

## Chapter PW-CY 40

## CHILDREN AND YOUTH

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## DAY CARE CENTERS FOR CHILDREN

Note: Rules relating to day care centers can be found in ch. HSS 55, Wis. Adm. Code.

**PW-CY 40.10 Introduction.** History: 1-2-56; r. and recr. Register, October, 1961, No. 70, eff. 11-1-61; r. and recr. Register, August, 1970, No. 176, eff. 3-1-71; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.11 Organization and administration.** History: 1-2-56; r. and recr. Register, October, 1961, No. 70, eff. 11-1-61; r. and recr. Register, August, 1970, No. 176, eff. 3-1-71; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.12 Personnel.** History: Cr. Register, August, 1970, No. 176, eff. 3-1-71; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.13 Physical plant and furnishings.** History: Cr. Register, August, 1970, No. 176, eff. 9-1-70; r. Register, July, 1980, No. 296, eff. 8-1-80.

**PW-CY 40.14 Program.** History: Cr. Register, August, 1970, No. 176, eff. 3-1-71; am. (3) (a) 1., Register, December, 1972, No. 204, eff. 1-1-73; r. July, Register, 1980, No. 295, eff. 8-1-80.

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**PW-CY 40.20 Revocation of licenses, permits or certifications.**

(1) **DEFINITIONS.** As used in these rules, "license" means any license, permit, certification or other grant of authority issued and subject to suspension or revocation by the state department of public welfare; "department" means the state department of public welfare; "hearing" includes a joint hearing by the department and any other administrative agency; "revocation or suspension" of licenses includes refusal to renew the same.

(2) **HOW PROCEEDINGS INITIATED.** Proceedings to revoke or suspend licenses may be initiated in one of 2 ways:

(a) On a verified complaint by an individual or an officer required by law to enforce the law in question, filed in triplicate (original and 2 copies) with the department;

(b) By the department on its own motion, whenever its investigation discloses probable grounds for action. The director of the division for children and youth may act for the department in initiating proceedings under this subsection.

(3) **STYLE OF PLEADINGS.** All pleadings, notices, orders and other papers filed in such proceedings shall be captioned "Before the Wisconsin State Department of Public Welfare" and shall be entitled

"In the Matter of the Revocation or Suspension of the \_\_\_\_\_ (license permit, or certification) of \_\_\_\_\_, Respondent." The party whose license is involved shall be known and designated as the "Respondent."

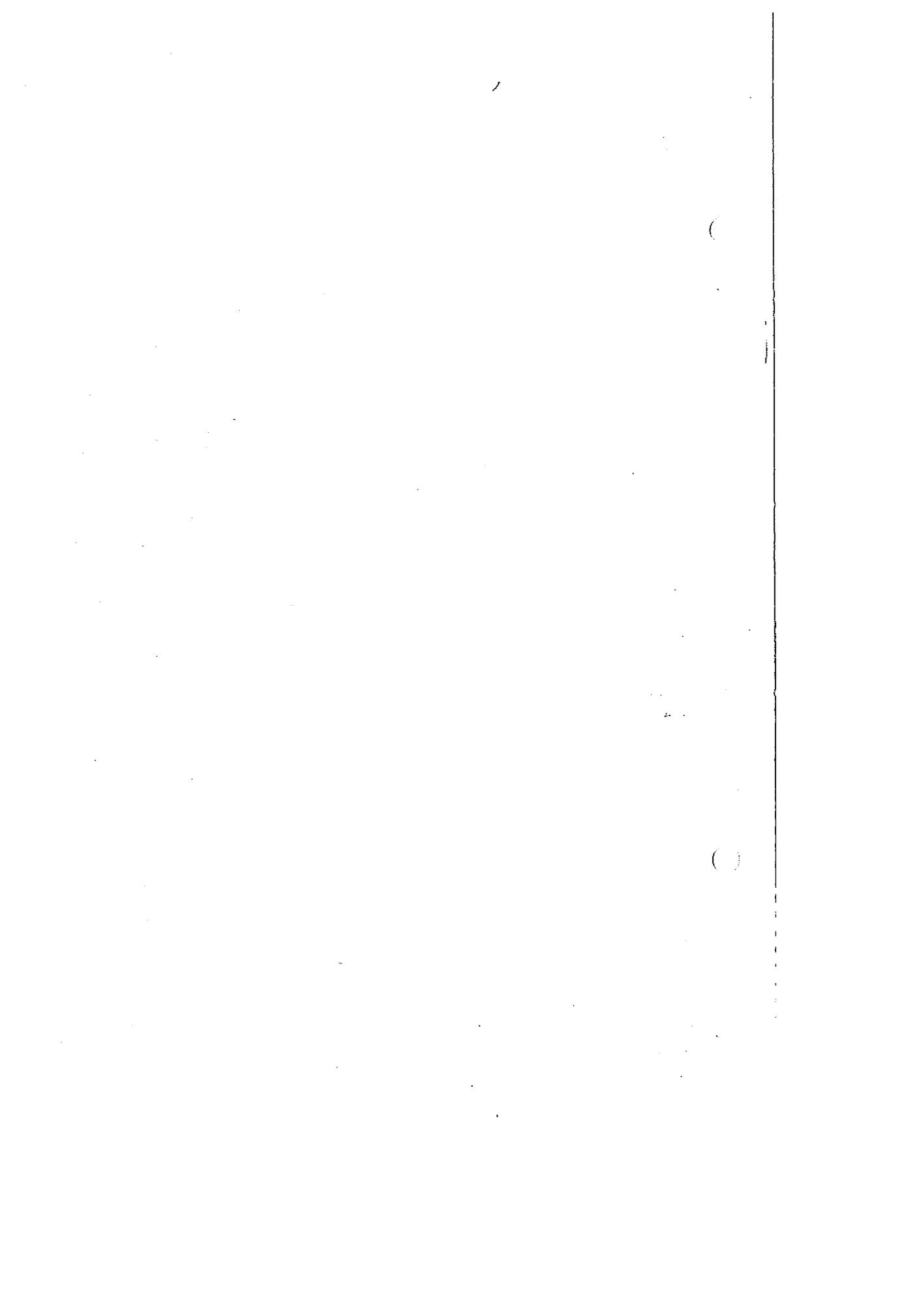
(4) **COMPLAINT ON DEPARTMENT'S INVESTIGATION.** If the complaint is founded upon an investigation made by the department, it shall be incorporated in the notice of hearing and statement of issues as prescribed by (7).

(5) **FORM OF CAUSES.** If the alleged cause is a continuing one, its general nature and the approximate time covered shall be stated in the complaint or notice or hearing; if a specific incident is relied on, it shall be alleged with such particularity as to time, place and circumstances as may be necessary to enable the respondent to prepare his defense; and in either case the cause may be alleged in the language of the statute or rule claimed to be involved, and shall conclude: "contrary to sec. \_\_\_\_\_ of the statutes" or "contrary to rule \_\_\_\_\_" of the rules and regulations of the department governing \_\_\_\_\_, or both. Separate causes shall be stated in separate paragraphs and numbered consecutively.

(6) **PROCEDURE UPON FILING OF COMPLAINT.** Upon the filing of a complaint as prescribed by (2) (a), the director of the division for children and youth shall cause an investigation to be made of the matters alleged to determine whether there is probable cause for action and if he determines that there is such probable cause he shall order a hearing as prescribed by (7) and also notify the complainant thereof. If he determines that no further action is warranted he shall notify the complainant, who may appeal in writing to the director of the state department of public welfare, who shall review the files of the director of the division for children and youth and may affirm his decision, order further investigation or order a hearing on the charges. Provided, that in any case where a

hearing has been ordered, the respondent has no standing to attack the determination of the

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hygiene and control of child's body waste may also be required. Orthotics care at this level demands an excessive amount of time, care and responsibility. Prescribed physical therapies are two to three hours a day.

(6) **EXCEPTIONAL PAYMENT.** An exceptional payment in an amount to be determined by the department may be made in addition to the age related rates and supplemental payment when the additional payment will:

(a) Enable the child to be placed in a foster home and prevent placement in an institution, nursing home or hospital.

(b) Enable the child to be placed from an institution, nursing home, or hospital into a foster home.

(c) Replace a child's basic wardrobe which had been lost or destroyed through other than normal wear and tear.

(7) **INITIAL CLOTHING ALLOWANCE.** A clothing allowance may be paid upon a child's initial placement in foster care. The amount of the allowance shall be the actual cost of the clothing not to exceed a maximum as determined by the department. The placement of a child in foster care 120 days or more after the child had been removed from foster care shall be considered an initial placement.

(8) **APPEALS.** Any decision made by a county or the department pursuant to these rules may be appealed in accordance with s. 48.64, Stats.

*History:* Cr. Register, July, 1978, No. 271, eff. 8-1-78.

**PW-CY 40.65 Fair hearings.** (1) **LEGAL BASIS.** This rule is adopted pursuant to s. 48.64 (4) (a), Stats.

(2) **DEFINITIONS.** (a) A claimant means a person licensed to operate a foster home under s. 48.62, Stats., affected by a decision or order issued by a division of the department of health and social services, a county welfare department or a child welfare agency.

(b) A hearing is defined as an orderly, readily available proceeding before an impartial employe of the state agency, in which a dissatisfied claimant or his representatives may present his case with the help of witnesses to show why action or inaction in his case should be corrected by the state agency; it is a continuation of the administrative process in which the claimant invokes the responsibility of the state agency through a quasi-judicial hearing in the particular case.

*Note:* Impartial employe of the state agency is currently defined as a hearing officer of the legal section of DFS.

(c) A request for a hearing is defined as any clear expression on the part of the claimant to the effect that he wishes to go beyond the usual procedure for adjusting complaints with a division of the department of health and social services, a county welfare department or a child welfare agency, and that he wants an opportunity to present his case to the department of health and social services. The specific wording of such a request is immaterial.

(d) The date of the request for hearing is defined as the date on which the request is received.

(3) **PURPOSES.** The major purposes of hearings are:

Register, July, 1980, No. 295  
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(a) To provide an opportunity for a dissatisfied claimant to appeal a decision or order issued by a division of the department of health and social services, county welfare agency, or a child welfare agency affecting the claimant or the children involved.

(b) To enable the county and claimants, jointly, to ascertain the factual basis on which, through proper application of the law and agency policy, a just decision may be reached.

(c) To contribute to uniformity in the application of the law and policy by assuring that every claimant is fully informed of his rights, that hearings on any grievance are readily available, and that instances of inequitable treatment are speedily remedied by prompt execution of hearing decisions.

(d) To safeguard claimants from mistaken, negligent, unreasonable or arbitrary action. The hearing process is not a substitute for proper and efficient administration and is not designed to produce any result that could not have been produced through regular administrative processes.

(e) To reveal aspects of a division of the department of health and social services, a county welfare department or a child welfare agency policy that constitute a misconstruction of law, state rules or policy.

(f) To provide a method whereby evidence may be obtained for referral to proper state policy-making authority, which evidence may show the need for modification of a state policy or policies.

(4) REQUIREMENTS. (a) Every claimant at the time of his application, and when other administrative decisions are made shall be informed in writing of his right to a fair hearing if his application is not acted upon with reasonable promptness, or if he is not satisfied with the action taken, and the method by which he may obtain a hearing.

(b) Every claimant may obtain a hearing before the department of health and social services in relation to a decision or order if he is dissatisfied with the action taken.

(c) The request for a hearing must be timely. No review will be provided in any case where the decision or inaction to be reviewed involves a question which arose more than 60 days prior to the request for a hearing.

(5) REQUEST FOR HEARING. (a) A complaint may be initiated orally in person, by letter or by form and if not adjusted by a division of the department of health and social services, a county welfare department or a child welfare agency to the satisfaction of the claimant a request for hearing will be completed and a hearing will be scheduled. Requests for hearing shall usually be on the simple form supplied by the state agency, but no written request shall be rejected for lack of formality.

(b) An oral request for a hearing made in person will be accepted, but shall be reduced to writing and signed by the claimant before the hearing will be scheduled. No request shall be dismissed without hearing unless the claimant shall remove from the jurisdiction, die, withdraw his request in writing, or abandon the proceedings. The proceedings may be considered abandoned if neither the claimant nor his representatives appears at the time and place set for hearing, and if, within a reasonable

time after the mailing of any inquiry as to whether he wishes any further action taken on his request for a hearing, no reply is received by the state agency.

(6) **FAIR HEARING.** (a) Hearings shall be held at a time convenient to the claimant and agency staff, easily accessible to the claimant and, whenever possible, on the premises of a division of the department of health and social services, a county welfare department or a child welfare agency, subject to the judgment of the hearing officer. Adequate preliminary notice shall be given to the claimant and his representative, if any, including information about the procedure at the hearing.

(b) The hearing shall be conducted by a hearing officer, duly appointed and qualified under the state civil service laws, who has not taken any part in the particular action under consideration.

(c) The claimant shall have the opportunity to examine all documents and records used at the hearing at a reasonable time before as well as during the hearing; have the opportunity to present his case, or be represented; have the opportunity to bring witnesses, confront and examine witnesses adversely, to establish all pertinent facts and circumstances, to advance any arguments without undue interference, and to question or refute any testimony or evidence.

(d) Unless waived by both parties a continuance for a reasonable time shall be granted when an issue is raised for the first time in a hearing.

(e) The claimant may question interpretation of the law, and the reasonableness and equity of policies practiced under the law, if he is aggrieved by their application of his situation.

(f) The hearing is an informal administrative procedure subject to the requirements of due process.

(7) **DECISIONS.** (a) The transcript of testimony and the exhibits, papers and request filed in the proceeding constitute the exclusive record for decision and are available to the claimant at any reasonable time after the decision upon request, and at a place accessible to him.

(b) The decision on the hearing shall be in writing by the secretary of the department or his designee.

(c) The decision shall set forth the issue or issues, citation of law or precedents, the reasoning that led to the decision, the principal and relevant facts elicited at the hearing, and the action taken. These factors shall be grouped under appropriate heading such as preliminary recitals, finding of fact, conclusions of law and order. A certified copy of the decision shall be mailed to the claimant (and his attorney if any) and the division of the department of health and social services, a county welfare department or a child welfare agency charged with the administration of the services.

(8) **ALLOCATION OF RESPONSIBILITY.** The functions relating to fair hearings are allocated to the division of family services. All final decisions, except cases wherein the request for review has been abandoned, shall be based upon hearings conducted by the hearing officer duly appointed pursuant to state civil service laws and responsible to the division, provided that if emergency needs so require the division administrator or any other employe duly designated by him may serve as a hearing of-

ficer. Such decisions shall be binding upon the state, county agencies, and child welfare agencies involved.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73; am. Register, July, 1975, No. 235, eff. 8-1-75.

**Note:** Rules relating to daycamps can be found in ch. HSS 55, Wis. Adm. Code.

**PW-CY 40.70. Definitions.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.71. License.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.72 Personnel standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.73 Program standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.74 Site, facilities and equipment standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.75 Administration standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.76 Health standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; am. (3) (a) 1, Register, December, 1972, No. 204, eff. 1-1-73; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.77 Food standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.78 Sanitation standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.79 Safety standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

**PW-CY 40.80 Transportation standards.** **History:** Cr. Register, October, 1961, No. 70, eff. 11-1-61; r. Register, July, 1980, No. 295, eff. 8-1-80.

## LICENSING GROUP FOSTER HOMES

**PW-CY 40.90 Licensing group foster homes for children. (1) INTRODUCTION.** (a) *Statement of intent.* The intent of these rules is to protect and promote the health, safety, and welfare of children in care in group foster homes in Wisconsin.

(b) *Effect of rules.* The following rules for licensing group foster homes have the full effect and force of law as provided in s. 227.01 (3), Stats. These rules do not repeat the laws related to child care and licensing. Persons using these rules should be aware of and familiar with the laws pertinent to foster care.

(c) *Exceptions to rules.* The department may make exceptions to any of the rules for licensing group foster homes beginning with PW-CY 40.91 (2) when the department is assured that granting such exceptions is not detrimental to the health, safety or welfare of children. No exceptions shall be made to PW-CY 40.90 (1) (a) through 40.90 (1) (f) or to PW-CY 40.91 (1).

(d) *Effective date of rules.* These rules shall be effective for all group foster homes for children 30 days after their publication in the Wisconsin Administrative Register, except that any group foster home for children which was licensed by the department prior to the effective date of these rules may continue to comply with the Rules for Licensing Foster

Homes (PW-CY 40.60-64) for up to 12 months from the effective date of the rules contained herein. Administrative rule PW-CY 40.64 (Additional Rules for Exceptions to the Legal Limit of Four Unrelated Children) shall be repealed effective 12 months from the effective date of the rules contained herein.

(e) *Definitions.* 1. Department. The department is the state of Wisconsin department of health and social services including any of the divisions of the department.

2. Rule. A rule is a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing) of general application and having the effect of law.

3. Licensing agency. The licensing agency is the department. It is responsible for evaluating the applicant, issuing a license if the applicant qualifies, and supervising the licensee to ensure continued compliance with rules.

4. Child. Child is legally defined as an individual under 18 years of age. In addition these rules use the word to include those individuals who are 18 years of age or older and receiving care, training and services pursuant to ss. 48.48 (4m) (14), Stats. In these rules, child means any foster child placed in and any other child residing in the group foster home.

5. Foster child. A foster child is a child placed for care and maintenance, with or without transfer of legal custody, in a group foster home for children.

6. Child welfare agency. A child welfare agency is any facility licensed under s. 48.60, Stats.

7. Supervising agency. A supervising agency is a child welfare agency licensed to place children in foster homes, county agency specified in s. 48.56 (1), Stats., or the department which is responsible for the supervision of a child in a group foster home. The supervising agency also places the child in the group foster home unless his parent or guardian, or a court of record has placed the child.

8. Person. A person is any individual, partnership, association, corporation or public agency other than the department.

9. Licensee. The licensee is any person licensed by the department under ss. 48.62 and 48.64 (3), Stats.

10. Sponsoring agency. The sponsoring agency is a child welfare agency licensed to place children in foster homes, a county agency specified in s. 48.56 (1), Stats., or the department which enters into a contract in writing with the licensee, specifying the program under which the group foster home shall be operated and for exclusive placement of children in the home.

11. Group foster home for children. A group foster home for children is any facility operated by a person required to be licensed under s. 48.62, Stats., and licensed by the department, under s. 38.64 (3), for 5 through 8 foster children. Herein, group foster home for children is referred to as group foster home. There are three categories of group foster homes:

a. Corporation operated group foster homes, wherein the licensee is a non-profit or proprietary corporation, which operates one or more group foster homes.

b. Family operated group foster home, wherein the licensee is one or more individuals who operates not more than one group foster home.

c. Agency operated group foster home, wherein the licensee is a public agency other than the department.

**Note:** Any family boarding home, as specified in s. 51.18, Stats., serving 5 through 8 individuals at least one of whom is a child, shall comply with the rules contained herein and the applicable rules of the department of industry.

12. Foster parent staffing arrangement. A foster parent staffing arrangement means that at least one individual regularly providing day-to-day care and supervision of the foster children in the group foster home has the home as his or her primary domicile. Individuals in this type of staffing arrangement may include:

a. Independent operators who regularly provide care in their primary domicile.

b. Employees of the licensee who regularly provide care and supervision of foster children in their primary domicile.

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