

**2009 DRAFTING REQUEST**

**Bill**

Received: **02/03/2010**

Received By: **gmalaise**

Wanted: **Today**

Identical to LRB:

For: **Legislative Council - JLC 7-9485**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - out-of-home placement**

Extra Copies:

Submit via email: **YES**

Requester's email: **anne.sappenfield@legis.wisconsin.gov**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Child welfare provider rates

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1			mduchek 02/10/2010	_____	mbarman 02/10/2010		S&L
/P2	gmalaise 02/04/2010	kfollett 02/09/2010		_____			
/1	gmalaise 02/15/2010	kfollett 02/15/2010	jfrantze 02/15/2010	_____	mbarman 02/15/2010	cduerst 02/24/2010	

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

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*2/26/10*

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/P2	gmalaise 02/04/2010	kfollett 02/09/2010					

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FE Sent For:

1        **AN ACT** *to amend* 49.34 (5m) (b) 1. and 2. and 49.343 (2) (c); and *to create* 49.343  
2            (1) (cr), 49.343 (1d) (cg), 49.343 (2) (b) 1m. and 5m., 49.343 (2) (d), 49.343 (4) (c),  
3            49.343 (5) and 49.343 (6) and (7) of the statutes; **relating to:** surplus limitations for  
4            providers rate-based services for the department of children and families or a county  
5            department, child welfare provider rates, and establishing performance-based  
6            contracting for providers of out-of-home residential care for children.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft 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 must meet certain statutory standards. Under one of these 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% 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% 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 4 consecutive contract periods an accumulated reserve for a service that is equal to or exceeds 10% of the amount of all

current contracts for that service, the provider must apply 50% of that accumulated amount to reducing its unit rate per client for that service in the next contract period.

This draft exempts child welfare agencies, group homes, and RCCs from current law limiting the amount of reserves a provider may retain from the surplus generated by a rate-based service in a contract period to 5% of the contract amount. This draft also permits DCF to grant an exception to a child welfare agency, group home, or RCC, upon request of the child welfare agency, group home, or RCC, to the provisions that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10% 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 residential care centers (RCCs) for children and youth and group homes to annually submit to DCF the per client rate 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 RCC, group home, or child welfare agency to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the RCC, group home, or child welfare agency to provide those services, and the reasonable and necessary costs of providing those services. Current law sets forth factors 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 proposed rate, DCF must negotiate with the RCC, group home, or child welfare agency to determine an agreed to rate. If after negotiations a rate is not agreed to, DCF and the RCC, group home, or child welfare agency 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 RCC, group home, or child welfare agency may not provide the service for which the rate was proposed.

The draft adds factors 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 agency is accredited by a national accrediting body that has developed child welfare standards.

The draft provides that if after mediation, a group home, RCC, or child welfare agency rate, a rate is not agreed to, DCF must order a rate for the



service after considering the factors set forth under current law for reviewing a proposed rate. Under the draft, an RCC, group home, or child welfare agency may appeal the rate set by the department as a contested case under ch. 227 by filing a request for a hearing with DCF within 30 days after the date of the order.

This draft creates a performance-based contracting system for group homes, RCCs, and child welfare agencies that will be implemented over a 3-year period beginning January 1, 2011. DCF, in consultation with an advisory committee, will identify performance-based contracting 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. In the year beginning January 1, 2011, DCF must select a representative sample of providers whose performance will be evaluated on the attainment of the measurements identified by the advisory committee. At the end of 2011, DCF, in consultation with the advisory committee, must adjust the measurements as needed.

Beginning January 1, 2013, all providers must have their performance evaluated on the attainment of the identified measurements. Adjustments in the measurements may be made thereafter on an as-needed basis.

Under the draft, DCF must report to the appropriate legislative standing committees on performance-based contracting by November 1, 2010.

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 subs. 2. and 3. and par. (em), if revenue under a contract  
3           for the provision of a rate-based service exceeds allowable costs incurred in the contract  
4           period, the provider may retain from the surplus generated by that rate-based service up to 5%  
5           of the contract amount. A provider that retains a surplus under this subdivision shall use that  
6           retained surplus to cover a deficit between revenue and allowable costs incurred in any  
7           preceding or future contract period for the same rate-based service that generated the surplus  
8           or to address the programmatic needs of clients served by the same rate-based service that  
9           generated the surplus. This subdivision does not apply to a child welfare agency that is  
10          authorized under s. 48.61 (7) to license foster homes, a group home as defined in s. 48.02 (7),  
11          or a residential care center for children and youth as defined in s. 48.02 (15d).

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

This SECTION exempts child welfare agencies, group homes, and RCCs from current law limiting the amount of reserves a provider may retain from the surplus generated by a rate-based service in a contract period to up to 5% of the contract amount. This SECTION also permits DCF to grant an exception to a child welfare agency, group home, or RCC, upon request of the child welfare agency, group home, or RCC, to the provisions that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that service.

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

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

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

5           49.343 (1d) (cg) "Performance-based contracting" means a method of paying a  
6 provider for services based on the achievement of specified measurable outcomes.

**NOTE:** SECTIONS 2 and 3 create definitions for "provider" and "performance-based contracting".

7           **SECTION 4.** 49.343 (2) (b) 1m. and 5m. of the statutes are created to read:

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

11           5m. Whether the agency is accredited by a national accrediting body that has developed  
12 child welfare standards.

**NOTE:** This SECTION adds 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 the draft, 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.

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

3           49.343 (2) (c) If the department determines under par. (b) that a proposed rate submitted  
4 under par. (a) is appropriate, the department shall approve the proposed rate. If the department  
5 does not approve a proposed rate, the department shall negotiate with the residential care  
6 center for children and youth, group home, or child welfare agency to determine an agreed to  
7 rate. If after negotiations a rate is not agreed to, the department and residential care center for  
8 children and youth, group home, or child welfare agency shall engage in mediation under the  
9 rate resolution procedure promulgated by rule under sub. (4) to arrive at an agreed to rate. If  
10 after mediation a rate is not agreed to, the department shall order a rate for the service after  
11 considering the factors under par. (b). A residential care center for children and youth, group  
12 home, or child welfare agency may not provide the service for which the rate was proposed  
13 appeal the rate set by the department as a contested case under ch. 227 by filing with the  
14 department a 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 proposed rate is not approved by DCF and DCF and the provider do not agree to a rate after negotiations and mediation. Under the draft, 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.

15           SECTION 6. 49.343 (2) (d) of the statutes is created to read:

16           49.343 (2) (d) Beginning January 1, 2010, the department shall do the following:

17           1. In cooperation with the advisory committee established in sub. (5), identify  
18 performance-based contracting measurements, by which to evaluate the performance of  
19 providers in meeting both the goals for the children placed in their care, and the goals for the  
20 out-of-home care system in this state.

1           2. In cooperation with the advisory committee, adjust, as needed, the  
2 performance-based contracting measurements.

**NOTE:** This SECTION requires DCF, beginning on January 1, 2010, to identify performance-based contracting measures and the goals for the out-of-home care system in Wisconsin and to adjust, as needed, the performance-based measurements in cooperation with the advisory committee created in this draft.

3           **SECTION 7.** 49.343 (4) (c) of the statutes, as created by 2009 Wisconsin Act 28, is created  
4 to read:

5           49.343 (4) (c) Procedures for reviewing proposed rates, including procedures for  
6 ordering a rate when negotiations 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.

7           **SECTION 8.** 49.343 (5) of the statutes is created to read:

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

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

15           (b) The implementation of rate regulation for residential care centers, group homes, and  
16 child welfare agencies, as authorized in this section.

1 (c) The identification of performance-based contracting measurements and the  
2 development of payment levels that correspond to the achievement of these measurements  
3 based on the assessed level of care of the child.

**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 setting for RCCs, group homes, and child welfare agencies, and the identification of performance-based measurements and payment levels that correspond to the achievement of these measurements.

4 **SECTION 9.** 49.343 (6) and (7) of the statutes are created to read:

5 49.343 (6) (a) Beginning January 1, 2011, the department shall select a representative  
6 sample of providers whose performance shall be evaluated on the attainment of the  
7 performance-based contracting measurements developed under sub. (2) (d) 1. The  
8 department, in consultation with the advisory committee established under sub. (5), shall  
9 adjust, as needed, the performance-based measurements developed under sub. (2) (d) 1., by  
10 December 31, 2011.

11 (b) Beginning January 1, 2013, all providers in this state shall be evaluated on the  
12 attainment of performance-based contracting measurements developed under sub. (2) (d) 1.  
13 The department, in consultation with the advisory committee shall adjust, as needed, the  
14 performance-based measurements developed under sub. (2) (d) 1., by December 31, 2013,  
15 and in subsequent years as determined necessary by the department.

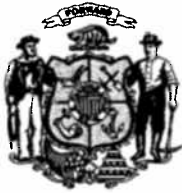
16 (7) By November 1, 2010, the department shall submit under s. 13.172 (3), a report to  
17 the legislative standing committees with jurisdiction over child welfare issues, which outlines  
18 a plan for implementation of performance-based contracting and identifying the  
19 performance-based contracting measures developed under sub. (5) (c).

**NOTE:** This SECTION requires DCF to select a representative sample of RCCs, group homes, and child welfare agencies, beginning on January 1, 2011, whose performance must be evaluated on the attainment of performance-based contracting measurements. The SECTION also provides that, beginning January 1, 2013, all RCCs, group homes, and child welfare agencies must be evaluated on the attainment of performance-based contracting measurements.

The SECTION requires DCF, by November 1, 2010, to submit a report to the legislative standing committees with jurisdiction over child welfare issues which outlines a plan for implementation of performance-based contracting and identifying the performance-based contracting measurements developed by DCF in cooperation with the advisory committee.

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(END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

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LRB-4257/P

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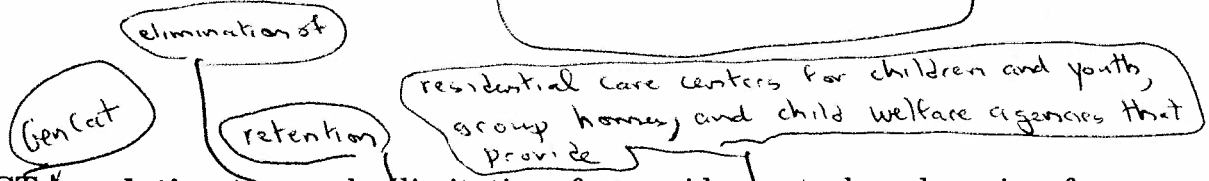
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

anal: jlenote

This bill is explained in the <sup>(b)</sup> NOSES provided by the Joint Legislative Council in the bill.

FE-SL



- 1 AN ACT relating to surplus limitations for providers rate-based services for <sup>& human services or social services</sup> the department of children and families or a county department child welfare
- 2 <sup>determination of the</sup> provided rates, <sup>recharged by those providers</sup> and establishing performance-based contracting <sup>system</sup> for providers
- 3 of out-of-home residential care for children; <sup>establishment of a</sup>
- 4 <sup>and requiring the exercise of rule-making authority</sup>

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This <sup>(bill)</sup> draft was prepared for the Joint Legislative Council's Special Committee on Child Welfare Provider Rate Implementation.

**Surplus Revenue**

<sup>& human services or social services (county department)</sup>

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 must meet certain statutory standards. Under one of <sup>those</sup> these 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 <sup>5</sup> 5% 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

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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% 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 4 consecutive contract periods an accumulated reserve for a service that is equal to or exceeds 10% of the amount of all current contracts for that service, the provider must apply 50% of that accumulated amount to reducing its unit rate per client for that service in the next contract period.

This ~~draft~~ exempts child welfare agencies, group homes, and ~~RCCs~~ from current law limiting the amount of reserves a provider may retain from the surplus generated by a rate-based service in a contract period to 5% of the contract amount. This ~~draft~~ also permits DCF to grant an exception to a child welfare agency, group home, or RCC, upon request of the child welfare agency, group home, or RCC, to the provisions that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10% 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 residential care centers (RCCs) for children and youth and group homes to annually submit to DCF the per client rate 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 ~~RCC, group home, or child welfare agency~~ to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the ~~RCC, group home, or child welfare agency~~, to provide those services, and the reasonable and necessary costs of providing those services. Current law sets forth factors 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 proposed rate, DCF must negotiate with the ~~RCC, group home, or child welfare agency~~ to determine an agreed to rate. If after negotiations a rate is not agreed to, DCF and the ~~RCC, group home, or child welfare agency~~ 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 ~~RCC, group home, or child welfare agency~~ may not provide the service for which the rate was proposed.

The ~~draft~~ adds factors 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 agency is accredited by a national accrediting body that has developed child welfare standards.

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(1)(u) Performance-Based Contracting System

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DCF must evaluate the performance of

Beginning January 1, 2013, all providers must have their performance evaluated on the attainment of the identified measurements. Adjustments in the measurements may be made thereafter on an as-needed basis.

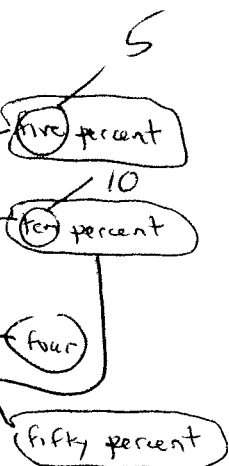
~~Under the Act, DCF must report to the appropriate legislative standing committees on performance-based contracting by November 1, 2010.~~

- 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
- 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

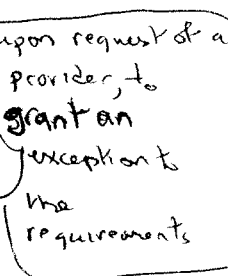
identified by DCF in cooperation with the advisory committee. By the end of 2013, DCF, in consultation with the advisory committee, must adjust those measurements as needed. Thereafter, adjustments

1 a purchaser to reduce the provider's unit rate per client for that rate-based service  
 2 in the next contract period. If a provider has held for 4 consecutive contract periods  
 3 an accumulated reserve for a rate-based service that is equal to or exceeds 10% of  
 4 the amount of all current contracts for that rate-based service, the provider shall  
 5 apply 50% of that accumulated amount to reducing its unit rate per client for that  
 6 rate-based service in the next contract period. The department may grant an  
 7 exception to this subdivision upon request of a provider that is a child welfare agency  
 8 that is authorized under s. 48.61 (7) to license foster homes, a group home, as defined  
 9 in s. 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02  
 10 (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% 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 amount accumulated from all contract periods for a rate-based service exceeds 10% 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 4 consecutive contract periods an accumulated reserve for a service that is equal to or exceeds 10% of the amount of all current contracts for that service, the provider must apply 50% of that accumulated amount to reducing its unit rate per client for that service in the next contract period.



This SECTION exempts child welfare agencies, group homes, and RCCs from current law limiting the amount of reserves a provider may retain from the surplus generated by a rate-based service in a contract period to up to 5% of the contract amount. This SECTION also permits DCF to grant an exception to a child welfare agency, group home, or RCC, upon request of the child welfare agency, group home, or RCC, to the provisions that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that service.



Insert 4-11

SECTION 2. 49.343 (1) (cr) of the statutes is created to read:

49.343 (1) (cr) "Provider" means a residential care center for children and youth, a group home, or a child welfare agency.

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

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1 49.343 (1d) (cg) "Performance-based contracting" means a method of paying  
2 a provider for services based on the achievement of specified measurable outcomes.

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

3 SECTION 4. 49.343 (2) (b) 1m. ~~and 5m~~ of the statutes ~~are~~ created to read:

4 49.343 (2) (b) 1m. Changes in the consumer price index for all urban  
5 consumers, U.S. city average, for the medical care group, as determined by the U.S.  
6 department of labor, for the 12 months ending on June 30 of the year in which the  
7 proposed rate is submitted.

8 ~~5m~~ Whether the agency is accredited by a national accrediting body that has  
9 developed child welfare standards.

NOTE: ~~This~~ SECTION ~~adds~~ 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 the draft, 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.

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

12 49.343 (2) (c) If the department determines under par. (b) that a proposed rate  
13 submitted under par. (a) is appropriate, the department shall approve the proposed  
14 rate. If the department does not approve a proposed rate, the department shall  
15 negotiate with the ~~residential care center for children and youth, group home, or~~  
16 ~~child welfare agency~~ to determine an agreed to rate. If after negotiations a rate is  
17 not agreed to, the department and ~~residential care center for children and youth,~~  
18 ~~group home, or child welfare agency~~ shall engage in mediation under the rate  
19 resolution procedure promulgated by rule under sub. (4) to arrive at an agreed to  
20 rate. If after mediation a rate is not agreed to, the department shall order a rate for  
21 the service after considering the factors under par. (b). ~~A residential care center for~~

Insert 5-2

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Insert 5-7

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a.c. (b)

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3 and 4

15

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49.343 (2)(b) sum. 6.

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the

department shall order a rate for the service after considering the factors under par. (b). A provider may

1 children and youth, group home, or child welfare agency may not provide the service  
2 for which the rate was proposed, appeal the rate set by the department as a contested  
3 case under ch. 227 by filing with the department a request for a hearing within 30  
4 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 proposed rate is not approved by DCF and DCF and the provider do not agree to a rate after negotiations and mediation. Under the draft, 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.

SECTION 6. 49.343 (2) (d) of the statutes is created to read:

49.343 (2) (d) Beginning January 1, 2010, the department shall do the following:

1. In cooperation with the advisory committee established in sub. (5), identify performance-based contracting 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.

2. In cooperation with the advisory committee, adjust, as needed, the performance-based contracting measurements.

NOTE: This SECTION requires DCF, beginning on January 1, 2010, to identify performance-based contracting measures and the goals for the out-of-home care system in Wisconsin and to adjust, as needed, the performance-based measurements in cooperation with the advisory committee created in this draft.

SECTION 7. 49.343 (4) (c) of the statutes, as created by 2009 Wisconsin Act 28,

is amended to read:

49.343 (4) (c) Procedures for reviewing proposed rates, including procedures for ordering a rate when negotiations 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.

Insert 6-13

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if

this SECTION (cs)

under 4. 15.04(1)(c)

1 SECTION 8. 49.343 (5) of the statutes is created to read:

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

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

9 (b) The implementation of rate regulation for residential care centers, group  
10 homes, and child welfare agencies <sup>providers</sup> as authorized <sup>under</sup> in this section. <sup>specified in sub. (6)(a)</sup>

11 (c) The identification of <sup>the</sup> performance-based contracting measurements, and the  
12 development of <sup>the</sup> payment levels that correspond to the achievement of these  
13 ~~measurements based on the assessed level of care of the child~~ <sup>specified in sub. (6)(a)</sup>

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 setting for RCCs, group homes, and child welfare agencies, and the identification of performance-based measurements and payment levels that correspond to the achievement of these measurements.

14 SECTION 9. 49.343 (6) ~~and 15~~ of the statutes are created to read:

15 49.343 (6) (a) <sup>(c)</sup> Beginning <sup>on</sup> January 1, 2011, the department shall select a  
16 representative sample of providers whose performance shall be evaluated on the  
17 ~~attainment of the performance-based contracting measurements developed under~~ <sup>and evaluate the performance of those providers in attaining the</sup>  
18 ~~sub. (2) (d)~~ <sup>par. (a) 1</sup> <sup>Based on that evaluation, the</sup> department, in consultation with the advisory committee  
19 <sup>created</sup> established under sub. (5), shall adjust, as needed, the performance-based  
20 ~~measurements developed under sub. (2) (d)~~ <sup>those measurements</sup> by December 31, 2011.

21 <sup>(d)</sup> Beginning <sup>on</sup> January 1, 2013, all providers in this state shall be evaluated on  
22 ~~the attainment of performance-based contracting measurements developed under~~ <sup>in attaining the</sup> <sup>the</sup> <sup>identified</sup>

regulation for providers  
Insert 7-14 14

attaining

SECTION 9

par. (a)

Based on that evaluation, the

created under sub. (5),

1 sub. (2) (d) The department, in consultation with the advisory committee, shall  
 2 adjust, as needed, the performance-based measurements developed under sub. (2)  
 3 (d) 1, by December 31, 2013, and in subsequent years as determined necessary by  
 4 the department.

5 (7) By November 1, 2010, the department shall submit under s. 13.172 (3), a  
 6 report to the legislative standing committees with jurisdiction over child welfare  
 7 issues, which outlines a plan for implementation of performance-based contracting  
 8 and identifying the performance-based contracting measures developed under sub.

(5) (c)

Finally, this providers, beginning on January 1, 2011,

providers and evaluate the performance of those providers in attaining the

Insert 8-9

~~NOTE: This SECTION requires DCF to select a representative sample of RCCs, group homes, and child welfare agencies, beginning on January 1, 2011, whose performance must be evaluated on the attainment of performance-based contracting measurements. The SECTION also provides that beginning January 1, 2013, all RCCs, group homes, and child welfare agencies must be evaluated on the attainment of performance-based contracting measurements.~~

The SECTION requires DCF, by November 1, 2010, to submit a report to the legislative standing committees with jurisdiction over child welfare issues which outlines a plan for implementation of performance-based contracting and identifying the performance-based contracting measurements developed by DCF in cooperation with the advisory committee.

Identified by DCF in cooperation with the advisory committee

10

(END)

of  
 to evaluate the performance of all providers in this state in attaining those

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FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4257/P2ins  
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(INSERT 3-1)

not, develop payments 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.

(END OF INSERT)

(INSERT 4-11)

1 SECTION 1. 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.

History: 1995 a. 27; 1997 a. 79; 2007 a. 20; 2009 a. 28. ✓

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.

(END OF INSERT)

(INSERT 5-2)

10 SECTION 2. 49.343 (2) (b) (intro.) of the statutes, as created by 2009 Wisconsin  
11 Act 28, is amended to read:  
12 49.343 (2) (b) (intro.) The department shall review a proposed rate submitted  
13 under par. (a) and audit the residential care center for children and youth, group



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

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343; 2009 a. 28, 71.

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.

(END OF INSERT)

(INSERT 5-7)

7 **SECTION 3.** 49.343 (2) (b) 5. of the statutes, as created by 2009 Wisconsin Act  
 8 28, is amended to read:

9 49.343 (2) (b) 5. Changes in service delivery proposed by the ~~residential care~~  
 10 ~~center for children and youth, group home, or child welfare agency~~ provider and  
 11 agreed to by the department.

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343; 2009 a. 28, 71.

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.

12 **SECTION 4.** 49.343 (2) (b) 5. of the statutes is created to read:

(END OF INSERT)

(INSERT 6-13)

13 **SECTION 5.** 49.343 (3) of the statutes, as affected by 2009 Wisconsin Act 28, is  
 14 amended to read:

1           49.343 (3) AUDIT. The department may require an audit of any residential care  
2           ~~center for children and youth, group home, or child welfare agency provider~~ for the  
3           purpose of collecting federal funds.

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343; 2009 a. 28, 71.

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.

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

6           49.343 (4) (a) Standards for determining whether a proposed rate is  
7           appropriate to the level of services to be provided, the qualifications of a residential  
8           ~~care center for children and youth, group home, or child welfare agency provider~~ to  
9           provide those services, and the reasonable and necessary costs of providing those  
10          services.

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343; 2009 a. 28, 71.

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.

(END OF INSERT)

(INSERT 6-17)

11          49.343 (4) (c) Procedures for reviewing proposed rates, including rate  
12          ~~resolution~~ procedures for ~~mediating an agreed to~~ ordering a rate when negotiations  
13          and mediation fail to produce an agreed to rate.

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343; 2009 a. 28, 71.

(END OF INSERT)

(INSERT 7-14)

14          49.343 (6) PERFORMANCE-BASED CONTRACTING SYSTEM. (a) For purposes of  
15          implementing a performance-based contracting system, the department, in

1 cooperation with the advisory committee created under sub. (5), shall do all of the  
2 following:

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

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

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

(END OF INSERT)

(INSERT 8-9)

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.

(END OF INSERT)

**Malaise, Gordon**

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**From:** Rose, Laura  
**Sent:** Monday, February 15, 2010 9:15 AM  
**To:** Sappenfield, Anne; Malaise, Gordon  
**Subject:** LRB 4257/P1: Legislative Council draft on child welfare rate regulation

Hi Anne and Gordon

I've reviewed the above-mentioned draft and it is ready to be drafted as 4257/1. No changes are needed.

Thanks,

Laura

*Laura D. Rose, Deputy Director*

Wisconsin Legislative Council

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Madison, WI 53701-2536

tel: 608.266.9791

fax: 608.266.3830

[laura.rose@legis.wisconsin.gov](mailto:laura.rose@legis.wisconsin.gov)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4257/R

GMM:kjf:md

(IN 2113)

(Today -- convert to /1 -- no change)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Regen

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.

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***Analysis by the Legislative Reference Bureau***

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

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

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***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

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

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



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~~<sup>✓</sup> 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~~<sup>✓</sup> 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."

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.

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<sup>✓</sup> 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<sup>✓</sup>, 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

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.

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.

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.

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.

1

(END)

**Parisi, Lori**

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**From:** Sappenfield, Anne  
**Sent:** Wednesday, February 24, 2010 10:14 AM  
**To:** LRB.Legal  
**Cc:** Malaise, Gordon  
**Subject:** Draft Review: LRB 09-4257/1 Topic: Child welfare provider rates

Please Jacket LRB 09-4257/1 for the ASSEMBLY.

Please also prepare a draft for a Senate companion. Thanks!!

Anne Sappenfield