998-99 to decrease funding for the purpose of administering the adoption assistance program.

SECTION 9322. Initial applicability; health and family services.

(1) The creation of section 48.975 (3) (a) 3. and (5) (b) of the statutes first applies to children who are placed for adoption on the effective date of this subsection.

SECTION 9400. Effective dates; general. This act takes effect on the day after publication, except as follows:

(1m) The treatment of sections 46.10 (14) (cm) 1. and 2. and 48.975 (2) and (3m) of the statutes, the renumbering and amendment of section 48.975 (3) (a), (4) and (5) of the statutes, the creation of section 48.975 (3) (a) 3. and 4., (4) (b), (bm), (c) and (d) and (5) (a), (b), (c), (d), (dm) and (e) of the statutes and SECTION 9322 (1) of this act take effect on January 1, 1999.