# Chapter DCF 54

## CHILD–PLACING AGENCIES

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**Note:** Chapter HSS 54 was renumbered chapter HFS 54 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1999, No. 522. Chapter HFS 54 was renumbered to chapter DCF 54 under s. 13.92 (4) (b) 1., Stats., Register November 2008 No. 635.

**DCF 54.01 Introduction. (1)** PURPOSE. The purpose of this chapter is to protect and promote the health, safety and welfare of children in the care of child–placing agencies and to establish the administrative rate that a child–placing agency may charge for services for foster homes with a Level 3 or 4 certification.

**(2)** APPLICABILITY. This chapter applies to all child–placing agencies.

**(3)** EXCEPTIONS TO RULES. The department may make exceptions to any provision of this chapter that is not a statutory requirement if the department is assured that granting such exceptions is not detrimental to the health, safety and welfare of children. A request for an exception shall be in writing, justify the reason for requesting an exception, and describe an alternative that meets the intent of the requirement.

**(3m)** COMPLIANCE WITH ADMINISTRATIVE RULES AND LAWS. A person who is licensed under this chapter shall operate the agency in compliance with this chapter, the provisions of the license, and applicable state, federal, and local law.

**(4)** DEFINITIONS. (a) "Administrative rate" means the difference between the rate charged by a child–placing agency to a Wisconsin public purchaser of services for a foster home with a Level 3 or 4 certification and the rate determined under s. DCF 56.23 that is paid by the child–placing agency to the foster parent for the care and maintenance of a child placed in the foster home.

**Note:** A purchaser of services may pay a foster parent for the care and maintenance of a child directly.

(am) "Board of directors" means the policy–making body which governs a child welfare agency.

(b) "Child" means a person who is under 21 years of age and is under juvenile court jurisdiction or other court order, is being provided services by a child welfare agency, or is placed under an agreement.

(c) "Child custody proceedings" has the meaning prescribed in the Indian Child Welfare Act, 25 USC 1903 (1), and as provided in that act includes foster care placements, termination of parental right proceedings, pre–adoptive placements and adoptive placements.

(d) "Child–placing agency" means a child welfare agency licensed to place children in licensed family foster homes and licensed group homes.

(e) "Child welfare agency" means any person required to be licensed under s. 48.60, Stats.

(em) "County department" or "county" means a county department of social services under s. 46.215 or 46.22, Stats.; a county department of human services under s. 46.23, Stats.; or a county department under s. 51.42 or 51.437, Stats.

(f) "Department" means the department of children and families.

(g) "Division" means the department's division of safety and permanence.

(gm) "Foster home with a Level 3 or 4 certification" means a facility operated by a person licensed under s. 48.62 (1), Stats., and certified under s. DCF 56.13 (5) or (6).

(h) "Guardian" means the person or agency appointed by a court to make major decisions affecting a child which may include consent to marriage, to enlistment in the armed forces, to major surgery and to adoption, or to manage the estate of a minor.

(i) "Indian child" has the meaning prescribed in 25 USC 1903 (4), namely, any unmarried person who is under age 18 and is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(j) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of their status as Indians.

(k) "Legal custodian" means the person or agency to whom a court has transferred a child's legal custody, and who thereby has the right and duty to protect, train and discipline the child and to provide for the child's care needs. "Legal custody" has the meaning prescribed in s. 48.02 (12), Stats.

(L) "Wisconsin public purchaser" means a county department, the department, or the Wisconsin department of corrections.

**History:** Cr. Register, September, 1982, No. 321, eff. 10–1–82; am. (4) (c), Register, December, 1983, No. 336, eff. 1–1–84; emerg. renum. (4) (c) to (h) to be (4) (d) to (h) and (k), cr. (4) (c), (i) and (j), eff. 9–5–92; renum. (4) (c) to (h) to be (4) (d) to (h) and (k), cr. (4) (c), (i) and (j), Register, May, 1993, No. 449, eff. 6–1–93; CR 04–040: cr. (3m) Register December 2004 No. 588, eff. 1–1–05; corrections in (4) (f) and (g) made under s. 13.92 (4) (b) 6., Stats., Register November 2008 No. 635; EmR1106: emerg. am. (1), (3), renum. (4) (a) to be (4) (am), cr. (4) (a), (gm), eff. 9–16–11; CR 11–026: am. (1), (3), renum. (4) (a) to be (4) (am), cr. (4) (a), (em), (gm), (L) Register December 2011 No. 672, eff. 1–1–12; EmR1414: emerg. r. and recr. (4) (b), eff. 8–1–14; CR 14–054: r. and recr. (4) (b) Register April 2015 No. 712, eff. 5–1–15.

**DCF 54.02 Organization and administration. (1)** INCORPORATION. Every child welfare agency shall be incorporated. Any agency incorporated outside of Wisconsin shall secure authorization from the secretary of state to do business in Wisconsin.

**(2)** BOARD OF DIRECTORS. (a) Every agency shall be governed by a board of directors which is responsible for the operation of the agency according to its defined purposes.

(b) If the agency is incorporated in another state, the board of directors shall:

1. Meet in Wisconsin at least once during the period for which the license is issued, or

2. Have a subcommittee of at least 3 Wisconsin residents one of whom shall be a member of the board. This subcommittee shall be responsible to the board of directors to see that board policies are carried out and that there is adherence to licensing rules.

(c) When requested, the board, or its subcommittee if it is in the category covered by par. (b) 2., shall meet with its licensing representative.

(d) The board shall:

1. Define its responsibilities. These responsibilities shall include:

a. The establishment of policies to be followed by the agency and regular planned review of policies and purposes of the agency to determine that the interests of children are being served.

b. Surveillance that the agency does not discriminate in its personnel practices, intake and services on the basis of race, color and national origin.

c. The exercise of trusteeship for property, investment and protection from liability.

d. Approval of the budget and responsibility for obtaining and disbursing of funds.

e. Employment of a qualified executive and delegation to that executive the responsibility for the administration of the agency and the employment of other staff members.

2. Meet at least semiannually and keep minutes of each meeting which shall be made a part of the permanent records of the agency.

3. Keep informed to ensure that the agency fulfills its functions.

4. Consult with the department prior to the establishment of a new agency or the changing of a basic program of care of an existing agency or the extension of service into additional program or geographic areas.

5. Notify the department when there is a change in the executive of the agency and/or the chief officer of the board.

6. Notify the department of any major changes pending or occurring in the corporate structure, organization or administration of the agency.

**(3)** APPLICATION. (a) The board shall submit to the department an application to operate an agency in a form prescribed by the department for a license. The application shall be signed by the chief officer of the board and the agency executive. It shall not operate the agency until it receives such a license.

**Note:** An application form may be obtained from the department's website at http://dcf.wisconsin.gov or by writing or telephoning any field office listed in Appendix A.

(b) If the board is applying for a license for the first time the application shall be submitted at least 60 days prior to the date on which it proposes to begin operation.

(c) The following material shall accompany the first application for a license:

1. A copy of the articles of incorporation and if existent, a copy of the constitution and by−laws.

2. Evidence of the availability of funds to carry the agency through the first year of operation.

3. A statement of purpose which includes a description of the geographic area to be served, the types of children to be accepted for care, the services to be provided and the program objectives.

4. A general description of each type of position proposed for the agency.

5. A proposed organization chart insuring that there will be staff in number and qualifications for the scope of the agency services.

6. A list of board members including the addresses of the officers of the board.

7. A proposed per client administrative rate that the child−placing agency will charge for services for foster homes with a Level 3 or 4 certification in the current year and a proposed budget with the same cost categories as the department's cost and service report under s. DCF 54.09 (1) (a).

(d) Subsequent applications shall be submitted to the department:

1. At least 30 days prior to the continuation date of the current license.

2. When an additional office is to be opened.

3. When a new program subject to licensing is to be initiated.

4. When the geographic area served is to be extended.

5. When the address of the agency is to be changed.

6. When the name of the agency is to be changed.

(e) Subsequent applications shall be sent with the following materials:

1. Copies of the annual reports published since the last license was issued.

2. The budget for the current fiscal year and the most recent financial audit.

3. A list of the current members of the board of directors and its committees.

4. The number, names, qualifications and classifications of current staff.

5. A copy of the current staff organization chart.

6. A description of any program review and evaluation and changes in program content and purpose which have occurred since the last license was issued.

7. If the expiring license is provisional, a statement showing whether the requirements on which a provisional license was based have been met, or if not, plans for meeting them.

8. A copy of any revisions of personnel practices that have been made since the last license was issued.

9. Upon the request of the department, a copy of the current staff development and in−service training plan.

(em) Within 60 days after receiving a complete application for a child−placing agency license, the department shall either approve the application and issue a license or deny the application. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial.

(er) Pursuant to s. 48.60, Stats., before the department may issue or continue a license under par. (em), the department shall review the need for additional placement resources that would be made available by licensing or continuing the license of any child welfare agency after August 5, 1973, providing care under s. 48.61 (3), Stats. If the department's review fails to indicate the need for additional placement resources neither the department nor the department of corrections may make any placements to any child welfare agency.

(f) A written amendment to the license shall be secured from the department by the board of directors prior to any changes in the conditions of the current license.

(g) When a license is granted, the board shall display the certificate of license in a prominent place in the agency.

**(3m)** LICENSE DENIAL OR REVOCATION. The department may deny, revoke or suspend a license, initiate other enforcement actions specified in this chapter or in ch. 48, Stats., or place conditions on a license if the applicant or licensee, a proposed or current employee, a volunteer or any other person having regular contact with the children, has or has been any of the following:

(a) The subject of a pending criminal charge for an action that substantially relates to the care of children or activities of the center.

(b) Convicted of a felony, misdemeanor or other offense that substantially relates to the care of children or activities of the center.

(c) Determined to have abused or neglected a child pursuant to s. 48.981, Stats., or has been determined to have committed an offense which substantially relates to the care of children or the activities of the center.

(d) The subject of a substantiated finding of misconduct in the department's nurse aide registry under s. DHS 129.10.

(e) The subject of a court finding that the person has abandoned his or her child, or has inflicted physical abuse or neglect on the child.

(f) Had a child welfare agency, group home or shelter care facility license revoked or denied within the last 5 years.

(g) Violated any provision of this chapter or ch. 48, Stats., or fails to meet the minimum requirements of this chapter.

(h) Made false statements or withheld information.

(i) Failed to comply with the requirements in s. DCF 54.09 (1) and (3).

**(4)** FINANCING. (a) The board, with the executive, shall be responsible for the safety and judicious use of the funds of the agency. Policies and practices shall be in accord with sound budgeting, disbursement and audit control procedures.

(b) Each agency shall:

1. Have sufficient funds assured to carry a new agency through its first year of operation and be able to furnish evidence to that effect.

2. Have a sound plan of financing to assure sufficient funds to enable it to carry out its defined purposes and to provide proper care for children, as required by the administrative rules relating to licensing child placing agencies.

3. Provide for annual audit of all accounts by a certified public accountant who is not in the employ of the agency nor a member of the board.

4. On request, provide the department with financial records or financial statements.

(c) The financial operation of the agency shall be on the basis of an annual budget approved by the board. This budget shall reflect anticipated expenditures and sources of income.

**History:** Cr. Register, August, 1957, No. 20, eff. 9−1−57; r. and recr. Register, September, 1970, No. 177, eff. 4−1−71; renum. from PW−CY 40.41, Register, September, 1982, No. 321, eff. 10−1−82; cr. (3) (em), Register, October, 1985, No. 358, eff. 11−1−85; emerg. cr. (5), eff. 9−5−92; CR 04−040: cr. (3) (er) and (3m) Register December 2004 No. 588, eff. 1−1−05; correction in (3m) (d) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; EmR1106: emerg. cr. (3) (c) 7., eff. 9−16−11; CR 11−026: cr. (3) (c) 7., (3m) (i) Register December 2011 No. 672, eff. 1−1−12; correction in (3m) (i) made under s. 13.92 (4) (b) 7., Stats., Register December 2011 No. 672; 2015 Wis. Act 132: am. (3) (d) 1. Register February 2016 No. 722, eff. 3−1−16.

**DCF 54.03 Personnel administration. (1)** PERSONNEL POLICIES. Each agency shall have a written statement of personnel practices adopted by the board. The board shall review personnel practices at least every 2 years.

(a) The following items shall be included in personnel practices and shall be submitted to the department for approval with the original application:

1. Job specifications for all positions of 6 months or longer duration in the agency.

2. 'Staff pattern'. There shall be a staff sufficient in number and qualifications for the scope of the agency's services.

(b) There shall be written policy statements available to all employees and made known to each employee at the time of employment including:

1. The method of wage adjustments.

2. Retirement program.

3. Health and other insurance programs.

4. Vacation, sick leave, holidays and leaves of absence.

5. Probationary status.

6. Termination procedures.

7. Agency chain of command.

8. Grievance procedures.

9. Employment outside the agency.

10. For the specific job classification for which application is being made:

a. Compensation.

b. Hours of work.

c. Job specifications.

d. Performance evaluations.

**(1m)** PERSONNEL RECORD. A personnel record shall be maintained for each staff member and be available to authorized licensing staff. The record shall include:

(a) Employment application showing qualifications and experience.

(b) Statements from previous employers or personal references.

(c) Dates of employment.

(d) Reports of job performance, if any.

(e) Medical reports, if pertinent.

(f) When the employee terminates employment, the dates and the reasons for separation.

**(2)** PERSONNEL. (a) *General qualifications.* 1. All employees shall have the ability and emotional stability to carry out their assigned duties.

2. Character references from at least 2 people and references from previous employers within the last 5 years must be obtained for prospective employees.

3. References may be documented either by letter or verifications in the record of verbal contact giving dates, person making the contact and persons contacted and the contact content.

4. The agency shall review and investigate application information carefully to determine whether employment of the individual is in the best interests of children under its care.

(b) *Administrative staff.* 1. An executive or administrator shall be employed who shall:

a. Possess a knowledge of child welfare services and a demonstrated actual or potential administrative skill and leadership.

b. Be a graduate of a college or university with a minimum of 15 graduate credits in the social sciences.

c. Have at least 2 years experience in an administrative or supervisory capacity.

2. The executive's duties in administering the agency shall include:

a. Responsibility to the board for satisfactory management.

b. Keeping the board informed of the program of the agency.

c. Interpreting and implementing recognized standards of child welfare.

d. Preparing and presenting the annual budget for discussion and approval.

e. Responsibility for the operation of the program of child welfare in employment, supervision and discharge of staff.

3. If the executive also functions as casework supervisor he shall meet the additional requirements for that classification.

4. There shall be a qualified staff person to whom authority is delegated in the absence of the executive.

(c) *Social service staff.* 1. If a director of social services is employed, he shall have a master's degree from an accredited school of social work and a minimum of 2 years of post master's degree social work experience in a supervisory capacity supplemented by or including experience in family or child welfare.

2. A casework supervisor shall have a master's degree in social work, or its equivalent and have a minimum of 2 years of supervised experience in family or child welfare.

3. An advanced social worker shall meet one of the following:

a. A master's degree in social work, or

b. One year of graduate work in an accredited graduate school of social work or its equivalent and at least 2 years supervised experience in family or child welfare, or

c. College graduation and at least 3 years of supervised experience in family and child welfare with 12 graduate credits in social work plus approved in−service training.

3m. At least 50% of the social worker staff shall be in the advanced social work category.

4. College graduates may be employed who do not have the foregoing training and experience. They shall have a minimum of 15 hours in the social sciences and within 2 years of employment have completed an approved in−service training program.

5. Persons who do not have qualifications for social worker but who have an interest in working with people may assist the social services staff. Employees in this classification shall have professional social worker supervision. They shall not assume the full responsibilities and duties normally assigned to a social worker.

(d) *Consultant services.* The agency shall provide consultant services as required to meet the needs of the children. Consultants shall meet the standards of their professional groups.

(e) *Volunteers.* If volunteers are used, the agency shall assign an appropriate staff member to evaluate and supervise them and to develop a plan for their orientation, training and use.

**(3)** STAFF DEVELOPMENT AND IN−SERVICE TRAINING. (a) The agency shall have within one year of original licensure, written material concerning the process and content of orientation, staff development and in−service training programs for agency employees.

(b) These programs shall include provision for the development of a working knowledge of these rules as they pertain to individual responsibilities of each employee.

**History:** Cr. Register, August, 1957, No. 20, eff. 9−1−57; r. and recr. Register, September, 1970, No. 177, eff. 4−1−71; renum. from PW−CY 40.43 and am. (2) (c) 5. and 6. and (d), Register, September, 1982, No. 321, eff. 10−1−82; correction in (1) made under s. 13.93 (2m) (b) 1., Stats., Register, May, 1993, No. 449; CR 04−040: renum. (2) (a) 1. a. to c. to be (2) (a) 1. to 4. Register December 2004 No. 588, eff. 1−1−05.

**DCF 54.04 Social services. (1)** GENERAL REQUIREMENTS. (a) The agency shall provide services to children who need and seek its care without discrimination on the basis of race or cultural identification, sex, sexual orientation, age, creed, ancestry, disability, political affiliations, religious beliefs, color, or national origin.

(b) Each agency shall:

1. Develop and follow written intake policies that include asking the referring person or agency to indicate if the child or at least one of the child's biological parents is of American Indian descent.

2. Secure and record information which substantiates the planning for the child.

3. Accept a child for placement only when legally authorized to do so.

4. Obtain from the parent or guardian of every child accepted for care a written authorization for emergency surgical care, for necessary vaccinations and immunizations, for routine medical examinations and treatment.

(c) The agency shall substantiate that continuing social services to the child, to his parents and to the foster parents on a planned basis are provided while the child is in placement.

(d) Adopt written policies for placement and discharge from service.

(e) When the agency is terminating its responsibility to the child release the child only to a person or agency authorized to accept the child.

(f) Requirements to be met by licensee in order to place children in boarding care. A child welfare agency with authority to place children in licensed foster homes and to license foster homes (s. 48.61 (3) and (7), Stats.) shall:

1. Have a social service supervisory staff of one or more persons who meet the requirements of s. DCF 54.03 (2) (c) 2. and have at least one year's experience in the study of foster homes, licensing, placement and supervision of foster care.

2. License only homes which meet the foster home rules.

3. Place children only in homes which meet the foster home rules.

4. Place and/or supervise a minimum of 5 children a year in foster care, exclusive of adoptive placement.

5. Assign the responsibility for supervision to one staff person when there are fewer than 20 children in foster care.

6. Place no child under the care of the agency in the home of a staff person employed by the agency or a member of the board of directors. This does not pertain to persons whose only employment by the agency is in the foster parent role.

7. Maintain individual foster home records for each home used by the agency which includes signed applications and agreements.

8. Establish an administrative plan for periodic review of children in boarding home placement.

(g) Requirements to be met by licensee in order to accept guardianship. A child welfare agency with authority to accept guardianship and place children for adoption under ss. 48.43 (1), 48.61 (5) and 48.70 (4), Stats., shall:

1. Furnish evidence of providing a service to cover a geographic area with no less than a 50 mile radius or 200,000 population base.

2. Have a social service supervisory staff of one or more persons available, who, in addition to meeting the requirements of s. DCF 54.03 (2) (c) 2., have one year's experience in the study, placement, and postplacement services in an agency authorized to place children for adoption.

3. Place at least 15 children in adoption a year.

4. If fewer than 20 children are under supervision or placed within one year, assign this responsibility to one staff person.

5. Assign to one worker no less than 5 placements a year.

6. Accept applicants only from the geographical area covered by the license.

7. Develop and follow written intake policies for the acceptance of children and prospective adoptive families. Intake policies shall include asking the referring person or agency to indicate if the child or at least one of the child's biological parents is of American Indian descent.

8. Establish an administrative plan for a periodic review of children in the agency's guardianship.

9. When a child is determined ready for placement the child shall be placed within 3 months by the guardianship agency or referred to another agency or resource for placement.

10. Provide postplacement services to the adoptive family for the purpose of effecting a successful integration of the child into the family.

11. Maintain a record of the study of the adoptive home and of the placement and postplacement services.

12. Require workers to inform prospective adoptive parents interested in adopting a special needs child about the subsidized adoption program and that they may submit an application for an adoption subsidy.

13. Comply with ch. DCF 53 regarding adoption information search and disclosure to adoptees and disclosure of medical, genetic and non−identifying social history information to the courts, adoptees, adoptive parents or birth parents.

**(2)** PROGRAM OF CHILD CARE. (a) *Education.* The agency shall be responsible for providing opportunities for academic and vocational training.

(b) *Health care.* The agency shall:

1. See that each child has a thorough health appraisal and a rehabilitative health program as indicated.

2. Have on file the written authorization from parent or guardian as required in sub. (1) (b) 4.

3. Provide for consultation to staff in the areas of medical, dental, psychological and psychiatric need.

4. Obtain, when needed, psychiatric and psychological services including tests and examinations.

(c) *Admission examination—health qualifications.* Each child shall have a physical examination from a qualified physician within 90 days prior to the initial acceptance for placement. If the foregoing has not occurred, the examination shall be given within 48 hours after acceptance.

1. Prior to placement the child shall have been observed by a person competent to recognize common signs of communicable diseases.

2. It shall be determined that each child is adequately immunized against the following diseases:

a. Diphtheria

b. Polio

c. Tetanus

d. Whooping cough (if under 5 years)

e. Measles (rubeola)

f. German measles (rubella)

g. Mumps

3. Each child shall have been given a tuberculin test, and chest X−ray if indicated, within 6 months prior to acceptance.

4. All medical reports, i.e., physical examinations, tests and recommendations shall be in writing and filed with the agency.

(d) *Medical examinations.* Each agency shall provide for each child annually a health examination covering the areas included on a department−prescribed form.

**Note:** A health examination form may be obtained by writing or telephoning any field office listed in Appendix A.

(e) *Medical care.* 1. Each agency shall have a plan and make provisions for prompt treatment in illnesses and for carrying out corrective measures and treatment of remedial defects or deformities.

2. Procedures for hospitalization shall be established.

(f) *Dental care.* 1. Each agency shall provide for regular dental examinations and treatment including necessary prophylaxis, repairs and extractions.

2. Each child over 3 shall have a thorough dental examination as soon as practical after acceptance for care and at intervals thereafter not exceeding 6 months after the last examination or completion of treatment.

(g) *Eye care.* Children who are in need of glasses shall have refractions at a minimum of once every 2 years and shall be supplied with glasses as required.

(h) *Special care.* Foster parents shall be informed of the expected precautions to be taken in the care of sick children and in the handling of medicines and prescriptions.

(i) *Medical records.* A health record shall be maintained for each child covering the following health history:

1. Pre−natal and birth history.

2. Developmental history.

3. Previous illness, injuries and surgery.

4. Immunizations and tests.

5. Social, emotional and environmental history of the child.

6. Height and weight record.

7. Health history of the child's family including mental, or emotional problems.

(j) *Clothing.* The agency shall furnish each child with clothing which is individually selected and fitted, appropriate to the season and comparable to that of other children in the community.

(k) The licensee shall be knowledgeable of and ensure that staff members and volunteers observe the patient rights and grievance resolution procedures in s. 51.61, Stats., and ch. DHS 94, for each resident that receives services for treatment of mental illness, a developmental disability, alcoholism or drug dependency. Residents that are not specifically identified as coming under s. 51.61, Stats., and ch. DHS 94 shall have rights and access to grievance resolution procedures that are comparable to those found in s. 51.61, Stats., and ch. DHS 94.

**History:** Cr. Register, August, 1957, No. 20, eff. 9−1−57; r. and recr. Register, September, 1970, No. 177, eff. 4−1−71; am. (2) (c) 1. b., Register, December, 1972, No. 204, eff. 1−1−73; renum. from PW−CY 40.43 and am. (1) (f) 1., (g) (intro.) and 2. and (2) (b) 2., Register, September, 1982, No. 321, eff. 10−1−82; cr. (1) (g) 12., Register, January, 1984, No. 337, eff. 2−1−84; cr. (1) (g) 13., Register, October, 1984, No. 346, eff. 11−1−84; correction in (1) (g) 9. made under s. 13.93 (2m) (b) 5., Stats., Register, June, 1986, No. 366; emerg. am. (1) (b) 1. eff. 9−5−92 and am. (1) (g) 7. eff. 11−1−92; am. (1) (b) 1. and (g) 7., Register, May, 1993, No. 449, eff. 6−1−93; CR 04−040: cr. (2) (k) Register December 2004 No. 588, eff. 1−1−05; corrections in (1) (f) 1., (g) 2., 13. and (2) (k) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; EmR1106: emerg. am. (1) (a), eff. 9−16−11; CR 11−026: am. (1) (a) Register December 2011 No. 672, eff. 1−1−12.

**DCF 54.05 Indian children. (1)** DETERMINATION THAT A CHILD IS OR MAY BE AN INDIAN CHILD. If an agency has obtained information at intake or through other means that the child or at least one of the child's biological parents is or may be of American Indian descent, the child's case manager shall:

(a) Carry out and document in the child's case record diligent efforts, including but not limited to contacting the potential tribe or tribes' membership or enrollment offices and child welfare offices, and the U.S. department of interior's bureau of Indian affairs where contacts with individual tribes do not document the child's Indian descent, to verify that the child is an Indian child and to identify the child's Indian tribe;

(b) Inform the court of a determination that the child is an Indian child and of the factual basis for that determination and document and date in the child's case record that determination; and

(c) Comply with 25 USC 1912 (a).

**(2)** COMPLIANCE WITH INDIAN CHILD WELFARE ACT. If the agency determines under sub. (1) that a child is an Indian child, the agency shall comply with all provisions of the Indian Child Welfare Act, 25 USC 1901 to 1963, and s. 48.028, Stats.

**(3)** SERVICES FOR INDIAN CHILD AND FAMILY. (a) Before providing services to an Indian child and the Indian child's family, the agency shall inform the child's tribe, if known, and ask for the tribe's participation in efforts to provide services to the Indian child and the Indian child's family. The child's case manager shall document and date in the child's case record agency efforts to inform the tribe and seek its participation.

(b) The Indian child's case manager shall undertake active efforts to prevent breakup of the child's family by providing remedial services and rehabilitative programs to the Indian child and the child's family in accordance with 25 USC 1912 (d). The child's case manager shall document and date those efforts in the child's case record.

**(4)** TERMINATION OF PARENTAL RIGHTS. An agency seeking the termination of parental rights to an Indian child shall notify the parents and tribe in accordance with 25 USC 1912 (a) of their rights of intervention and shall provide the court of jurisdiction with information on agency efforts described under sub. (3). The information shall include the reasons why those efforts proved unsuccessful. The agency shall record in the Indian child's case record the date the information was given to the court.

**(5)** PLACEMENT OF AN INDIAN CHILD. (a) *Adoptive placement.* 1. For the adoptive placement of an Indian child, 25 USC 1915 (a) requires that preference be given, in the absence of good cause to the contrary, to placement with, in order of priority, a member of the Indian child's extended family, another member of the Indian child's tribe or another Indian family. The Indian child's case manager shall investigate the availability of a placement in the order of priority indicated.

2. After completing the adoption of the Indian child, the child's case manager shall request in writing that the court that

ordered the adoption notify the secretary of the U.S. department of the interior of the following enrollment information:

a. The name and tribal affiliation of the Indian child;

b. The name and address of the adoptive parents; and

c. The name and address of any agency having files or information on the child's adoptive placement.

3. The Indian child's case manager shall file a copy of the written request under subd. 2. in the child's case record.

(b) *Foster care or preadoptive placement.* 1. For foster care or preadoptive placement of an Indian child, 25 USC 1915 (b) requires that the child be placed in the least restrictive setting which most approximates a family and in which any special needs of the child may be met, within reasonable proximity to the child's home. Preference is to be given, in the absence of good cause to the contrary, to placement, in order of priority:

a. With a member of the Indian child's extended family;

b. In a foster home licensed, approved or specified by the Indian child's tribe;

c. In an Indian foster home licensed by the department, a county social services or human services department or a child−placing agency; or

d. In an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

2. For foster care or preadoptive placement of an Indian child, except for an emergency placement under 25 USC 1922, the child's case manager shall investigate to determine the availability of a placement under subd. 1. in the order of priority indicated. The Indian child's case manager shall document in the child's case record the investigative efforts and results, as well as any emergency placement and the reason for it.

3. An agency seeking to place an Indian child in foster care shall notify the parents and tribe in accordance with 25 USC 1912 (a) of their right of intervention and shall provide the court of jurisdiction with information on agency efforts described under sub. (3). The information shall include the reasons why those efforts proved unsuccessful. The agency shall record in the Indian child's case record the date the information was given to the court.

(c) *Preference of tribe, child or parent.* In the case of a placement under par. (a) or (b), if the Indian child's tribe establishes a different order of preference by resolution, the agency shall follow that order so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in par. (b). Where appropriate, the preference of the Indian child or the child's parent shall be considered provided that where a consenting parent evidences a desire for anonymity, the agency shall give weight to that desire in applying the preference.

(d) *Informing the court.* Prior to the court ordering termination of parental rights, foster care placement, adoptive placement or adoption of an Indian child, the agency shall inform the court in writing of agency investigative efforts and results to determine the availability of a placement in order of priority under par. (a) or (b) including when there is an emergency placement or when a different order of preference is expressed under par. (c).

(e) *Record of placement.* When an agency places an Indian child under par. (a) or (b), the agency shall forward a record of the placement to the department. The record shall provide evidence of efforts to comply with the order of preference under par. (a) 1. or (b) 1., as appropriate. The department, pursuant to 25 USC 1915 (e), shall maintain the record and shall make it available at any time upon request of the secretary of the U.S. department of the interior or of the Indian child's tribe.

**Note:** Send records of placement to the Bureau of Permanence and Out−of−Home Care, Division of Safety and Permanence, P.O. Box 8916, Madison, WI 53708−8916.

**(6)** SANCTIONS FOR NOT COMPLYING WITH THE INDIAN CHILD WELFARE ACT. A child−placing agency which fails to follow the provisions of the Indian Child Welfare Act (ICWA), 25 USC 1901 to 1963, concerning child custody proceedings involving an Indian child shall be subject to the following department sanctions:

(a) If the child−placing agency knowingly and intentionally disregards a requirement of the ICWA, the department shall by letter of notification order the child−placing agency to stop accepting for service all Indian children referred for service to the agency. The agency shall ensure that no child accepted for service is an Indian child;

(b) If the child−placing agency knowingly and intentionally disregards the department's letter of notification under par. (a), the department shall revoke or not renew, as appropriate, the child−placing agency's license;

(c) If the child−placing agency is informed or discovers that it has unknowingly or negligently violated a requirement of the ICWA, the child−placing agency shall do the following:

1. Notify the court and the department upon being informed of or discovery of the violation of the ICWA;

2. Notify the parent Indian custodian, tribe and child upon being informed of or discovery of the violation of the ICWA; and

3. Cooperate with all parties in promptly correcting any inappropriate placements; and

(d) If the child−placing agency under par. (c) does not comply with par. (c) 1. to 3., the child−placing agency shall be subject to the sanctions under pars. (a) and (b).

**History:** Emerg. cr. eff. 11−1−92; cr. Register, May, 1993, No. 449, eff. 6−1−93.

**DCF 54.06 Records, inspections, and reports. (1)** GENERAL REQUIREMENTS. Each agency shall maintain records and submit reports prescribed by the department. Authorized representatives of the department shall have access to all records pertinent to licensing and to specific adoption searches and disclosure of the adoption search information.

**(2)** RECORDS. (a) Each agency shall maintain:

1. A permanent register with identifying information of all children accepted for service or placement.

2. Individual case records for each child served and his family.

a. These records shall contain vital statistics information for the child, his parents and siblings, source of referral, date of acceptance and terms.

b. The original social study and investigation.

c. Legal documents pertinent to legal custody and guardianship such as birth records and court reports.

d. Written agreements with parents, guardians or legal custodians. (The consent and authorization for necessary medical or surgical care may be kept separate in the health record.)

e. School reports.

f. Recording of progress of casework and/or treatment plan with child and family.

3. Individual foster home records for each foster home used by the agency which include signed applications and agreements.

4. Individual records of studied adoptive applicants.

5. Personnel records.

6. Financial reports and audits.

(b) All records shall be kept in a safe place protected from fire damage, theft and unauthorized scrutiny.

(c) All adoption records shall be maintained in a separate file and in a manner that ensures confidentiality.

1. The agency shall establish written procedures governing access to the files.

2. The agency shall establish written procedures which ensure that information is released only in accordance with ss. 48.432, 48.433 and 48.93, Stats., and ch. DCF 53.

**(3)** REPORTS. (a) Each agency shall submit statistical reports as required by the department under s. 48.66 (3), Stats.

(b) Each agency shall make a report to the department within 48 hours after the occurrence of an unusual incident such as a major fire which is defined as one which requires the services of a fire department, or the death or serious injury of a child, a serious injury being defined as one which requires the hospitalization of the child.

**(4)** INSPECTION OF PREMISES. The department may visit and inspect a child−placing agency and shall be given unrestricted access to the premises. During this inspection, a licensee shall provide all of the following:

(a) Any documentation of child−placing agency operations requested by the department.

(b) Any agency records on a child or a foster home requested by the department.

**(5)** DOCUMENTATION OF STAFFING. A licensee shall maintain and retain staff payroll records for 5 years.

**(6)** REQUESTS FOR INFORMATION. A licensee shall promptly respond to requests for information from the department or any other governmental agency with statutory authority to see the information.

**(7)** CURRENT AND ACCURATE. A licensee shall ensure that information that the licensee submits to or shares with the department or any other governmental agency is current and accurate.

**(8)** FINANCIAL RECORDS AND AUDITS. (a) A licensee shall arrange for an annual audit report by a certified public accountant in accordance with department guidelines.

**Note:** For further information, contact the Department of Children and Families, Bureau of Finance, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708−8916 or (608) 267−3905.

(b) A licensee shall establish and maintain an accounting system that enables a child−placing agency to accurately report income and disbursements by the cost categories in the cost and service report in s. DCF 54.09 (1) (a).

(c) A licensee shall be responsible for the secure and judicious use of the funds of the child−placing agency. Policies and practices shall be in accord with sound budgeting, disbursement, and audit control procedures.

(d) A licensee shall maintain a system of business management and staffing to ensure complete and accurate accounts, books, and records are maintained.

(e) Upon request, a licensee shall provide the department with financial information about the child−placing agency.

**History:** Cr. Register, August, 1957, No. 20, eff. 9−1−57; r. and recr. Register, September, 1970, No. 177, eff. 4−1−71; renum. from PW−CY 40.44, Register, September, 1982, No. 321, eff. 10−1−82; am. (1) and cr. (2) (c), Register, October, 1984, No. 346, eff. 11−1−84; emerg. renum. from HSS 54.05, eff. 11−1−92; renum. from HSS 54.05, Register, May, 1993, No. 449, eff. 6−1−93; correction in (2) (c) 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; EmR1106: emerg. am. (title), cr. (4) to (8), eff. 9−16−11; CR 11−026: am. (title), cr. (4) to (8), correction in (5) made under s. 13.92 (4) (b) 1., Stats., Register December 2011 No. 672, eff. 1−1−12.

**DCF 54.065 Department memos.** A licensee shall register to receive department memos on child welfare licensing and child welfare policy by electronic mail. A licensee shall submit a new registration if the licensee's electronic mail address changes.

**Note:** Sign up for Child Welfare Licensing Memos at https://dcf.wisconsin.gov/cwlicensing/signup . Sign up for Child Welfare Policy Memos at https://dcf.wisconsin.gov/childwelfare/signup .

**History:** EmR1106: emerg. cr., eff. 9−16−11; CR 11−026: cr. Register December 2011 No. 672, eff. 1−1−12.

**DCF 54.07 Rate determination. (1)** The department shall determine the maximum per client administrative rate that each child−placing agency may charge for the administrative portion of its services for foster homes with a Level 3 or 4 certification based on the following:

(a) A maximum per client administrative rate determined by the department that no child−placing agency may exceed.

(b) A per client administrative rate that the department determines is appropriate for each child−placing agency program based on the reasonable and necessary costs of the services provided by that child−placing agency.

**(2)** A child−placing agency shall charge all Wisconsin public purchasers the same rate for the same services.

**History:** EmR1106: emerg. cr., eff. 9−16−11; CR 11−026: cr. Register December 2011 No. 672, eff. 1−1−12.

**DCF 54.08 Allowable costs.** In determining rates under this subchapter, the department may consider costs incurred for any purpose that is allowable under all of the following:

**(1)** Applicable federal regulations, including 2 CFR Part 225, 2 CFR Part 230, 45 CFR Part 74, 45 CFR Part 92, and 48 CFR Part 31, except as provided in sub. (2).

**(2)** Reserves or profit as allowed under the following:

(a) For nonprofit corporations, reserves allowed under s. 49.34 (5m) (b) 2., Stats.

(b) For proprietary child−placing agencies, profit allowed on an annual basis is the smaller amount determined under the following 2 methods of calculating profit:

1. The equity method is the sum of 7.5 percent of allowable operating costs plus 15 percent of average net equity for the year. In this subdivision, "average net equity" means the average cost of equipment, buildings, land, and fixed equipment minus the average accumulated depreciation and average long term liabilities for the year.

2. The expenses method is 10 percent of allowable operating costs for the year.

**Note:** Further explanation is available in the department's *Allowable Cost Policy Manual*, which is available in the Partner Resources/Grants and Contract Administration section of the department's website at http://dcf.wisconsin.gov.

**History:** EmR1106: emerg. cr., eff. 9−16−11; CR 11−026: cr. Register December 2011 No. 672, eff. 1−1−12.

**DCF 54.09 Rate methodology. (1)** COST AND SERVICE INFORMATION. Each year by July 1, a licensee shall submit the following information to the department:

(a) A cost and service report in which the licensee reports the child−placing agency's costs, types of services provided, and number of children served in the previous year for services provided for foster homes with a Level 3 or 4 certification. The report shall be submitted on a department−prescribed form.

**Note:** The cost and service report form is available on the department website, http://dcf.wisconsin.gov, by clicking on foster care and adoption/child welfare licensing/rate regulation.

(b) The child−placing agency's most recent audit report under s. DCF 54.06 (8) (a).

**(2)** MAXIMUM ALLOWABLE RATE. Each year no later than September 1, the department shall notify licensees of the per client administrative rate that no child−placing agency may exceed for services provided in the following calendar year.

**(3)** PROPOSED RATES. (a) Each year no later than October 1, a licensee shall submit to the department a proposed rate for the following calendar year for each child−placing agency program that the licensee operates. The licensee shall submit the proposed rate on a department−prescribed form.

(b) A licensee may request an exception to the department's maximum rate under sub. (2) if the licensee provides a specialized service or specialized programming to a specific population of children. The exception request shall explain the benefits of the service or programming and why the licensee cannot provide the service or programming within the maximum rate. The exception request shall be made on the rate request form.

**Note:** The rate request form is available at https://dcf.wisconsin.gov/ratereg .

**(4)** REVIEW OF A PROPOSED RATE. In reviewing a proposed rate submitted by a licensee under sub. (3), the department shall consider all of the following:

(a) Whether the proposed rate exceeds the maximum rate determined by the department under sub. (2).

(b) The child−placing agency's most recent cost and service report under sub. (1) (a).

(c) The child–placing agency's most recent audit report under sub. (1) (b).

(d) Whether the child–placing agency's reported costs are within a range of similar costs reported by other child–placing agencies for similar items and services.

(e) The child–placing agency's per client administrative rate in previous years.

(f) Changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.

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

(h) Changes in the allowable costs of child–placing agencies based on current actual cost data or documented projections of costs.

(i) Changes in program utilization that affect the per client administrative rate.

(j) Changes in the department's expectations relating to service delivery.

(k) Changes in service delivery proposed by a child–placing agency and agreed to by the department.

(L) The loss of any source of revenue that had been used to pay expenses, resulting in a lower per client administrative rate for services.

(m) Whether the child–placing agency is accredited by a national accrediting body that has developed child welfare standards.

(n) Changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage, as defined in s. 49.141 (1) (g), Stats.

(o) Competitive factors.

(p) The availability of funding to pay for the services to be provided under the proposed rate.

**(5)** RATE APPROVAL. (a) Each year no later than November 1, the department shall notify each licensee that submitted all information as required under subs. (1) and (3) of the maximum approved per client administrative rate for the child–placing agency for the following year.

**Note:** The notification will be sent to the electronic mail address that the licensee has provided to the department.

(b) If the department determines that a proposed rate submitted under sub. (3) is appropriate based on the factors in sub. (4), the department shall approve the proposed rate.

(c) If the department determines that a proposed rate submitted under sub. (3) is not appropriate based on the factors in sub. (4), the department shall negotiate with a licensee to determine an agreed to rate. The department's approved rate under par. (a) following negotiations shall be based on the factors in sub. (4) and additional relevant information presented during negotiations.

(d) The department may grant a licensee's request for an exception to the department's maximum rate under sub. (3) (b) if the department determines that the licensee has shown by clear and convincing evidence that the licensee's costs are reasonable and necessary given the costs and benefits of the licensee's specialized service or specialized programming.

**(6)** NONCOMPLIANCE. If a licensee does not submit all information as required under subs. (1) and (3), the department may impose sanctions and penalties under s. DCF 54.02 (3m) and s. 48.715, Stats., including license revocation.

**History:** EmR1106: emerg. cr., eff. 9–16–11; CR 11–026: cr. Register December 2011 No. 672, eff. 1–1–12.

**DCF 54.10 Rate resolution. (1)** MEDIATION. (a) If a licensee has negotiated with the department under s. DCF 54.09 (5) (c) and does not agree to the department's approved rate under s. DCF 54.09 (5) (a), the licensee may request that the department and the licensee engage in mediation. A licensee shall send a request for mediation within 5 business days after the date of the notice in s. DCF 54.09 (5) (a). The request shall be sent by electronic mail to an address specified by the department.

**Note:** Requests for mediation should be sent to DCFCWLRateReg@wisconsin.gov.

(b) The department shall notify the licensee of the date of the mediation no later than 10 working days after receiving a request under par. (a).

(c) The issues discussed in the mediation shall be limited to the factors in s. DCF 54.09 (4).

**(2)** ORDER A RATE. If after mediation a rate is not agreed to, the department shall order a rate after considering the factors in s. DCF 54.09 (4) and relevant information presented during negotiation and mediation.

**(3)** CONTESTED RATE. (a) A licensee may appeal the rate ordered by the department under sub. (2) as a contested case under ch. 227, Stats. A request for hearing may be submitted to the division of hearing and appeals within 30 days after the date of the order.

**Note:** Requests for hearing may be sent to the Division of Hearings and Appeals, PO Box 7875, Madison, WI 53707.

(b) The basis for a request for hearing shall be limited to the factors in s. DCF 54.09 (4).

(c) The division of hearings and appeals shall notify the parties in writing at least 10 days before the hearing of the date, time, and location of the hearing and the procedures to be followed.

**History:** EmR1106: emerg. cr., eff. 9–16–11; CR 11–026: cr. Register December 2011 No. 672, eff. 1–1–12.

**DCF 54.11 Extraordinary payments. (1)** A licensee may request that a Wisconsin public purchaser pay an extraordinary payment in addition to the rate established under ss. DCF 54.07 to 54.10 for a specific child in care.

**(2)** A licensee may request and a Wisconsin public purchaser may approve a child–specific extraordinary payment if all of the following conditions are met:

(a) The child has service needs that are not accounted for in the maximum per client administrative rate for the child–placing agency as determined under s. DCF 54.09 (5) or 54.10, as applicable.

(b) The child's service needs are not paid for by another source.

(c) The extraordinary payment will be used to cover expenses that are an allowable cost under s. DCF 54.09.

**(3)** A licensee shall submit a request for an extraordinary payment to the Wisconsin public purchaser on a form prescribed by the department. The request shall be dated and signed and include all of the following:

(a) Name of the child–placing agency, licensee, and any authorized representative.

(b) Name of the child for whom an extraordinary payment is being requested.

(c) Amount of the extraordinary payment requested and time period that the extraordinary payment would cover.

(d) A rationale for the request that includes all of the following:

1. An explanation of the child's service needs.

2. The amount of money that the child–placing agency is currently spending to address the child's needs.

3. Any services that are not being provided due to economic constraints.

4. Documentation of the need for additional services by a person with expertise in the child's type of needs.

5. How additional dollars would be allocated and the means by which additional services would be provided.

**Note:** An extraordinary payment request form is available at https://dcf.wisconsin.gov/ratereg .

**(4)** The Wisconsin public purchaser shall approve or deny the request or recommend an alternative to meet the child's needs and shall notify the licensee of the determination within 10 working days after receipt of the request form. The Wisconsin public purchaser shall send a copy of the licensee request, the signed and dated determination, and the justification for the determination to the department within 20 days of the approval or non−approval of the request.

**Note:** Send the required information to the Department of Children and Families, Division of Safety and Permanence, Extraordinary Payments Panel, 201 E. Washington Avenue, P.O. Box 8916, Madison WI 53708−8916.

**(5)** A licensee may not appeal the denial of a request for an extraordinary payment under this section.

**History:** EmR1106: emerg. cr., eff. 9−16−11; CR 11−026: cr. Register December 2011 No. 672, eff. 1−1−12.

**DCF 54.12 Advisory committee.** The department shall convene the rate regulation advisory committee under s. 49.343 (5), Stats., at regular intervals to consult with the department on items in s. 49.343 (5) (a) to (c), Stats.

**History:** EmR1106: emerg. cr., eff. 9−16−11; CR 11−026: cr. Register December 2011 No. 672, eff. 1−1−12.