16

WISCONSIN STATE SENATE

Carol Roessler

STATE SENATOR

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care

From: Senator Carol Roessler, Chair

Date: October 17, 2003

Re: Clearinghouse Rule 03-010, relating to voluntarily relinquishing custody of a newborn who is 72 hours old or younger.

CR 03-010 has been referred to the Senate Health, Children, Families, Aging and Long Term Care Committee. These proposed administrative rules were created to guide the process by which a parent may voluntarily relinquish custody of a newborn who is 72 hours old or younger and sets forth the process by which a law enforcement officer, emergency medical technician, or hospital staff member may take custody of the newborn.

If you would like the committee to hold a hearing on CR 03-010, please contact Jennifer Halbur in my office by **October 31, 2003.**

CAPITOL ADDRESS: State Capitol • P.O. Box 7882, Madison, WI 53707-7882 • **PHONE:** 608-266-5300 • **FAX:** 608-266-0423
HOME: 1506 Jackson Street, Oshkosh, WI 54901 • **TOLL-FREE:** 1-888-736-8720
E-MAIL: Sen.Roessler@legis.state.wi.us • **WEBSITE:** http://www.legis.state.wi.us/senate/sen18/news/

Recycled Paper

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

October 7, 2003

The Honorable Alan Lasee, President
Wisconsin State Senate
219 South, State Capitol
Madison, WI 53702

The Honorable John Gard, Speaker
Wisconsin State Assembly
215 West, State Capitol
Madison, WI 53702

Re: Clearinghouse Rule 03-010
HFS 39, relating to voluntarily relinquishing custody of a newborn who is 72 hours old or younger.

Gentlemen:

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

The rules were 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 rules, please contact Mark Mitchell at 608-261-8316.

Sincerely,

Helene Nelson
Secretary

cc Gary Poulson, Deputy Revisor of Statutes
Senator Joseph Leibham, JCRAR
Representative Glenn Grothman, JCRAR
Mark Mitchell, DHFS-DCFS
Gary Radloff, Secretary's Office

PROPOSED ADMINISTRATIVE RULES – HFS 39
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Need for Proposed Rules

The proposed order creates rules under the authority of s. 48.195 (6), Stats., to guide the process by which a parent may voluntarily relinquish custody of a newborn who is 72 hours old or younger and sets forth the process by which a law enforcement officer, emergency medical technician, or hospital staff member may take custody of the newborn.

The proposed order, as does s. 48.195 (2) (c), Stats., prohibits any officer, employee, or agent of this state or of a political subdivision of this state from attempting to locate or ascertain the identity of a parent who voluntarily relinquishes custody of a newborn or of any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the newborn has been the victim of abuse or neglect, as defined in ss. 48.02 (1) and 48.981 (1) (d), Stats., or that a person assisting the parent has or is attempting to coerce or induce the parent into relinquishing custody of the newborn. This does not prevent the parent or person assisting the parent from providing such information voluntarily.

Nothing in the proposed order is intended to affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs the duties prescribed by law, licensure or certification to be performed by a law enforcement officer, emergency medical technician, or hospital staff member.

The department's authority to create these rules is found in ss. 48.195 (6) and 227.11 (2), Stats. These rules interpret s. 48.195, Stats.

Response to Clearinghouse Recommendations

Except as follows the department accepted all comments of the Clearinghouse and modified the rule as suggested.

Clearinghouse comment Section 2 a.: *Since the applicability of the definitions in s. HFS 39.03 is established by "In this chapter:", it is not appropriate to use "...as defined in s. HFS 39.03 ..." elsewhere in the chapter . See ss. HFS 39.03 (21) and 39.05 (1) (b).*

The departed modified the sections of the rule to which this comment applied as recommended except s. HFS 39.05 (b). Section HFS 39.05 (b) was not changed because it is intended that only hospital staff members as specified in s. 39.03 (4) (a) to (h) would be responsible for taking a child into custody. The hospital staff member specified in s. HFS 39.03 (14) (h) is a hospital staff member who is designated in a hospital policy to only *dispatch* personnel. It is not intended that this person would be taking a child into custody. For clarification, the term "defined" as used in s. HFS 39.05 (b) was change to the term "specified".

Public Hearings

The Department scheduled two (2) public hearings on the proposed rules. The hearings were scheduled for the following places on the noted dates:

- April 7, 2003 Milwaukee

- April 8, 2003 Madison

Due to a severe winter snowstorm, the public hearing in Milwaukee was cancelled. The Madison hearing was held as scheduled.

The Department received comments on the proposed rule from only three persons. All other comments made were regarding the draft brochures that the Department had developed related to the rule. Since the brochures are not part of the rule, we have not dealt with the comments related to the brochures in this report, although those comments were considered in the development of the final draft of the brochures.

The Department made changes to the proposed rules in response to the public comments on the proposed rule. For the most part, these changes related to strengthening language to assure the anonymity of the parent relinquishing the newborn and any person assisting the parent in such relinquishment.

Final Regulatory Flexibility Analysis

The proposed order will not have a significant economic impact on small businesses.

Proposed Ch. HFS 39
Hearing Attendees or Commenters

The following is a complete list of the persons who attended a public hearing or submitted written comments on the proposed Ch. HFS 39 or the model brochure(s) developed by the Department. With each person's name and affiliation is an indication of the individual's position on the proposed rules and whether or not the individual testified or provided written comments. The number preceding a name serves in the summary of hearing comments to indicate the person who made the specific comment.

Name and Address	Position	Action
1. Loralee Brumund Department of Transportation 4802 Sheboygan Ave. Madison, WI 53702	Opposes parts of brochures	Written comments only
2. Mary Gothard, CHES Health Education Specialist Wisconsin Division of Public Health 1 W. Wilson St., Room 351 P.O. Box 2659 Madison, WI 53701-2659	Opposes parts of brochures	Written comments only
3. Tamara Lemay DCFS/BPP/Adoption 1 W. Wilson St., Room 527 Madison, WI 53702	Opposes parts of brochures	Written comments only
4. Erin Bilot Office of Suzanne Jeskewitz State Representative 24th Assembly District	Opposes parts of brochures	Written comments only
5. Sherry Quamme Director, Meriter Emergency Services 202 S. Park St.	Opposes parts of brochures	Written comments only

Madison, WI 53715		
6. Carol A. Wright Deputy Director Marquette Co. Dept. of Human Services 77 W. Park St., P.O. Box 405 Montello, WI 53949	No position	Written comments only
7. Terry S. Walsh, Executive Director Safe Place for Newborns of Wis., Inc. P.O. Box 628124 Middleton, WI 53562	Opposes parts of the brochures. No position on the rule.	Testified orally and in writing
8. Suzanne Jeskewitz, State Representative 24th Assembly District	Opposes parts of the rule and parts of the brochures	Testified orally and in writing

Summary of Proposed Chapter HFS 39, Relinquishing Custody of a Newborn Child
Public Hearing Testimony and Department Responses

Rule Reference (citation in brackets corresponds to citation as found in the final proposed rule)	**Comment** (numbers indicate person making comment)	**Department Response**
General	There are two issues I would like to address that may avoid any abandonment or neglect findings against the mother. Other than law enforcement and hospital personnel, (not that I want social workers to have additional work), I believe social services/human services should be allowed to accept the newborn. Once relinquished to this department, the social worker must contact law enforcement or a hospital/clinic immediately so the baby can receive prompt medical care. There may be some circumstances that a mother will feel more comfortable relinquishing her baby to a department that generally cares for children on a continuous basis. Secondly, I believe if a mother relinquishes her baby inside the facility where the baby will be seen by the facility's staff, the mother should not be subject to criminal proceedings. Currently, there is a county whereby this situation occurred. The mother is going through a CHIPS action on abandonment or neglect. **(6)(7)**	No change. The issues discussed in this comment are beyond the scope of the proposed rule.
HFS 39.09 (6)	Restate to indicate that no identifying information that applies to parent or person assisting the parent may be documented. **(8)**	We have added language indicating that only non-identifying information be documented. However, it is unclear whether this will impact on individuals taking a

		child into custody since they generally document, for a variety of reasons, all information pertaining to their activities.
HFS 39.10 (4)	Note: Add Website availability and address **(8)**	We have added the web address.
HFS 39.10 (5)(c)	Worried about the use of "any person." Needs to be more specific. **(8)**	We have changed the sentence to read "Any relevant information relating to the relinquishment given to an employee or agent."
HFS 39.10 (5)(e)	Restate to indicate that no identifying information that applies to parent or person assisting the parent may be documented. **(8)**	We have added language indicating that only non-identifying information be documented. However, it is unclear whether this will impact on individuals taking a child into custody since they generally document, for a variety of reasons, all information pertaining to their activities.

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

The Wisconsin Department of Health and Family Services proposes to create HFS 39, relating to voluntarily relinquishing custody of a newborn who is 72 hours old or younger.

Analysis Prepared by the Department of Health and Family Services

This order creates rules under the authority of s. 48.195 (6), Stats., to guide the process by which a parent may voluntarily relinquish custody of a newborn who is 72 hours old or younger and sets forth the process by which a law enforcement officer, emergency medical technician, or hospital staff member may take custody of the newborn.

This order, as does s. 48.195 (2) (c), Stats., prohibits any officer, employee, or agent of this state or of a political subdivision of this state from attempting to locate or ascertain the identity of a parent who voluntarily relinquishes custody of a newborn or of any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the newborn has been the victim of abuse or neglect, as defined in ss. 48.02 (1) and 48.981 (1) (d), Stats., or that a person assisting the parent has or is attempting to coerce or induce the parent into relinquishing custody of the newborn. This does not prevent the parent or person assisting the parent from providing such information voluntarily.

Nothing in this chapter is intended to affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs the duties prescribed by law, licensure or certification to be performed by a law enforcement officer, emergency medical technician, or hospital staff member.

The department's authority to create these rules is found in ss. 48.195 (6) and 227.11 (2), Stats. These rules interpret s. 48.195, Stats.

Order

SECTION 1. Chapter HFS 39 is created to read:

CHAPTER HFS 39

RELINQUISHING CUSTODY OF A NEWBORN CHILD

HFS 39.01 Authority and purpose
HFS 39.02 Initial applicability
HFS 39.03 Definitions
HFS 39.04 Relinquishing custody of a newborn
HFS 39.05 Taking a newborn into custody
HFS 39.06 Court authority upon relinquishment
HFS 39.07 Health and safety of a newborn upon relinquishment
HFS 39.08 Anonymity and confidentiality
HFS 39.09 Responsibilities of a person taking custody of a newborn
HFS 39.10 Responsibilities of emergency medical service providers
HFS 39.11 Procedures for being identified as a parent of a newborn

HFS 39.12 Immunity from liability
HFS 39.13 Medical assistance eligibility

HFS 39.01 Authority and purpose. This chapter is promulgated under the authority of ss. 48.195 (6) and 227.11 (2), Stats., to establish procedures under which a parent may relinquish a newborn who is 72 hours old or younger and procedures by which a law enforcement officer, emergency medical technician, or hospital staff member may take custody of a relinquished newborn, and procedures by which a parent who relinquishes a newborn may choose to be identified as the newborn's parent.

HFS 39.02 Initial applicability. This rule applies to newborns relinquished on or after the effective date of this rule.

HFS 39.03 Definitions. In this chapter:

(1) "Agent" means any person providing services under a contract with an emergency medical service provider.

(2) "Ambulance service provider" means a person licensed to engage in the business of transporting sick, disabled or injured individuals by ambulance to or from facilities or institutions providing health services.

(3) "Bureau" means the bureau of Milwaukee child welfare.

(4) "Child" has the meaning given in s. 48.02 (2), Stats.

(5) "Coerce" means to force to act or think in a given manner or to compel by pressure or threat.

(6) "County department" means an agency under s. 46.22 or 46.23, Stats.

(7) "Custody" means having the physical person of a newborn in the absence of a court order granting physical or legal custody to a physical custodian.

(8) "Department" means the Wisconsin department of health and family services.

(9) "Emergency medical service provider" means any one of the following:

(a) A hospital.

(b) A law enforcement agency.

(c) A fire department.

(d) An ambulance service provider.

(e) A public agency.

(f) A public safety agency.

(10) "Emergency medical technician" means an individual who is licensed as any one of the following:

(a) An EMT-basic.

(b) An EMT-basic IV.

(c) An EMT-intermediate.

(d) An EMT-paramedic.

(11) "Fire department" has the meaning given in s. Comm 14.02 (3).

(12) "Hospital" has the meaning given in s. 50.33(2) (a) and (c), Stats., except for psychiatric hospitals or mental hospitals, approved to operate according to the provisions of s. HFS 124.03.

(13) "Hospital-provided emergency medical services" means services provided by a hospital that the department has identified as providing some category of emergency service.

(14) "Hospital staff member" means any of the following individuals employed by or under contract with a hospital:

(a) An emergency medical technician working in the hospital under the direction of a physician.

(b) A hospital social worker, as described in s. HFS 124.25.

(c) A licensed practical nurse licensed under s. 441.10 (3), Stats.

(d) A physician, as defined in s. 448.01 (5), Stats.

(e) A physician assistant, as defined in s. 448.01 (6), Stats.

(f) A registered nurse licensed under s. 441.06, Stats.

(g) Any other employee or agent who is designated in a written hospital policy to take custody of a newborn under this chapter.

(h) An employee or agent who is designated in a written hospital policy to dispatch a law enforcement officer or emergency medical technician to meet a parent who wishes to relinquish a newborn.

(15) "Identifying information" means any information that would disclose the name, location, or identity of a parent or a person assisting a parent.

(16) "Induce" means to lead or move a parent relinquishing a newborn or a person assisting a parent relinquishing a newborn by influence or persuasion.

(17) "Intake worker" means any person who meets the requirements of ss. 48.06 (1) (am) and (2) (b), Stats., and who provides intake services under ch. 48, Stats.

(18) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b), Stats.

(19) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c), Stats.

(20) "Maternal and child health hotline" means the 24-hour per day, 7-day per week information and referral toll-free telephone service administered by the department.

(21) "Newborn" means a person whom a law enforcement officer, emergency medical technician, or a hospital staff member reasonably believes to be 72 hours old or younger.

(22) "Parent" means one of the following:

(a) A biological mother or a biological father of a newborn.

(b) A male who is presumed to be the father of a newborn under s. 891.41, Stats.

(23) "Public agency" has the meaning given in s. 146.70 (1) (f), Stats.

(24) "Public safety agency" has the meaning given in s. 146.70, (1) (g), Stats.

(25) "Relinquish" means to voluntarily give the physical person of a newborn to a law enforcement officer, emergency medical technician, or hospital staff member.

HFS 39.04 Relinquishing custody of a newborn. (1) INDIVIDUALS WHO MAY RELINQUISH A NEWBORN. A newborn may only be relinquished under this chapter by a parent of the newborn.

(2) PARTICIPATION OF OTHERS DURING RELINQUISHMENT. A parent may select any person to assist the parent in the relinquishment of a newborn.

HFS 39.05 Taking a newborn into custody. (1) WHO MAY TAKE CUSTODY OF A NEWBORN. The following individuals may take custody of a newborn relinquished under this chapter:

(a) An emergency medical technician.

(b) A hospital staff member specified in s. HFS 39.03 (14) (a) to (g).

(c) A law enforcement officer.

(2) INDIVIDUALS REQUIRED TO TAKE CUSTODY OF A NEWBORN. If a law enforcement officer or emergency medical technician is requested to meet a parent who wishes to relinquish a newborn, the law enforcement officer or emergency medical technician shall meet the parent and take custody of the newborn in the manner specified in s. HFS 39.09.

(3) LIMITATIONS ON TAKING CUSTODY. The individuals specified in subs. (1) and (2) shall be actively employed by, or under contract with, an emergency medical service provider, and acting within the scope of the contract or employment during the act of relinquishment and until custody of the newborn is transferred to an intake worker as required in s. HFS 39.09 (3).

(4) COMPLETION OF RESPONSIBILITIES UPON TAKING CUSTODY. If a person who takes custody of a newborn under this chapter cannot subsequently fulfil the requirements of s. HFS 39.09, the requirements of s. HFS 39.09 shall be fulfilled by any other person described in sub. (1).

HFS 39.06 Court authority upon relinquishment. Upon completion of the act of relinquishment, the court has exclusive original jurisdiction of a relinquished newborn as specified under s. 48.13 (2m), Stats. Custody of a relinquished newborn may not be returned to a parent or transferred to any other person, except as provided in ss. HFS 39.09 (3) and HFS 39.05 (1), and s. 48.207, Stats., or by court order pursuant to ch. 48, Stats.

HFS 39.07 Health and safety of a newborn upon relinquishment. (1) A law enforcement officer, emergency medical technician, or hospital staff member who takes a newborn into custody under this chapter shall take any action necessary to protect the health and safety of the newborn, including obtaining hospital-provided emergency medical services for each newborn taken into custody under this chapter.

(2) If the location of a relinquishment is not a hospital, an ambulance service provider shall transport the newborn to the nearest hospital.

(3) A hospital receiving a newborn under this chapter shall provide care for the newborn as provided in this chapter, ch. HFS 124, and s. 146.301, Stats.

(4) Within 5 days after taking or receiving custody of a newborn, a hospital staff member shall file a birth certificate for the newborn under s. 69.14 (3), Stats.

(5) The act of relinquishment shall be presumed to be parental consent for the purpose of providing medical treatment and care to a relinquished newborn until an appropriate court order is granted under s. 48.373 (1), Stats.

HFS 39.08 Anonymity and confidentiality. (1) A parent who relinquishes custody of a newborn, or a person assisting a parent in that relinquishment, may do so anonymously.

(2) A parent who relinquishes custody of a newborn or a person assisting the parent with the relinquishment, who chooses to relinquish a newborn anonymously under sub. (1) may refuse to provide identifying information to, and may, at any time, leave the presence of, the law enforcement officer, emergency medical technician, or hospital staff member who took custody of the newborn, unless the law enforcement officer, emergency medical technician, or hospital staff member reasonably believes that one of the following circumstances exists:

(a) The newborn has been abused or neglected, as defined in ss. 48.02 (1) and 48.981 (1) (d), Stats.

(b) The parent is being coerced or induced into relinquishing the newborn.

(3) No person, including an officer, employee, or agent of this state or a political subdivision of this state, may induce or coerce or attempt to induce or coerce a parent or a person assisting a parent in relinquishing a newborn under this chapter to provide identifying information or attempt to ascertain identifying information from, or follow, or pursue, or locate a parent who relinquishes a newborn under this chapter or a person that assisted a parent in

relinquishing a newborn, unless the person reasonably believes that the circumstances in sub. (2) (a) or (b) exist.

(4) Any person who has or obtains information relating to the relinquishment of a newborn shall keep that information confidential and may not disclose that information, except to the persons specified in s. 48.195 (2) (d), Stats.

(5) (a) A parent who chooses to be identified during the act of relinquishment may be asked all of the information specified in s. 39.09 (1), and any other information deemed pertinent by the person taking custody of the newborn.

(b) A parent who anonymously relinquishes a newborn under sub. (1) may choose to be identified as a parent of the newborn subsequent to the relinquishment by following the procedures specified in HFS 39.11.

(6) Nothing in this chapter shall affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs the duties prescribed by law or under his or her licensure or certification.

HFS 39.09 Responsibilities of a person taking custody of a newborn. In addition to protecting the health and safety of the newborn as required under s. HFS 39.07, a person taking custody of a newborn under this chapter shall do all of the following:

(1) Inform the parent, and any person assisting the parent with the relinquishment, of the anonymity provisions in s. HFS 39.08. If the parent chooses under s. HFS 39.08 (5) to provide identifying information or be identified as a parent of the newborn, make a reasonable effort to obtain all of the following:

(a) Information regarding the social and health history of each parent of the newborn, and of the families of each parent as prescribed by the department.

(b) Information on the ethnicity and race of the newborn, including whether the newborn is of American Indian heritage and, if so, any tribal affiliation.

(c) The name, address, telephone number, and any other identifying information of each parent, and any person assisting a parent in the relinquishment.

(2) Offer the parent who relinquishes a newborn and any person present with a parent during the relinquishment the publication entitled *Relinquishment Brochure and Questionnaire* created by the department. If the parent or a person present with the parent refuses the information offered, document the refusal as prescribed in sub. (6).

Note: For a free copy of the *Relinquishment Brochure and Questionnaire*, write or call the Publications Manager, Division of Children and Family Services, 1 W. Wilson St., P.O. Box 8916, Madison, WI 53708-8916. The telephone number is 608-267-7932. The publication can also be found on the Department's website at http://www.dhfs.state.wi.us/Children/CPS/index.HTM

(3) (a) Within 24 hours after taking custody of the newborn, transfer custody of the newborn to the intake worker in the county where the relinquishment occurred and provide, as

requested by the intake worker, all of the information relating to the relinquishment obtained before, during and after the act of relinquishment.

(b) Upon accepting custody of a relinquished newborn, the intake worker shall immediately request that the appropriate law enforcement agency investigate and determine, through the Wisconsin missing children information clearinghouse, the National Center for Missing and Exploited Children, and any other national and state resource, whether the newborn has been reported as a missing child. The intake worker shall document the request and results of the search in the usual and customary manner of performing intake services under ch. 48, Stats.

(4) Take custody of the newborn or child and immediately notify, as appropriate, a law enforcement agency or officer, if any of the following circumstances are believed to exist:

(a) The person attempting to relinquish the newborn or child is not the parent of the newborn or child.

(b) The child is more than 72 hours old.

(c) The newborn or child has been abused or neglected, as defined in ss. 48.02 (1) and 48.981 (1) (d), Stats.

(d) The parent who is relinquishing the newborn is being induced or coerced, or has been induced or coerced, into relinquishing the newborn.

(5) A law enforcement officer notified under sub. (4), shall make a referral to the bureau, or county department if required under s. 48.981 (3), Stats.

(6) Document all of the non-identifying information observed or obtained during the relinquishment, including the information obtained from performing the responsibilities in subs. (1) to (5) and in s. HFS 39.07.

HFS 39.10 Responsibilities of emergency medical service providers. An emergency medical service provider whose employee or agent takes custody of a newborn or who may be required to dispatch a law enforcement officer or emergency medical technician under this chapter shall do all of the following:

(1) Develop and implement written policies and procedures that set forth how the emergency medical service provider will cooperate with other emergency medical service providers to perform its responsibilities under this chapter.

(2) Develop and implement written policies and procedures to guide employees and agents in their activities performed under this chapter.

(3) Ensure that an employee or agent who takes custody of a newborn under this chapter is trained in the policies and procedures developed pursuant to subs. (1) and (2).

(4) Maintain a supply of the publication entitled *Relinquishment Brochure and Questionnaire* to be distributed by an employee or agent pursuant to s. HFS 39.09 (2).

Note: For a free copy of the *Relinquishment Brochure and Questionnaire*, write or call the Publications Manager, Division of Children and Family Services, 1 W. Wilson St., P.O. Box 8916, Madison, WI 53708-8916. The telephone number is 608-267-7932. The Relinquishment Brochure and Questionnaire can also be found on the Department's website at http://www.dhfs.state.wi.us/Children/CPS/index.HTM

(5) Maintain all of the following written documentation:

(a) Name and title of the employee or agent who took custody of the newborn and the name and title of any other employee or agent present during the act of relinquishment.

(b) Date and time of the relinquishment, and address where the relinquishment occurred. If the actual address cannot be ascertained, the nearest cross street to the location where the relinquishment occurred.

(c) Any relevant information relating to the relinquishment given to an employee or agent.

(d) Information on the general health of the newborn at the time of the relinquishment and during the transfer of custody of the newborn to an intake worker under s. HFS 39.09 (3).

(e) Any non-identifying observations concerning the relinquishment made by an employee or agent who took custody of a newborn and any employee or agent who was present during the relinquishment or was otherwise involved in the relinquishment.

(f) A description of all actions taken by an employee or agent after the newborn was taken into custody, including all locations that a newborn was taken and the reason the newborn was taken to any of the specified locations.

(g) The age or estimated age of the newborn.

(h) The name and address of the intake worker, and the date, time, and location that custody was transferred to the intake worker under s. HFS 39.09 (3).

(i) Whether the newborn is believed to have been abused or neglected, as defined in ss. 48.02 (1) and 48.981(1) (d) Stats.

(j) The date on which a birth certificate for the newborn was filed as specified in s. HFS 39.07 (4).

(k) Whether the parent or person assisting with the parent during the relinquishment refused to accept any information offered.

(L) Whether the parent or person assisting the parent voluntarily provided any identifying information.

(m) Whether the employee or agent that took custody of the newborn informed the parent and the person assisting the parent during the relinquishment, of the anonymity and confidentiality provisions specified in s. HFS 39.08.

(n) Procedures that prescribe the transfer of responsibilities under s. HFS 39.05 (4) from an employee or agent who took custody of a newborn to a different employee or agent authorized under s. HFS 39.05 (1) or (2) to take custody of a newborn.

(6) Make available in a location conspicuous to an employee and agent a copy of this chapter and the policies and procedures developed and implemented under subs. (1) and (2).

(7) Develop and implement any other written policies and procedures that may be required by the department under this chapter.

HFS 39.11 Procedures for being identified as a parent of a newborn. (1) If a parent who relinquished a newborn anonymously under s. HFS 39.08 (1) later wishes to be identified as a parent of the newborn, or the other parent of the newborn wishes to be identified as a parent of the newborn, the parent shall contact the intake worker in the county in which the relinquishment occurred.

(2) An intake worker contacted by a parent under sub. (1) shall advise the parent of the procedures to be followed by the intake worker under ch. 48, Stats., concerning a newborn alleged to be in need of protection or services under s. 48.13 (2m), Stats.

(3) An intake worker contacted by a parent under this section, shall make a reasonable effort to obtain from the parent any identifying information about the parent, the other parent of the newborn, and any other information necessary for the performance of the intake worker's responsibilities under ch. 48, Stats.

HFS 39.12 Immunity from liability. Any parent who relinquishes custody of a newborn under this chapter and any person who assists a parent in that relinquishment, and any law enforcement officer, emergency medical technician, or hospital staff member who takes a newborn into custody under this chapter has the immunity and limitations on immunity as specified in s. 48.195 (4), Stats.

HFS 39.13 Medical assistance eligibility. A newborn who is taken into custody under this chapter is presumed to be eligible for medical assistance as specified in s. 48.195 (5), Stats.

The rules included 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) (intro.), Stats.

Wisconsin Department of Health and Family Services

Dated:

By: _____
Helene Nelson
Secretary

SEAL:

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2001 Session

☒ Original	☐ Updated	LRB Number	Amendment Number if Applicable
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number Ch. HFS 39

Subject

Relinquishing and Reclaiming Custody of a Newborn

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb within agency's budget. ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No Local Government Costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

None

Assumptions Used in Arriving at Fiscal Estimate

This rule implements new statutory provisions at s. 48.195, Stats. Under the law and the rule, a person can relinquish custody of a newborn to a law enforcement officer, emergency medical technician or a hospital staff member. The purpose of the law is to prevent a parent from abandoning a child in a place where the child would be at substantial risk of death. Prior to the law, these abandoned children either would have died or would have been found and placed in foster care. The new law should decrease the number of child deaths and increase the number of children placed safely in foster care. If the number of children in foster care increases, costs will increase for county human services or social services department and for DHFS, which operates the child protective services system in Milwaukee County. Given the very small numbers of such cases, there will be little change in the number of children placed in foster care and, therefore, there will be little or no increase in costs. However, any change in costs are the result of the new statutory provision and not this rule.

Long-Range Fiscal Implications

None.

Prepared By: Mark S. Mitchell	Telephone No. (608) 261-8316	Agency DHFS/DCFS/BPP
Authorized Signature	Telephone No. 266-9622	Date (mm/dd/ccyy) 02/03/2003