

**Report From Agency**  
**Department of Children and Families**  
**Hearing Summary**

**Proposed Rules Relating to Foster Care**  
**DCF 56**  
**CR 10-148**

Public hearings were held in Milwaukee and Eau Claire on February 15 and 28, 2011. The department prepared amended proposed rules that incorporated many of the suggestions made in these two hearings. A hearing on the amended proposed rules was held in Madison on May 3.

At the May 3 hearing, comments were received from the following:

- Amelia Franck Meyer, Anu Family Services [comments on initial rules designated as (1); amended rules (1A)]
- Kathy Markeland, Wisconsin Association of Family and Children's Agencies [initial rules (18); amended rules (18A)]
- Angela Martin, Kenosha Human Development Services (7A)
- Joy Anderson, A Helping Heart, Inc. (10)
- Melissa Dombrowski-Boling and Crystal Peterson, Anu Family Services (1), submitted the same comments that they submitted at the February 15 hearing. They also resubmitted comments by representatives of agencies listed at numbers 1 to 5 below as the Foster Family Treatment Association.

At all 3 hearings, total comments and registrations against or mixed were received from the following:

- |   |                                    |
|---|------------------------------------|
| 1. Anu Family Services                      | 2. Family Works, Madison           |
| 1A. Amelia Franck Meyer, Hudson             | Nicole Ruder                       |
| Melissa Dombrowski-Boling, Waukesha         |                                    |
| Crystal Peterson, Oshkosh                   |                                    |
| Rebekah Sandell, Madison                    |                                    |
| Cheryl Everts, Madison                      |                                    |
| Amy Morgan, Milwaukee                       |                                    |
| Heather Edge, Madison                       |                                    |
| Carrie Young, Madison                       |                                    |
| 3. La Causa, Inc., Milwaukee                | 4. St. Amelian-Lakeside, Milwaukee |
| Chyra Trost                                 | Michelle Scott-Grant               |
| Karen Steinbach                             | Kristine Kuehlmann                 |
| Colleen Hoover                              | Angela Haese                       |
| Denise White, foster parent                 | Amy Bennett                        |
| 5. Fresh Start Counseling Center, Milwaukee | 6. Rock County Human Services      |
| Jermaine Reed                               | Philip Boutwell, Deputy Director   |

- |  |   |
|--|---|
| 7. Kenosha Human Development Services<br>Lester Byron Wright   | 8. Janice Harwell-Pugh<br>Milwaukee   |
| 7A. Angela Martin  |   |
| 9. Lori Knapp, Inc.-Level 5 provider<br>Kelly Gochenaur<br>Onalaska  | 10. A Helping Heart, Inc.-Level 5 provider<br>Joy Anderson<br>Madison   |
| 11. Benevolence First, Inc., Milwaukee<br>Danielle Dumas<br>Cynthia Search                                 | 12. Mary Haynes<br>Milwaukee  |
| 13. Harmony Social Services, Milwaukee<br>Jocelyn Hall<br>Rose Balistrieri<br>Timothy Boone<br>Sherry Rowe | 14. Thrive Treatment Services<br>Tammi Wagnitz, Watertown<br>Sheila Hageny, Watertown<br>Becky Johnson, Watertown<br>Bridget Shaver, Watertown<br>Jenna Daniels, Watertown<br>Lakenya Kirkendoll, Milwaukee |
| 15. Jay Warner<br>Jefferson  | 16. New Horizon Child-Placing Agency, Milwaukee<br>Sophya Harris  |
| 17. Nathan Jensen<br>Madison   |   |

The following commented for information only:

- |   |  |
|---|--|
| 18. WI Assn. of Family & Children's Agencies<br>18A. Kathy Markeland<br>Madison | 19. Family Works<br>Valerie Smith, Eau Claire<br>Karen Kress, foster parent, Rice Lake |
| 20. New Visions Treatment Homes<br>April Nielsen<br>Chetek                      | 21. Community Care Resources, Inc., Middleton<br>Renee Sutkay                          |
|   | 22. Robert and Peggy Meyers, foster parents in Fond du Lac for CCR                     |

Registered in favor of the proposed rules--Kathryn Zoellner, Thrive Treatment Services, Watertown.

Observed for information only--34 people.

## Summary of Comments and Responses on Proposed Rules

Number designates commenter from list on pages 1 to 2.

### Entire rule

*Comment (1 to 5, 19):* Refer to levels of care by names rather than level numbers.

*Department response:* This is not possible. The phrase “foster homes with a Level 3 to 5 certification” appears in many sentences that are already complex.

### DCF 56.03 Definitions

*Comment (1 to 5, 18, 19):* Define Level 3, 4, 5 Treatment foster care.

*Comment (1A):* References to Level 3 and 4 foster care should use the term “treatment foster care.”

*Department response:* The term “treatment foster care” no longer appears in the statutes or rules. Definitions are only for terms that are used in the rule. Items in the commenter’s suggested definitions regarding services provided by agencies and foster parents are already throughout the rule in substantive provisions.

There are few references to “foster care” in the rule. The rule provides the licensing requirements for foster parents and the certification requirements for foster homes.

### DCF 56.09 (2) provides that a foster home with a Level 3 to 5 certification may not also be a licensed family child care center or a certified child care home.

*Comment (1 to 5, 18):* Should allow dual licensure as a foster home and a family child care center if the child care licensors permit.

*Comment (18A):* We agree dual licensure is inappropriate in most circumstances. But it should be clear that it is possible to get an exception from both the foster care and child care licensing agencies. We are aware of a case in which child care licensors did not approve an arrangement that had existed for years.

*Department response:* The department’s Bureau of Child Care Regulation does not license or allow a child care center or certified child care home to operate in a foster home in which a foster child with a high level of need is placed, except for unusual circumstances. This language clarifies existing department practice. If approval to operate a child care center or certified child care home is granted, s. DCF 56.02 (2) describes the process to obtain an exception from the foster care licensing agency.

The specific case that the commenter is referring to involved an existing Level 2 foster home with an approved family child care center. The foster parent then applied for certification to operate a Level 3 foster home. Neither the child-placing agency nor the department’s Bureau of Child Care Regulation approved continuing the child care center if the foster parent wanted to operate a Level 3 foster home.

The department is aware of two Level 3 foster homes operated by individuals who also operate a family child care center. Both cases involved placement of a child who needed services of a Level 3 foster home and had an existing relationship with the child care licensee. In both cases, the foster parent has a child-specific license.

The department will provide explanation of this provision in its annotated version of the rules.

#### **DCF 56.09 (4) (g) No smoking**

*Comment (1):* We support the no smoking provision. These are not our kids.

#### **DCF 56.13 (5) (a) 2. Certain licensee qualifications**

To be certified to operate a Level 3 foster home, a licensee must meet at least 3 criteria from a list of 7 types of education, skills, abilities, and work or personal experience. When the Out-of-Home Care Committee reviewed the draft of this provision, they requested that certain combinations of criteria not be allowed. The department agreed and these changes were incorporated into the emergency and proposed permanent rules.

*Comment (1 to 5, 18):* We have decided we don't want this provision.

*Department response:* The department does not think that the combination of a high school degree and parenting or a substantial relationship with a child is sufficient experience to qualify a person to care for a high needs child. A person with these qualifications is able to be a foster parent for a child with a lower level of need.

The department will modify the rule to add "a college degree in the area of the child's treatment needs" as a criteria that can be combined with parenting or a substantial relationship to qualify an applicant to operate a Level 3 or 4 foster home.

*Rule change:*

- Level 3--DCF 56.13 (5) (a) 2. "shall also meet the criteria in subd. 1. a., c., e., or g."
- Level 4--DCF 56.13 (6) (a) 2. "shall also meet the criteria in subd. 1. a., c., e., or g."

#### **DCF 56.13 (5) (a) Licensee qualifications and characteristics**

*Comment (7, 7A):* The types of experience in s. DCF 56.13 (5) (a) that qualify a foster parent has little relationship with the characteristics of a good foster parent as listed in s. DCF 56.05 (1) (b). These characteristics along with a demonstrated ability to learn our treatment model are the best characteristics for being a good treatment foster parent.

*Department response:* The department disagrees.

### **DCF 56.13 (5) (c) 1. a. and (6) (c) 1. a. Reference from parent**

*Comment (1 to 5, 18, 19):* The rule appears to require a reference from a professional who knows an applicant in the role of parent, foster parent, or respite provider although an applicant is not required to have that experience.

*Department response:* **Department agrees.** We will clarify the language.

*Rule change:* DCF 56.13 (5) (c) 1. a. and (6) (c) 1. a. “At least one of these reference letters shall be regarding the applicant’s qualifications under par. (a) 1., excluding par. (a) 1. d.”

### **DCF 56.13 (5) (b) Hours of pre-placement training for Level 3 and 4**

*Comment (1 to 5, 18):* The proposed rule requires 36 hours of pre-placement training for each foster parent who operates a Level 3 foster home and 40 hours of pre-placement training for each foster parent who operates a Level 4 foster home.

We think the rule should require 18 hours of pre-placement training for a foster parent at Level 3 or Level 4.

*Comment (1A, 18A):* The rule should decrease pre-placement training by 12 hours and add the hours to initial licensing training. Practice has shown that training is more meaningful after a child is in the home. For Level 3, require 24 hours pre-placement and 36 hours of initial licensing. For Level 4, require 28 hours pre-placement and 42 hours of initial licensing training.

*Comment: (1A, 18A):* Include language that licensing agency may consider previous training received by the foster parent in determining their qualifications to meet the pre-placement training standard.

*Department response:*

- Department strongly believes that foster parents who care for children with high needs should have significant training prior to placement of a child.
- The child-placing agencies who made this comment were on the Foster Parent Training Committee that developed the requirements that are in the rule. All agencies indicated that their agencies already require foster parents to receive more than 40 hours of pre-placement training.
- The pre-placement training for Level 3 is the same as the combination of pre-placement and initial licensing training for Level 2.
- The department agrees that experience as a foster parent is more meaningful than classroom training. The department recommends that foster parents begin at Level 2 and move to Level 3 when they are experienced. An experienced Level 2 foster parent would have already met the pre-placement training requirements to operate a Level 3 foster home.
- Language regarding considering previous training will be in an annotation.

## **DCF 56.13 (7) Level 5 foster homes**

### **Exceptions under s. DCF 56.02**

*Comment (10):* Section 56.02 requires department approval for exceptions to Level 5 requirements. Licensing agencies should have input on allowing exceptions to certain requirements without department approval.

*Department response:* The licensee for a Level 5 foster home is an employee of the licensing or supervising agency. The department does not think that a licensing or supervising agency should be allowed to grant itself exceptions to Level 5 requirements. Level 5 foster homes can only be created under a department exception.

### **(e) Program manager 1. Responsibilities**

*Comment (10, 18A):* The program manager is the foster parent and licensee. If they leave the job as program manager, the program would be left without a license.

*Department response:* Most Level 5 foster homes have 2 people on the license, so there is a back-up available when the program manager is unavailable or leaves employment.

### **(f) Program staff 1. Staff Ratio**

*Comment (9):* One program staff person for every 2 children during waking hours or staff ratio is based on the identified needs of the children to ensure their safety and welfare. Two staff for 3 children is not cost effective.

*Department response:* No change. In general, one staff for every 2 children is appropriate for these very high needs children. On a case by case basis, the department may consider a different ratio requested during the application process for a Level 5 foster home.

## **4. Staff qualifications**

*Comment (10, 18A):* Qualifications for program staff should be more flexible.

*Department response:* **Department agrees.** The department will add a standard for qualification as program staff that will allow an individual to work in a supervised traineeship program for the first 120 hours of work.

*Rule change:* [new language] DCF 56.13 (7) (f) 4. e. Completion of a traineeship program in which program staff work with qualified, experienced program staff for at least the first 120 hours of employment before working independently with a child.

## **5. Staff age**

*Comment (9):* Remove requirement that staff be at least 21 years old. Many of our staff are students.

*Department response:* In general, the department thinks that it is reasonable to require that staff be at least 21 years to care for children who have very high needs or are medically fragile. Foster parents and resident care staff in a group home must also be at least 21 years old.

The department will consider an exception if appropriate. The criteria for selecting staff should be included in the application for the Level 5 foster home. Individuals under 21 years old will not be approved to be the only staff on duty.

## **7. Staff health exam**

*Comment (9):* It is difficult to find licensed practitioners who are willing to “stick their necks out” to say someone may not be able to mentally or even physically perform the job for fear of lawsuit. We suggest only requiring a screen for communicable diseases.

*Department response:* Department agrees to a modification. The division will revise the language so it is similar to the language that has been in the group home rule for many years without any issues.

*Rule change:* DCF 56.13 (7) (f) 7. will read: “Upon hire and before working with residents, a program manager shall require each program staff person to have a tuberculosis test and provide a statement from a physician, physician assistant, or a HealthCheck provider that the program staff person meets the minimum physical requirements of the position, is in general good health, and does not have a communicable disease. The statement shall be based on a medical examination performed within the previous 6 months.”

## **10. Training and orientation for program staff**

*Comment (10, 18A):* 40 hours of pre-service training for program staff is a substantial carrying cost.

*Department response:* Completion of training is required before program staff can work independently with a child not before they can work.

## **DCF 56.14 (6p) CPR training for Level 5 program staff**

*Comment (9):* CPR training should not be a requirement for Level 5 program staff. Our children have complex physical needs and compromised skeletal and muscular structures. Our staff are not RNs and cannot assess with a stethoscope, so they are expected to call 911. Parents understand the trade-off of an institutional vs. community setting.

*Department response:* The requirement that program staff receive CPR training will remain in the rule and no exception will be given. Medical professionals should provide staff with appropriate direction for emergency response for particular children.

### **DCF 56.14 (6d) (a) Curriculum for Level 3 and 4 pre-placement training**

*Comment (18):* Should allow a licensing agency to submit a proposed pre-placement training curriculum to the department for approval for Level 3 and 4.

*Department response:* **Department agrees.**

*Rule change:* DCF 56.14 (6d) (a) 2. Notwithstanding subd. 1., a licensing agency may submit to the department for approval a proposed pre-placement training curriculum that is designed to meet the needs of foster parents licensed by that agency. The pre-placement training for a foster parent who operates a Level 3 foster home may be a curriculum that has been approved by the department.

DCF 56.14 (6h) (a) 2. Notwithstanding subd. 1. a., a licensing agency may submit to the department for approval a proposed pre-placement training curriculum that is designed to meet the needs of foster parents licensed by that agency. The pre-placement training for a foster parent who operates a Level 4 foster home may be a curriculum that has been approved by the department.

### **DCF 56.14 (6d) (b) and DCF 56.14 (6h) (b) Agency staff and foster parent as co-trainers**

*Comment:* Always requiring a foster parent to be a co-trainer presents issues.

Suggestions:

- (18) Add, "if possible."
- (1 to 5) Should encourage not require.
- (21) Allow exception for no show, ill, weather, or other unusual circumstances.
- (1, 19) Foster parents or foster youth in audience or support meetings should meet intent.

*Department response:* **Department agrees.** We will amend the rule to allow exceptions that meet intent.

*Rule change:* New language at DCF 56.14 (6d) (b) 2. and (6h) (b) 2. Notwithstanding subd. 1., a foster parent may attend a pre-placement training for which no foster or adoptive parent is a trainer if the licensing agency approves and provides opportunities for the foster parent attending the training to participate in activities or programs that promote networking among foster parents and provide an opportunity for an experienced foster parent to answer questions from the new foster parent.

### **DCF 56.14 Foster parent training should be available evenings and weekends**

*Comment (22):* My husband cannot take off work to attend training on weekdays.

*Department response:* Foster parent training will be available evenings and weekends.



### **DCF 56.15 Supervising agency responsibilities**

*Comment (20)*: Rule should state that if multiple agencies are involved in supervision, responsibilities may be divided and they should specify who is responsible.

*Department response*: **Department agrees.**

*Rule change*: [new language] DCF 56.15 (1m) If more than one agency is performing supervising responsibilities in subs. (1) and (3), the agencies shall specify in writing which agency is responsible for each requirement.

### **DCF 56.15 (1) (a) 4. Notify school district clerk**

*Comment (1)*: Person designated in statute to be notified when a foster home is licensed does not tell the school principal when we notify them. Rule should require agencies to notify school principal in addition to clerk.

*Department response*: Sections 48.62 (3) and 48.64 (1r), Stats., require the clerk of the school district to be notified when a foster home is licensed or a school-aged child is placed in a foster home in a school district. Our rule reflects these statutory provisions. The clerk's failure to notify the school principal is a communication problem within the school district and does not justify increased work for agency caseworkers. DCF and DPI have met on this issue and have issued joint guidance for schools and child welfare agencies.

### **DCF 56.15 (1) (b) 1. 24 hr crisis contact**

*Comment (18)*: Provide the foster parent with the telephone number of a social worker, caseworker, counselor or clinical staff member who will provide crisis intervention, emergency counseling, and related services to the foster parent on a 24-hour per day, 7-day per week basis.

*Department response*: **Department agrees.**

*Rule change*: DCF 56.15(1) (b) 1. Provide the foster parent with the telephone number of a supervising agency caseworker, counselor, clinical consultant, or clinical staff member who will provide crisis intervention, emergency counseling, and related services to the foster parent on a 24-hour per day, 7-day per week basis.

### **DCF 56.15 (1) (b) 3. Example of stressful period for additional child care**

*Comment (18)*: Provide or arrange for additional childcare personnel during stressful or critical periods, such as the time from the end of the school day until bedtime, as determined by the treatment team.

*Department response*: **Department agrees.** We will add the example as a note.

*Rule change*: DCF 56.15 (1) (b) 3. (note) Note: An example of a stressful or critical period might be the time from the end of the school day until bedtime.

#### **DCF 56.15 (1) (b) 4. Assist foster parent obtain medical supplies and services**

DCF 56.15 (1) (b) 4. provides that the supervising agency shall assist and support the foster parent obtain any medical supplies and services required for the child, regardless of whether those supplies and services were included in the treatment plan.

*Comment (1):* This should not be open-ended liability for the supervising agency.

*Department response:* **Department agrees.**

*Rule change:* DCF 56.15 (1) (b) 4. Assist and support the foster parent obtain any medical supplies and services that are required for the child. If required medical supplies and services are not included in the treatment plan, the supervising agency and placing agency shall revise the treatment plan to include the required medical supplies and services and to determine financial responsibility.

#### **DCF 56.15 (1) (b) 5. a. Clinical consultant**

*Comment (1 to 5, 18):* Should also allow degree with certification in Marriage and Family Therapy or Professional Counseling to be clinical consultants.

*Department response:* **Department agrees.**

*Rule change:* DCF 56.15 (1) (b) 5. a. A master's degree in social work, psychology, child development, or counseling.

b. A license or certification under ch. 457, Stats, and ch. MPSW 3, 6, 11, 12, or 17.

#### **DCF 56.16 (2) (c) Licensing agency should be involved in rate determination**

*Comment (18):* The supervising agency should propose the initial foster care rate based upon their analysis of the child's level of need.

*Comment (1):* The licensing agency should be involved in rate determination.

*Department response:* **Department agrees** that the licensing agency should be involved in rate determination. The licensing agency and supervising agency are generally the same agency. We will create new language.

*Rule change:* [new language] DCF 56.16 (2) (c). Participate in the determination of supplemental payments under s. DCF 56.23 (2) and exceptional payments under s. DCF 56.23 (3) as follows:

- a. Review the payment amount that a placing agency is proposing for a child's placement and discuss the child's needs with the placing agency.
- b. Inform a prospective foster parent of the placing agency's proposed payment amount.
- c. Recommend any modifications to the payment amount that the placing agency has proposed.
- d. Participate with the placing agency, foster parent, and treatment team members in the redetermination of the payment amount following a reassessment under s. DCF 56.22 (5) (b).

e. At a foster parent's request, assist a foster parent in resolving a disagreement between the foster parent and the placing agency regarding a payment amount before the foster parent requests a hearing under s. DCF 56.10.

#### **DCF 56.21(4)(b) 1. Respite language**

*Comment (18):* A licensing agency shall fund and arrange for a foster parent who operates a foster home with a Level 3 or 4 certification to have 8 to 24 consecutive hours of respite care per month of care provided. Respite care shall be provided in a combination of days to be determined by the foster parent and the licensing agency. The licensing agency may require that any respite care include an overnight stay.

*Department response:* **Department agrees.** We will add the language change in the comment.

*Rule change:* See above.

#### **DCF 56.22 Assessment tool**

*Comments:*

- (18, 19) The assessment tool is untested. Delay the effective date of the rate setting changes on Level 3 and 4 foster homes until January 1, 2012.
- (1 to 5) Delay rate-setting based on the assessment tool at least 6 months.
- (1) The assessment tool does not capture all of a child's needs.
- (7A) The assessment tool was developed to assess factors crucial to good decision making for mental health services. Using it to determine reimbursement rates is flawed because skilled foster parents reduce symptoms exhibited by the child.
- (19) Concerned that assessment tool will be manipulated to skew a certain rate.
- (6) The assessment tool is redundant to YASI used in juvenile justice and Parts A and B of CPS.
- (6) Non-productive administrative tasks for social workers to take training on the assessment tool and do assessments every 6 months on sizeable number of children.

*Department response:*

- Rate-setting based on the assessment tool was already implemented in February.
- The requirement to assess a child every 6 months is unchanged from ch. DCF 38.
- A primary purpose of the assessment tool is to better match the services purchased with a child's needs at earlier point in the case and make the best use of limited child welfare funding.
- The Wisconsin assessment tool is based on a national model for which there is substantial research demonstrating the reliability and validity.

- The Department of Health Services coordinated services teams that treat children with mental health issues are using the same assessment tool. DHS had been using a slightly different tool based on the same national model for years and has now moved to the same tool as DCF. Some children are served by both the child welfare and mental health systems. DHS and DCF are sharing training resources and support of agency staff in use of the tool.
- Full implementation of the assessment tool is part of the department's Program Improvement Plan that has been approved by the federal Administration for Children and Families.
- Other states are using assessment tools based on the same national model to support rate determination.
- The department requires individuals who administer the assessment tool to be certified annually. The certification process requires an exam with results measured for reliability and validity compared to other users and within an acceptable range.
- The department has received positive feedback on the assessment tool from some individuals who were initially resistant.

#### **DCF 56.22 (3) Timing of assessment**

Section 56.22 (3) requires a placing agency to assess each child before placement in a foster home or within 30 days after the child's placement. A reassessment is required within 6 months after the child's last assessment. The placing agency, licensing agency, or foster parent may request a reassessment more frequently.

*Comment (1A, 18A):* If a placing agency has completed the assessment before placement, the treatment team should be given the opportunity to review the assessment and the rate within the first 30 days of placement.

*Department response:* The rules already allow for a foster parent to request a reassessment. Also, the treatment team is reviewing the assessment and developing the child's plan of care during the first 30 days.

#### **DCF 56.22 (4) (b) 3. Administering assessment tool**

DCF 56.22 (4) (b) 3. provides that the person who will administer the assessment tool shall first review information gathered in collaboration with the child's team or treatment team.

*Comment (1 to 5, 18, 19):* Should also include information from foster parents, supervising agency, and licensing agency.

*Department response:* **Department agrees.** A foster parent and supervising agency representative are members of the treatment team. The department will add "licensing agency" and a note on treatment team membership.

Rule change: DCF 56.22 (4) (b) 2. Interview or collect information from an individual who has interviewed the child, child's family, foster parent or other out-of-home care provider, the child's team or treatment team, and the licensing agency.

3. Review information gathered in collaboration with the child's team or treatment team and the licensing agency.

Note: See s. DCF 56.17 (1) on treatment team membership.

### **DCF 56.22 (5) (a) Use of assessment info**

DCF 56.22 (5) (a) (intro.) provides that the placing agency shall use information from the assessment of the child, the child's family, and the child's foster parent for all of the following:

Comment (18): Should also include supervising agency.

Comment (1 to 5, 19): Should also include licensing agency.

Department response: **Department agrees.**

Rule change: DCF 56.22 (5) (a) (intro.) The placing agency shall use information from the assessment of the child, the child's family, the child's foster parent, the supervising agency, and the licensing agency for all of the following:

### **DCF 56.22 (6) (b) Payment for pre-placement interactions**

Comment (1 to 5, 1A, 18, 19,): Before placing a child in a foster home with a Level 3 to 5 certification, the placing agency, supervising agency, and, if different, the licensing agency shall arrange for pre-placement, face-to-face interactions among the child, foster parent, and, if appropriate, the child's family and provide financial reimbursement to the licensing agency commensurate with their daily rate.

DCF response: There is no change that the department can make.

- Title IV-E funds cannot be paid to 2 providers for the same days.
- This provision is not new. It has been renumbered from ch. DCF 38.
- Some have argued pre-placement interactions are part of the cost of doing business.
- Some agencies use respite care funds.
- When a child transitions out of a foster home, there are often days for which the agency and foster parent are still receiving payment when the child is no longer in the foster home.

### **DCF 56.22 (7) (b) Services/Placement based on level of need**

Section 48.62 (8) (b), Stats., provides that a foster home that is certified to provide a given level of care under par. (a) may provide foster care for any child whose needs are assessed to be at or below the level of care that the foster home is certified to provide. A foster home that is certified to provide a given level of care under par. (a) may not provide foster care for any child whose needs are assessed to be above that level of care

unless the department, county department, or child welfare agency issuing the foster home license determines that support or services sufficient to meet the child's needs are in place and grants an exception to that prohibition.

Section DCF 56.22 (7) repeats the statutory language and requires that the placing agency document in the child's electronic case record what services and support will be provided to meet the child's needs as identified in the assessment tool.

*Comment (1 to 5):* Should require placement in level of care that meets level of need.

*Comment (1A, 18):* Specified services including agency contact, respite, treatment team, and supervising agency duties should follow a child's level of need.

*Comment (19):* The level of care of a foster home should be the same or higher than a child's level of need.

*Department response:*

- Statute allows placement in a foster home with a level of care lower than child's level of need if appropriate services and supports are provided.
- A child may occasionally be placed in a foster home with a lower level of care than the child's level of need to allow a child to be placed in his or her own community or with relatives. Counties are committed to creating plans to support the needs of children they place and are required to document the services and support that will be provided to meet a child's needs. The current rule allows the counties to flexibly provide the services and supports that are needed for a particular child.
- Private child-placing agencies may be advocating this position because they see it as a business opportunity. Counties would be unable to comply with the specified requirements that apply for foster homes with higher levels of care.

### **DCF 56.23 Supplemental rates should not be child-specific**

*Comment (1):* Should not move to child-specific rates because they increase admin costs due to time spent in rate-setting, billing, collection, and write-offs.

*Department response:* Supplemental payments under both the old and new rules are child-specific.

### **Payment for placement before assessment and rate-setting completed**

*Comment (18, 18A):* The supervising or licensing agency should proposed rate that a foster parent is paid for a child's placement for the time before the assessment and rate-setting is completed. The placing agency may or may not approve the proposed rate.

*Comment (1, 1A, 19):* Rule should allow for an assessment rate determined by the licensing agency if a child is placed before an assessment is completed.

*Comment (19):* If assessment not completed, placing agencies should be required to make an exceptional payment to the foster parent.

*Department response:* No change. Payment for a child's needs beyond the basic maintenance payment that covers the time period before the assessment and rate-setting may be done in either of these ways:

1. After the assessment of the child and rate-setting is completed, a placing agency can make a supplemental payment that covers the time period back to the date of placement. This method prevents overpayments and underpayments.
2. A placing agency may agree to make an exceptional payment for the period before the assessment and rate-setting is completed.

### **DCF 56.23 (3) (a) 5. Payment equalization**

Section 48.62 (8) (c), Stats., requires that the department provide a method for equalizing payments to foster parents lost as a result of the implementation of rules that determine payments based on levels of care and levels of need.

DCF 56.23 (3) provides that a placing agency *may* make an exceptional payment to accomplish any of several objectives, including: "For a child placed in a foster home before February 21, 2011, and who remains placed in that foster home, equalize the total payment amount lost by the child's foster parent due to implementation of the method of determining supplemental payments in sub. (2)."

#### *Comment (1, 18, 19):*

- Should be "shall" not "may."

#### *Department response:*

- The statutory provision does not mean supplemental payments can never be reduced. If the child has fewer needs in the future, the payments should be reduced.
- If the word "shall" is used, supplemental payments would have to remain at the current level forever to avoid hearings on whether any future supplemental rate change would have been different under the old method. The equalization measure is intended to ease the transition to the new method not require continuing comparisons between the old and new methods. There also seems to have been significant variation in the manner that previous payments were determined.

### **DCF 56.23 (3) (a) New criteria for exceptional payment**

*Comment (18):* Rule should allow a new criteria for an exceptional payment to allow child to stay in a foster home with a higher level of care to promote stability.

*Department response:* The supplemental payment provision at s. DCF 56.23 (2) (b) 2. allows a placing agency to pay an amount determined by the department if a foster home's level of care certification is higher than the level of need of a child placed in the

foster home and the foster home has a Level 3 or 4 certification. This amount is currently set at \$100 per month.

The department will modify the exceptional payment provision at DCF 56.23 (3) (a) 1. to add “or remain” in a foster home. This will allow a higher payment in some circumstances. A payment should not generally remain at the higher level if a child’s condition improves.

*Rule change:* DCF 56.23 (3) (a) 1. Enable the child to be placed or remain in a foster home instead of being placed or remaining in a more restrictive setting.

### **DCF 56.23 (3) Require exceptional payments for all Level 3 to 5 placements**

*Comment (18A):* The rule should require that all Level 3 to 5 placements receive an exceptional payment.

*Comment (1A):* All Level 3 or 4 placements should receive an exceptional payment.

*Department response:* The department strongly disagrees. Exceptional payments are never required; they are intended to be exceptional. Section DCF 56.23 (3) gives placing agencies discretion to provide an exceptional payment in specific, limited circumstances only if the placing agency determines it is appropriate in an individual case to meet the needs of the child.

### **Appendix A title**

*Comment (18):* Add word to title: “Placement Complexity Chart Options”

*Department response:* **Department agrees.**