

Clearinghouse Rule 07-028

PROPOSED ORDER OF DEPARTMENT OF HEALTH AND FAMILY SERVICES TO ADOPT RULES

The Wisconsin Department of Health and Family Services proposes to **amend** ch. HFS 51 (title), HFS 51.01, HFS 51.02, and HFS 51.09 (2) (a) 1. and Note; and **to create** HFS 51.03 (15g), (15r), (18g) and (18r) and HFS 51.10, relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoptions, and adoptions of children with special needs, and affecting small businesses.

SUMMARY OF PROPOSED RULE

Statute interpreted: Section 48.84, Stats.

Statutory authority: Sections 48.84 (2) and 227.11 (2), Stats.

Explanation of agency authority:

Section 48.84, Stats., requires first-time proposed adoptive parents to receive preadoption preparation (i.e., training) before the child may be placed under s. 48.833, Stats., for adoption; before a prospective adoptive parent may petition for placement of a child for adoption under s. 48.837, Stats., or before a proposed adoptive parent may bring a child into Wisconsin for an international adoption under s. 48.839, Stats.

Section s. 48.84, Stats., requires the Department to establish by rule the number of hours and topics covered in the training of first-time adoptive parents. The training must cover issues that may confront adoptive parents in general and that may confront adoptive parents of special needs or international children.

Related statute or rule: Sections 48.833, 48.837, and 48.839, Stats.

Plain language analysis:

Effective April 1, 2007, 2005 Wisconsin Act 293 creates s. 48.84, Stats., to require prospective adoptive parents to receive preadoption preparation (i.e., training) in the following instances:

- Before a child may be placed under s. 48.833, Stats., (special needs adoption) for adoption;
- Before a proposed adoptive parent who has not previously adopted a child may petition for placement of a child for adoption under s. 48.837, Stats., (nonrelative adoptions); and
- Before a proposed adoptive parent who has not previously adopted a child may bring a child into Wisconsin for adoption under s. 48.839, Stats., (international adoptions).

Under s. 48.84, Stats., preadoption training must be provided by a licensed child welfare agency, a licensed private adoption agency (child placing agency), the state adoption information exchange under s. 48.55, Stats., the state adoption center under s. 48.55, Stats., a state-funded foster care and adoption resource center, or a state-funded post adoption resource center.

Section 48.84, Stats., requires the Department to establish, by rule, the number of hours of training necessary, and the training content, including information on issues that may confront adoptive parents, generally, and that may confront adoptive parents of special needs and international children.

Summary of, and comparison with, existing or proposed federal regulations:

The federal Department of State is issuing a final rule on the accreditation and approval of agencies and persons in accordance with the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000. The rule will be 22 CFR Part 96. These federal rules are anticipated to be final in the summer or fall of 2007. The rule will apply to all international adoptions. The federal proposed rule identifies eight competencies that must be included in training for pre-adoptive parents and required a total of 10 hours of training for each parent by accredited agencies.

Comparison with rules in adjacent states:

Iowa - Comparable rules for Iowa can be found at Iowa Administrative Code, Human Services (441), Title XIV, Chapter 200.4(4). The code requires training of families that adopt special needs children who are under the guardianship of the Department of Human Services. It does not require by administrative rule training for other adoptive families. The required training before placement includes completion of at least 30 hours of "Parenting for Safety and Permanence: Model Approach to Partnership in Parents" (PS-MAPP) and the self-study course, "Universal Precautions in Foster and Adoptive Family Homes" before placement of a child. The rule sets out exceptions to the pre-placement training requirement. The rule also requires that if a parent is adopting a child who is at high risk of becoming or is HIV positive, they must complete the "Caring for Children with HIV" course. Applicants have to re-take the pre-placement training if the adoption is not completed within 24 months. The training, at some point must include discussion with family members regarding problems the child may have arising out of the loss of birth parents, such as separation, loss, grief, and anger; must provide background information on the child and family; must provide information on the child's special needs; must provide a description of the child's medical needs, including whether the child is HIV positive; must discuss with family members the impact of adding a new child; must provide an explanation of the subsidized adoption program; must provide information about community resources that could assist the family. Illinois Administrative Rule, Section 309.20, and Section 309.110.

Michigan - Comparable rules for Michigan can be found at Michigan Administrative Code, Michigan Department of Human Services, Office of Children and Adult Licensing, Child Planning Agency, R 400. Section R 400.12707, requires that the child placing agency staff provide and document an orientation for prospective adoptive parents before they are determined suitable to be adoptive parents. The orientation must include a review of the agency's program, policies, and procedures; the needs and characteristics of children who are available for adoption, the legal process for adoption; services and resources that are

available; and fees and charges for services. The rule does not require any specific training for adoptive parents. However, many adoptive parents are licensed foster parents, and those parents must meet foster parent training requirements. Foster parents must go through an orientation with the child placing agency and must complete foster parent training of not less than 12 hours of training to be completed by the end of the original six month licensing period and before the placement of the child. Up to six hours of the orientation may be included as part of the 12 hours of training. They may also receive at least 12 more hours of training during the next two years after the original licensing period, and at least six hours of training annually thereafter. The training must cover the following areas: characteristics and needs of children; safe sleep practices for infants; effective parenting; behavior management; importance of the foster child's family; the role of the agency; emergency procedures including first aid and fire safety; preparation of the foster child for independence. The agency must document all training received by each foster parent.

Illinois - The Department is not aware of an Illinois administrative rule that requires adoption preparation training for private adoptions. However, if the prospective parent is adopting a ward of the Department of Children and Family Services the parent must receive training. In addition, if the parent is adopting a child from another country the parent must be licensed as a foster parent. Illinois Administrative Code, Title 89, chapter III, Subchapter b., Part 333, Section 333.4 (a) (4). Training of adoptive families is done in four phases, pre-service preparation, during the assessment phase, during the certification process, and post adoption. The rule indicates that certification training may consist of six hours of standardized training for foster care conversion adoption, or six hour of standardized training and an individualized training plan specific to the child's needs for parents who have not had the child in their home, or training specified by private child welfare agencies who meet a specified standard.

Minnesota - The Department is not aware of Minnesota administrative rules that refer to required adoption training for private or international adoptions. However, it appears that if the child is adopted through the public child welfare system the parents must complete foster parent training. Minnesota Rule, Chapter 2960, section 2960.3070, requires nonrelative foster parents to complete a minimum of six hours of orientation before placing a foster child in the home. The orientation must include information on: emergency procedures, relevant laws and rules, cultural diversity, gender sensitivity, and cultural competence, information about the rule and responsibilities of the foster parent and the development of a case plan, and the requirements of the licensing agency. In addition the foster parent must complete 12 hours of training per year in one or more of 26 areas identified in the administrative rule. Foster parents who care for a child who needs medical equipment to survive must complete medical equipment training.

Summary of factual data and analytical methodologies:

The Department relied on all of the following sources to determine the impact on adoption agencies, and to draft the proposed rules:

- The Department convened the existing Adoption Services Committee which includes representatives from the state special needs adoption program, the Bureau of Milwaukee Child Welfare, county human or social services agencies, and private adoption agencies under contract to the state, to review a variety of existing pre-adoption training curriculums, and to review the proposed Hague Convention rules on

training for pre-adoptive parents who intend to adopt a child from another country. After lengthy discussion the Committee determined that a single curriculum should not be selected because agencies needed some flexibility to develop a training program that best met the needs of their families. The Committee then developed the current rule standards which identify 10 competencies which must be included in any training program and identified a minimum total number of hours of training that must be provided to first-time pre-adoptive parents. The time spent on each competency is left to the discretion of agencies because the needs of a parent adopting a domestic infant would be different from the needs of a parent adopting a child from another country, and different again from the parent adopting a child with special needs.

- The Department conducted a written survey and follow-up telephone survey to 28 private adoption agencies licensed in the state of Wisconsin to gather information on whether the agencies currently provided training to pre-adoptive parents; the areas covered in the training; how the training is delivered; and the likely impact of the proposed rules. The Department was able to obtain responses from 26 agencies.
- The Department convened a meeting for all private adoption agencies in February 2007 to discuss the proposed rule in detail and to provide the agencies with an opportunity to discuss their concerns and questions.
- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or reduces revenues by more than the prior year's consumer price index. For the purposes of this rulemaking, 2006 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics, and for 2006 is 3.2 percent.

Analysis and supporting documents used to determine effect on small business:

Effective April 1, 2007, 2005 Wisconsin Act 293 creates s. 48.84, Stats., to require prospective adoptive parents to receive preadoption preparation (i.e., training) in the following instances:

- Before a child may be placed under s. 48.833, Stats., (special needs adoption) for adoption;
- Before a proposed adoptive parent who has not previously adopted a child may petition for placement of a child for adoption under s. 48.837, Stats., (nonrelative adoptions); and
- Before a proposed adoptive parent who has not previously adopted a child may bring a child into Wisconsin for adoption under s. 48.839, Stats., (international adoptions).

Under s. 48.84, Stats., licensed private adoption agencies are among the entities that may provide the preadoption training under s. 48.84 (1), Stats. There are 28 such agencies in the

state. According to a February 2007 Department survey, at least 25 of the 28 licensed agencies already require and provide training to first-time adoptive parents. The training currently being provided and the training required to be provided under the proposed rule is substantially similar. Consequently, any costs that these agencies may incur under the proposed rule should be nominal.

Effect on small business:

Pursuant to the forgoing analysis the Department will impact a substantial number of small businesses that are licensed private adoption agencies, but the proposed rule will not have a significant economic impact on those agencies. A rule will have a significant economic impact on adoption agencies that are small businesses if the rule would decrease revenues or increase costs, including annualized capital expenditures, by more than the prior year's consumer price index. For the purposes of this rulemaking, 2006 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2006 is 3.2 percent.

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person listed above until the date given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> when the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. Chapter HFS 51 title is amended to read:

Chapter HFS 51 ADOPTION OF CHILDREN WITH SPECIAL NEEDS AND PREADOPTION PREPARATION TRAINING

SECTION 2. HFS 51.01 and 51.02 are amended to read:

HFS 51.01 Authority and purpose. This chapter is promulgated under the authority of ss. 48.01 (1) (f), 48.48 (8), 48.84 (2), and 227.11 (2), Stats., to establish criteria and procedures for placement of special needs children in adoptive homes. The criteria and procedures are intended to ensure that every special needs child is placed in a suitable

adoptive placement with the best interests of the child as the paramount concern, that the needs of the child as the primary client are met and that persons seeking to adopt special needs children are treated fairly.

HFS 51.02 Applicability. This chapter applies to the department, to child-placing agencies providing adoption services under contract with the department, to county agencies providing adoption services under contract with the department and to all persons making inquiry or application to the department or to a child-placing agency or a county agency providing adoption services under contract with the department for adoption of special needs children, including minority children, except when procedures involving the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply. In this section, “child-placing agency” means a private child-placing agency licensed under ch. HFS 54 to accept guardianship of children and to place children under its guardianship for adoption, and “county agency” means a county social services department under s. 46.215 or 46.22, Stats., or a county human services department under s. 46.23, Stats. Section HFS 51.10 applies to a proposed adoptive parent who has not previously adopted a child with whom a child is placed or will be placed under s. 48.833 or 48.837, Stats., or who brings a child from a foreign country to Wisconsin for adoption under s. 48.839, Stats.

SECTION 3. HFS 51.03 (15g), (15r), (18g) and (18r) are created to read:

HFS 51.03 (15g) “Licensed child welfare agency” means an agency licensed by the department under s. 48.60, Stats., and Ch. HFS 54 to place children in foster homes and other out-of-home care facilities and to license foster homes or treatment foster homes.

(15r) “Licensed private adoption agency” means a licensed child welfare agency specifically authorized to place children for adoption.

(18g) “State-funded foster care and adoption resource center” means an entity funded by the department to provide information, technical assistance, and other services as authorized under s. 48.825, Stats.

(18r) “State-funded postadoption resource center” means an entity funded by the department to provide postadoption services as authorized under s. 48.825, Stats.

SECTION 4. HFS 51.09 (2) (a) 1. and Note are amended to read:

HFS 51.09 (2) (a)1. Request a review by the ~~chief~~ manager of the division’s ~~unit~~ section which conducted the screening or home study.

Note: To request a review by the ~~unit chief~~ section manager or bureau director, write:

Director
Bureau of Programs and Policies
P.O. Box 8916
Madison, WI 53708-8916

SECTION 5. HFS 51.10 is created to read:

HFS 51.10 Preadoption preparation training. (1) WHO MUST RECEIVE PREADOPTION PREPARATION TRAINING. As required under s. 48.84 (1), Stats., all of the

following individuals shall receive preadoption preparation training before the adoption is finalized:

(a) The proposed adoptive parent or parents of a child placed for adoption under s. 48.833, Stats., if the proposed adoptive parent or parents have not previously adopted a child.

(b) The proposed adoptive parent or parents prior to petitioning for placement of a child for adoption under s. 48.837, Stats., if the proposed adoptive parent or parents have not previously adopted a child.

(c) A proposed adoptive parent or parents prior to bringing a child into this state for adoption under s. 48.839, if the proposed adoptive parent or parents have not previously adopted a child.

(2) WHO MAY PROVIDE PREADOPTIVE PREPARATION TRAINING. As required under s. 48.84 (1) Stats., preadoptive preparation training shall be provided to a person identified in sub. (1) by any one of the following entities:

(a) A licensed child welfare agency.

(b) A licensed private adoption agency.

(c) The state adoption information exchange under s. 48.55, stats.

(d) The state adoption center under s. 48.55, stats.

(e) A state-funded foster care and adoption resource center.

(f) A state-funded postadoption resource center.

(3) CONTENT AND NUMBER OF HOURS OF PREADOPTION PREPARATION TRAINING. (a) *Orientation*. The training shall include a minimum of 2 hours of orientation for the adoptive parent or parents to the purpose and function of the agency through which the child is being adopted and a description of the support and services available to the adoptive family by that agency and other postadoption services available to the adoptive family through other agencies.

(b) *Core competencies*. 1. Training on the core competencies identified in this paragraph shall consist of a minimum of 16 hours. Any training provided to meet the requirements of this section by any of the entities described in sub. (2) shall include the awareness of specific understandings by the adoptive parent or parents through the development of the following competencies:

a. Adoption and its impact on parenting and family dynamics.

b. The issues for a child in an adoptive placement.

c. Loss and grief for the adopted child and the adoptive family.

- d. Attachment issues in adoptive placements.
- e. Support and resources for adopted children and adoptive families.
- f. Cultural sensitivity in adoption.
- g. Effects of abuse and neglect in adoption.
- h. Legal issues relating to adoption.
- i. Issues of children being adopted from an institutionalized care setting.
- j. Educational issues in adoption.

2. The training on the competencies shall assure that the adoptive parent or parents are provided with information appropriate to the needs of the child to be adopted.

(c) *Format of training.* The preadoptive preparation training may be provided using a variety of formats including, but not limited to, face-to-face individual or group training, audio-visual means, and printed material. In all methods, there shall be an opportunity for the adoptive parent to discuss, in person, with a representative of the agency arranging the adoption the material presented and an opportunity to present and receive answers to any questions. The agency through which the adoptive parent or parents are adopting the child shall also determine through in person contact with the adoptive parent or parents whether the adoptive parent or parents have learned the competencies identified in par. (b)1.a. to j.

(4) EXCEPTION TO THE PREADOPTION PREPARATION TRAINING. (a) If the preadoptive parent or parents held a foster care license and received foster parent training within the 12 months prior to the application to adopt a child, the preadoptive parent or parents shall do all of the following:

- 1. Attend the orientation under sub. (3) (a).
- 2. Participate in core competency training under sub. (3) (b), except as provided in par. (b) of this subsection.

(b) The agency through which the preadoptive parent or parents have applied to adopt a child shall compare the competencies included in the foster parent training received by the preadoptive parent or parents under par. (a) with the core competencies identified in sub. (3) (b). The adoption agency shall require the preadoptive parent or parents to participate in the preadoptive training to the extent that is necessary for the preadoptive parent or parents to have received 2 hours of orientation training under sub. (3) (a) and 16 hours of core training that includes all of the core competencies under sub. (3) (b) through either the previous foster parent training or the preadoptive preparation training.

(5) DOCUMENTATION AND RECORD OF THE RECEIPT OF THE PREADOPTION PREPARATION TRAINING. (a) Documentation of the receipt of the preadoption preparation training shall be maintained in the preadoptive parent's or parents' record for at least 5 years, unless otherwise required by statute or regulation, by all of the following:

1. The preadoptive parent or parents.
2. The agency through which the preadoptive parent or parents have applied to adopt a child.
3. The agency which granted the foster care license under ch. HFS 56 to the preadoptive parent or parents.
4. The agency which provided the preadoptive preparation training to the preadoptive parent or parents.

(b) The documentation of the training received and competencies learned by the preadoptive parent or parents shall be provided by any of the entities under par. (a) 1. to 4. to any county, state, or federal entity which is authorized to determine compliance with the requirements of this chapter.

SECTION 6. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and Family
Services

Dated:

Kevin R. Hayden, Department Secretary

SEAL: