



2009 ASSEMBLY BILL 780

1 **AN ACT** *to amend* 48.625 (1), 49.34 (5m) (b) 1. and 2., 49.34 (5m) (em), 49.343 (2)
2 (b) (intro.), 49.343 (2) (b) 5., 49.343 (2) (c), 49.343 (3), 49.343 (4) (a) and 49.343
3 (4) (c); and *to create* 48.625 (1g), 49.343 (1d) (cg), 49.343 (1d) (cr), 49.343 (2) (b)
4 1m., 49.343 (2) (b) 6., 49.343 (5) and 49.343 (6) of the statutes; **relating to:**
5 elimination of surplus retention limitations for residential care centers for
6 children and youth, group homes, and child welfare agencies that provide
7 rate-based services for the Department of Children and Families or a county
8 department of human services or social services; determination of the rates
9 charged by those providers; establishment of a performance-based contracting
10 system for those providers; requiring the Department of Children and Families
11 to certify the need for a new group home or for an increase in the capacity of an
12 existing group home; extending the time limit for emergency rule procedures;

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1 providing an exemption from emergency rule procedures; requiring the
2 exercise of rule-making authority; and making an appropriation.

Analysis by the Legislative Reference Bureau

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

3 **SECTION 1d.** 48.625 (1) of the statutes is amended to read:

4 48.625 (1) Any person who receives, with or without transfer of legal custody,
5 5 to 8 children, not including children who under sub. (1m) are not counted toward
6 that number, to provide care and maintenance for those children shall obtain a
7 license to operate a group home from the department. To obtain a license under this
8 subsection to operate a group home, a person must meet the determination of need
9 requirement under sub. (1g), meet the minimum requirements for a license
10 established by the department under s. 48.67, meet the requirements specified in s.
11 48.685, and pay the license fee under sub. (2). A license issued under this subsection
12 is valid until revoked or suspended, but shall be reviewed every 2 years as provided
13 in s. 48.66 (5).

14 **SECTION 1g.** 48.625 (1g) of the statutes is created to read:

15 48.625 (1g) No person may apply for a license under sub. (1) to operate a new
16 group home or for an amendment to a license under sub. (1) that would increase the
17 bed capacity of an existing group home until the department has reviewed the need
18 for the additional placement resources that would be made available by the issuance
19 or amendment of the license and has certified in writing that a need exists for the
20 proposed additional placement resources. The department shall promulgate rules
21 to implement this subsection.

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1 **SECTION 1m.** 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
8 the same rate-based service that generated the surplus or to address the
9 programmatic needs of clients served by the same rate-based service that generated
10 the surplus. This subdivision does not apply to a child welfare agency that is
11 authorized under s. 48.61 (7) to license foster homes, a group home, as defined in s.
12 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02
13 (15d).

14 2. Subject to subd. 3. and par. (em), a provider may accumulate funds from more
15 than one contract period under this paragraph, except that, if at the end of a contract
16 period the amount accumulated from all contract periods for a rate-based service
17 exceeds 10% of the amount of all current contracts for that rate-based service, the
18 provider shall, at the request of a purchaser, return to that purchaser the purchaser's
19 proportional share of that excess and use any of that excess that is not returned to
20 a purchaser to reduce the provider's unit rate per client for that rate-based service
21 in the next contract period. If a provider has held for 4 consecutive contract periods
22 an accumulated reserve for a rate-based service that is equal to or exceeds 10% of
23 the amount of all current contracts for that rate-based service, the provider shall
24 apply 50% of that accumulated amount to reducing its unit rate per client for that
25 rate-based service in the next contract period. The department may grant an

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1 exception to this subdivision upon request of a provider that is a child welfare agency
2 that is authorized under s. 48.61 (7) to license foster homes, a group home, as defined
3 in s. 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02
4 (15d).

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

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

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

15 49.343 **(1d)** (cg) “Performance-based contracting system” means a system of
16 paying a provider for services based on the achievement of specified measurable
17 outcomes.

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

19 49.343 **(1d)** (cr) “Provider” means a residential care center for children and
20 youth, a group home, or a child welfare agency.

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

23 49.343 **(2)** (b) (intro.) The department shall review a proposed rate submitted
24 under par. (a) and audit the ~~residential care center for children and youth, group~~
25 ~~home, or child welfare agency~~ provider submitting the proposed rate to determine

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1 whether the proposed rate is appropriate to the level of services to be provided, the
2 qualifications of the ~~residential care center for children and youth, group home, or~~
3 ~~child welfare agency~~ provider to provide those services, and the reasonable and
4 necessary costs of providing those services. In reviewing a proposed rate, the
5 department shall consider all of the following factors:

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

7 49.343 (2) (b) 1m. Changes in the consumer price index for all urban
8 consumers, U.S. city average, for the medical care group, as determined by the U.S.
9 department of labor, for the 12 months ending on June 30 of the year in which the
10 proposed rate is submitted.

11 **SECTION 7.** 49.343 (2) (b) 5. of the statutes, as created by 2009 Wisconsin Act
12 28, is amended to read:

13 49.343 (2) (b) 5. Changes in service delivery proposed by the ~~residential care~~
14 ~~center for children and youth, group home, or child welfare agency~~ provider and
15 agreed to by the department.

16 **SECTION 8.** 49.343 (2) (b) 6. of the statutes is created to read:

17 49.343 (2) (b) 6. Whether the agency is accredited by a national accrediting
18 body that has developed child welfare standards.

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

21 49.343 (2) (c) If the department determines under par. (b) that a proposed rate
22 submitted under par. (a) is appropriate, the department shall approve the proposed
23 rate. If the department does not approve a proposed rate, the department shall
24 negotiate with the ~~residential care center for children and youth, group home, or~~
25 ~~child welfare agency~~ provider to determine an agreed to rate. If after negotiations

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1 a rate is not agreed to, the department and residential care center for children and
2 youth, group home, or child welfare agency the provider shall engage in mediation
3 under the rate resolution procedure promulgated by rule under sub. (4) to arrive at
4 an agreed to rate. If after mediation a rate is not agreed to, the residential care center
5 for children and youth, group home, or child welfare agency may not provide the
6 service for which the rate was proposed department shall order a rate for the service
7 after considering the factors under par. (b). A provider may appeal the rate set by
8 the department as a contested case under ch. 227 by filing with the department a
9 request for a hearing within 30 days after the date of the order.

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

12 49.343 (3) AUDIT. The department may require an audit of any residential care
13 center for children and youth, group home, or child welfare agency provider for the
14 purpose of collecting federal funds.

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

17 49.343 (4) (a) Standards for determining whether a proposed rate is
18 appropriate to the level of services to be provided, the qualifications of a residential
19 care center for children and youth, group home, or child welfare agency provider to
20 provide those services, and the reasonable and necessary costs of providing those
21 services.

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

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1 49.343 (4) (c) Procedures for reviewing proposed rates, including rate
2 resolution procedures for ~~mediating an agreed to~~ ordering a rate when negotiations
3 and mediation fail to produce an agreed to rate.

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

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

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

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

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

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

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

22 1. Identify measurements by which to evaluate the performance of providers
23 in meeting both the goals for the children placed in their care and the goals for the
24 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.

19 **SECTION 14m. Nonstatutory provisions.**

20 (1) DETERMINATION OF NEED FOR ADDITIONAL GROUP HOME PLACEMENT RESOURCES;
21 RULES.

22 (a) *Permanent rules.* The department of children and families shall submit in
23 proposed form the rules required under section 48.625 (1g) of the statutes, as created
24 by this act, to the legislative council staff under section 227.15 (1) of the statutes no

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1 later than the first day of the 3rd month beginning after the effective date of this
2 paragraph.

3 (b) *Emergency rules.* The department of children and families may promulgate
4 the rules required under section 48.625 (1g) of the statutes, as created by this act,
5 as emergency rules under section 227.24 of the statutes. Notwithstanding section
6 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
7 paragraph remain in effect until the date on which the rules submitted under
8 paragraph (a) take effect. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of
9 the statutes, the department is not required to provide evidence that promulgating
10 a rule under this paragraph as an emergency rule is necessary for the preservation
11 of the public peace, health, safety, or welfare and is not required to provide a finding
12 of emergency for a rule promulgated under this paragraph.

13 (1m) PERFORMANCE-BASED CONTRACTING SYSTEM. The authorized FTE positions
14 for the department of children and families are increased by 0.63 FED positions, to
15 be funded from the appropriation under section 20.437 (1) (n) of the statutes, for the
16 performance of services associated with the implementation of the
17 performance-based contracting system under section 49.343 (6) of the statutes, as
18 created by this act.

19 (2) REQUIRED GENERAL FUND BALANCE. Section 20.003 (4) of the statutes does not
20 apply to the action of the legislature in enacting this act.

21 **SECTION 14r. Fiscal changes.**

22 (1) PERFORMANCE-BASED CONTRACTING SYSTEM. In the schedule under section
23 20.005 (3) of the statutes for the appropriation to the department of children and
24 families under section 20.437 (1) (a) of the statutes, as affected by the acts of 2009,
25 the dollar amount is increased by \$200,000 for the second fiscal year of the fiscal

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SECTION 14r

1 biennium in which this subsection takes effect to increase the authorized FTE
2 positions for the department by 2.37 GPR positions for the performance of services
3 associated with the implementation of the performance-based contracting system
4 under section 49.343 (6) of the statutes, as created by this act.

5 (END)