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Department of Health and Family Services

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January 22, 1999

The Honorable Fred Risser, President
Wisconsin State Senate
1 East Main, Suite 402
Madison, WI 53702

The Honorable Scott Jensen, Speaker
Wisconsin State Assembly
1 East Main, Suite 402
Madison, WI 53702

Re: Clearinghouse Rule 98-136

HFS 51.01, 51.02, 51.03 and 51.09, relating to the applicability of the Department's rules that establish criteria and procedures for placement of special needs children in adoptive homes.

Gentlemen:

In accordance with the provisions of s. 227.19(2), Stats., you are hereby notified that the above-mentioned rule is in final draft form. This notice and the report required by s. 227.19(3), Stats., are submitted herewith in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rule, please contact Karen Oghalai at 266-0690.

Sincerely,


Paul E. Menge
Administrative Rules Manager

cc. Gary Poulson, Deputy Revisor of Statutes
Senator Judy Robson, JCRAR
Representative Glenn Grothman, JCRAR
Karen Oghalai, Division of Children and Family Services
Kevin Lewis, Secretary's Office

PROPOSED ADMINISTRATIVE RULES – HSS 51.01, 51.02, 51.03 & 51.09
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

The Department has rules in effect that consist of criteria and procedures for placing special needs children in adoptive homes. A special needs child is a child who is legally free for adoption and waiting for an adoptive placement but for whom it is difficult, for one reason or another, to find an adoptive home.

In Wisconsin the Department is responsible for placing most special needs children for adoption. Currently the Department's rules, ch. HSS 51, apply to the Department and child-placing agencies providing adoption services under contract with the Department. A question has been raised about whether a county agency is a "child-placing agency" as that term is used in s. HSS 51.02. Although "child-placing agency" is not defined in ch. HSS 51, the term is usually used by the Department and others to refer to private child-placing agencies licensed under ch. HSS 54. A county social services or human services agency that places children for adoption is not licensed as a child-placing agency but rather derives its authority from s. 48.57 (1) (e) or (hm), Stats.

This order amends ss. HSS 51.01 and 51.02 to make clear that a county agency providing adoption services under contract with the Department must follow the same standards as the Department. This will ensure consistency whether services are provided directly by the Department or by a licensed child-placing agency or county agency under contract to the Department. The only county agency that currently has a contract with the Department to provide adoption services for special needs children is Milwaukee County, and the current contract requires the Milwaukee County Human Services Department to comply with ch. HSS 51. The rule change is consistent with that contractual obligation.

The rulemaking order also amends other parts of ch. HSS 51 to correct the names of the Department, Division and Bureau. The names of those organizations were changed following state executive reorganization which was effective July 1, 1996.

Response to Clearinghouse Recommendation

The Legislative Council's Rules Clearinghouse had one comment on the proposed amendments to ch. HSS 51. The Department accepted that comment and modified the the rule accordingly.

Public Hearing

The Department held one public hearing on the proposed amendments to ch. HSS 51. The hearing was in Madison on Tuesday, November 17, 1998. No one appeared at the hearing. No written comments on the proposed changes were received during the public review period that ended a week after the hearing.

Final Regulatory Flexibility Analysis

These amendments to the Department's rules for adoption of children with special needs will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. The amendments make clear that the rules apply to county agencies providing adoption services under contract to the Department, and not only to the Department and private child-placing agencies, and in the process define "child-placing agency" and "county agency" and update addresses and organization names that appear in ch. HSS 51.

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES

To amend HSS 51.01, 51.02, 51.03 (7), (9), (10) and (19) and 51.09 (2) (a) 2. (Note) and (b) (Note), relating to the applicability of the department's rules that establish criteria and procedures for placement of special needs children in adoptive homes.

Analysis Prepared by the Department of Health and Family Services

The Department has rules in effect that consist of criteria and procedures for placing special needs children in adoptive homes. A special needs child is a child who is legally free for adoption and waiting for an adoptive placement but for whom it is difficult, for one reason or another, to find an adoptive home.

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The rulemaking order also amends other parts of ch. HSS 51 to correct the names of the Department, Division and Bureau. The names of those organizations were changed following state executive reorganization which was effective July 1, 1996.

The Department's authority to amend these rules is found in ss. 48.01 (1) (f), 48.48 (8) and 227.11 (2), Stats. The rules interpret ss. 48.01 (1) (f), 48.48 (8), 48.57 (1) (e) and (hm) and 48.61 (5), Stats.

SECTION 1. HSS 51.01 and 51.02 are amended to read:

HSS 51.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 48.01 (1) (f), 48.48 (8) and 227.11 (2), Stats., to establish criteria and procedures for placement ~~by the department~~ of special needs children in adoptive homes. The criteria and procedures are intended to ensure that every special needs child ~~in the guardianship of the department~~ is placed in a suitable adoptive placement with the best interests of the child as the paramount concern, that the needs of the child as the primary client are met and that persons seeking to adopt special needs children are treated fairly.

HSS 51.02 APPLICABILITY. This chapter applies to the department, to child-placing agencies providing adoption services under contract with the department, to county agencies providing adoption services under contract with the department and to all persons making inquiry or application to the department or to a child-placing agency or a county agency providing adoption services under contract with the department for adoption of special needs children, including minority children, except when procedures involving the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply. In this section, “child-placing agency” means a private child-placing agency licensed under ch. HSS 54 to accept guardianship of children and to place children under its guardianship for adoption, and “county agency” means a county social services department under s. 46.215 or 46.22, Stats., or a county human services department under s. 46.23, Stats.

SECTION 2. HSS 51.03 (7), (9), (10) and (19) are amended to read:

HSS 51.03 (7) “Bureau director” means the director of the division’s bureau ~~for children, youth and families~~ of programs and policies which operates the special needs adoption program.

(9) “Department” means the Wisconsin department of health and ~~social~~ family services.

(10) “Division” means the department’s division of ~~community~~ children and family services.

(19) “Unit supervisor” means the supervisor of the adoption staff in a ~~regional office~~ region of the division.

SECTION 3. HSS 51.09 (2) (a) 2. (Note) and (b) (Note) are amended to read:

HSS 51.09 (2) (a) 2. (Note) To request a review by the unit chief or bureau director, write:

Director
Bureau ~~for Children, Youth and Families~~ of Programs and Policies
P.O. Box ~~7851~~ 8916
Madison, WI ~~53707~~ 53708-8916

(b) (Note) To request a review by the division administrator, write:

Administrator
Division of ~~Community Services~~ Children and Family Services
P.O. Box ~~7851~~ 8916
Madison, WI ~~53707~~ 53708-8916

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
Family Services

Dated:

By: _____
Joseph Leean
Secretary

SEAL: