

CR 83-49

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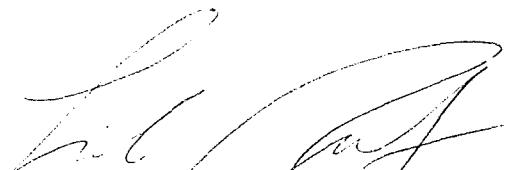
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of said Department, do hereby certify that the annexed rules relating to subsidized adoptions were duly approved and adopted by this Department on December 12, 1983.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 12th day of December, A.D. 1983.



Linda Reivitz, Secretary
Department of Health and Social Services

SEAL:

2-1-83

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING AND ADOPTING RULES

To repeal PW-CY 40.30 to 40.35 and to create HSS 50 and HSS 54.04(1)(g)12, relating to subsidies necessary to ensure the adoption of children with special needs.

Analysis Prepared by the Department of Health and Social Services

Many Wisconsin children are available for legal adoption but due to special medical, behavioral or emotional needs or other special circumstances they are difficult to place in adoptive homes. Section 48.975, Stats., authorizes the Department to provide special maintenance and medical subsidy payments to the adoptive families and thereby assure opportunities for many of these children to live in a permanent family environment.

Sections PW-CY 40.30 to 40.35 are revised to be made consistent with P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. 673, to establish more explicit eligibility criteria, to take out unnecessary language and to improve the rules format. The rules are also renumbered to bring them into the HSS series of the Wisconsin Administrative Code. Eventually all rules of the Department will be in the HSS series in the Code so it will be easier for interested persons to identify and locate rules administered by the Department.

The rules cover who is eligible for an adoption subsidy, how to apply for a subsidy, and the respective responsibilities of adoptive parents and the Department.

Section HSS 54.04(1)(g)12 is created to require child-placing agencies to give prospective adoptive parents the necessary information to enable them to apply for an adoption subsidy.

Pursuant to authority vested in the Department of Health and Social Services by ss.48.67, 48.975(5), and 227.014(2), Stats., the Department of Health and Social Services hereby repeals and adopts rules interpreting ss.16.54(4), 46.016, 48.48(12), 48.60, 48.975, and 49.46(1)(d)3, Stats., as follows:

SECTION 1. PW-CY 40.30 to 40.35 of the Wisconsin Administrative Code are repealed.

SECTION 2. HSS 50 of the Wisconsin Administrative Code is created to read:

CHAPTER HSS 50
SUBSIDIZED ADOPTIONS

HSS 50.01	Introduction.
HSS 50.02	Eligibility for a subsidy.
HSS 50.03	Application for a subsidy.
HSS 50.04	Amount of subsidy.
HSS 50.05	Subsidized adoption responsibilities.

HSS 50.01 INTRODUCTION. (1) STATEMENT OF INTENT. The intent of this chapter is to facilitate the placement of all children in Wisconsin who are legally available for adoption in adoptive homes.

(2) PURPOSE OF RULES. This chapter establishes criteria to be used in determining when an adoption subsidy, as authorized under s.48.975, Stats., may be provided to families adopting children in Wisconsin under ss. 48.81 through 48.97, Stats. This chapter also specifies limitations on the use of subsidies in the adoption program.

(3) TO WHOM THE RULES APPLY. This chapter applies to the department, to county agencies and other child-placing agencies, and to adoptive parents.

(4) DEFINITIONS. In this chapter:

(a) "Adoptive family" means a husband and wife jointly or an unmarried adult.

(b) "Adoption resources exchange" means a regularly published list of special needs children who are available for adoptive placement.

(c) "Child" means a person under 18 years of age.

(d) "Child-placing agency" means an agency authorized under s.48.61(5), Stats., to accept guardianship and to place children under its guardianship for adoption.

(e) "Department" means the Wisconsin department of health and social services.

(f) "Division" means the division of community services of the department.

(g) "Guardian" has the meaning prescribed in s. 48.02(9), Stats.

(h) "Legal adoption" means the process by which a child becomes a member of a family other than that of the child's birth parents.

(i) "Maintenance subsidy" means a payment not to exceed the amount of the foster care maintenance payment which would have been paid if the child with respect to whom the subsidy payment is made had been in a family foster home.

(j) "Medical assistance card" means a card issued monthly for the purpose of identifying the recipient as being eligible for medical assistance under title XIX of the Social Security Act of 1935, as amended, 42 USC 1396, and ss.49.43 to 49.49, Stats.

(k) "Medical subsidy" means that a medical assistance card is issued by the department for the adoptive child in conjunction with the maintenance subsidy.

(1) "Regions" means the 6 geographical areas of Wisconsin designated by the department as its principal field administrative areas.

(m) "Subsidized adoption" has the meaning prescribed in s.48.975(1), Stats., namely, payments made by the department to the parents of an adopted child which are designed to assist in the cost of care of the child after legal adoption.

HSS 50.02 ELIGIBILITY FOR A SUBSIDY. In order for a child to be adopted with a subsidy the following circumstances shall exist:

(1) ELIGIBILITY CRITERIA FOR THE CHILD (a) Age. The child shall be less than 18 years of age at the time of adoption except that eligibility for a subsidy may continue up to age 19 if the adoptee is full-time in high school or the equivalent, or age 21 if the department determines that the adoptee has a mental or physical handicap which warrants the continuation of assistance under 42 USC 673, and the adoptee is not eligible for other benefits such as social security income. In this paragraph "equivalent" means any training for competitive employment, such as beauty school, apprenticeship, trade school or general education diploma (GED) program.

(b) Special needs. The child shall have at least one of the following special needs at the time of the adoptive placement:

1. The child is 10 years of age or older if age is the only factor in determining eligibility;

2. The child is a member of a sibling group of three or more children that must be placed together;

3. The child exhibits special need characteristics judged to be moderate or intensive under the schedule of difficulty-of-care levels specified in s.HSS 56.10(3); or

4. The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources.

(c) Availability for adoption. A child shall be considered available for adoption if the child is in the guardianship of the department, a county agency under s.48.57(1)(e) or (hm), Stats., or a child-placing agency authorized to place children for adoption and the Department, county agency or child-placing agency decides that the child cannot or should not return to the home of his or her parents. If the child is an American Indian, adoption procedures shall be in accordance with 25 USC 1901-1963.

(2) REASONABLE PLACEMENT EFFORT. All reasonable efforts shall be made to place the child without a subsidy including the following:

(a) A review of all the approved and available homes associated with the child-placing agency;

(b) A canvass of local adoption agencies and adoptive parent organizations; and

(c) Registration of the child with the adoption resource exchange for at least one month's circulation.

(3) FAMILY CIRCUMSTANCES. A study of the financial circumstances of the family shall be completed to determine the amount of the subsidy. The family's financial circumstances shall meet one of the following criteria:

(a) The financial impact of providing for an adoptee would result in a significant burden on the family's financial resources;

(b) The family's financial resources are substantial but unusual circumstances place demands on the family income to the extent that providing for an adoptee would result in an undue financial burden;

(c) The family does not have health insurance, or the coverage of the insurance is not sufficient to cover the expected medical needs of the adoptee; or

(d) Resources needed by the adoptee are not available in the family's community and the expense of gaining access to the necessary resources would place a significant financial burden on the family.

(4) EXCEPTIONS. (a) Subsection (2) shall be waived if the child has developed significant emotional ties with the foster family and it can be demonstrated that the child:

1. Identifies himself or herself as a member of the family;
2. Is regarded by the foster parents, foster siblings, community and school as belonging to that family; and
3. Has, because of his or her attachment to the foster family and other factors such as age and number of previous placements, a diminished probability of forming new attachments if denied permanence with this family.

(b) Subsection (2) shall be waived if a child is in an adoptive placement without a subsidy and, prior to making the adoption final, problems specified under sub. (1)(b)3. or (3) arise and the family requests a subsidy.

HSS 50.03 APPLICATION FOR A SUBSIDY. (1) TIMING. An application for subsidy shall be completed and approved before an adoptive placement occurs, except under the circumstances noted in s.HSS 50.02(4)(b).

(2) APPLICATION FORM. Application shall be made on a form provided by the department.

(a) Part I of the application shall be completed and signed by the parent or parents and the adoption worker.

(b) Part II of the application shall be completed and approved or disapproved by the regional director or designee and a copy shall be given to the parent or parents and copies shall be kept in the parent and child file and in the regional office file.

(3) CHILD AND FAMILY SUMMARY. Information documenting the need for an adoption subsidy shall be recorded on the child and family summary form and submitted with the completed application form for approval or disapproval by the regional director or designee.

(4) SUBSIDIZED ADOPTION AGREEMENT. The parents' subsidy agreement shall be completed and signed by the parent or parents, the adoption worker and the regional director or designee. Copies of the signed agreement shall be given to the parent or parents and placed in the child's record.

(5) PAYMENT AUTHORIZATION. The adoption worker shall complete the payment authorization form as soon as the adoption is made final and send a copy to the division.

(6) APPEAL PROCESS. Applicants not satisfied with the action taken on their application or on the conditions governing the subsidy award may, prior to legal adoption, request a review by the division administrator or designee or may appeal the decision under ch. 227, Stats.

Note: A request for review of a decision should be addressed to Administrator, Division of Community Services, P.O. Box 7851, Madison, WI 53707. A request for an administrative hearing should be addressed to the Office of Administrative Hearings, P.O. Box 7875, Madison, WI 53707.

Note: Copies of the application form and the child and family summary form are available at any regional office of the department or may be obtained by writing: Bureau of Human Resources, Division of Community Services, P.O. Box 7851, Madison, WI 53707:

HSS 50.04 AMOUNT OF SUBSIDY. To determine the amount of a subsidy, the following procedures shall apply:

(1) MAINTENANCE SUBSIDY. (a) Each adoptive child's situation shall be considered individually in computing the subsidy based on the uniform foster care rates specified in s. 49.19(12), Stats., and difficulty-of-care levels specified in s.HSS 56.10.

(b) The amount of the subsidy shall be the total computed maintenance subsidy minus the amount of the adoptive child's unearned income from other sources.

(2) MEDICAL SUBSIDY. A medical subsidy shall be granted to all cases approved for a maintenance subsidy.

(a) Adoptive families covered by private health insurance policies shall provide information to the department regarding their coverage.

(b) The medical assistance card may not be used for care of the adoptive child covered by the family's insurance.

HSS 50.05 SUBSIDIZED ADOPTION RESPONSIBILITIES. (1) SUBSIDIZED ADOPTION AGREEMENT. There shall be a written subsidized adoption agreement signed by the adoptive parents and a division representative which shall cover:

- (a) The amount of the subsidy;
- (b) The responsibilities of the adoptive parents;
- (c) The responsibilities of the department;
- (d) Circumstances under which the subsidy may be terminated, temporarily suspended, or reduced; and
- (e) A stipulation that the agreement shall remain in force regardless of the state of residence of the family and the child.

(2) POST-ADOPTION RESPONSIBILITIES OF ADOPTIVE PARENTS. After the adoption has been made final, the adoptive parents shall notify the division of the following circumstances:

- (a) A change in the family's address;
- (b) A change in the adoptee's legal guardian;
- (c) If the adoptee enters military service;
- (d) If the adoptee marries;
- (e) If the adoptee no longer resides in the home;
- (f) If the adoptee dies;
- (g) High school completion date after the adoptee reaches 18 years of age;
- (h) Change in health insurance benefits or coverage;
- (i) If the adoptee becomes eligible for or there is a change in the amount of special benefits such as social security, veterans or other benefits; and
- (j) If the adoptee has been placed in an institution or other alternate care facility at public expense.

(3) POST-ADOPTION RESPONSIBILITIES OF THE DEPARTMENT. After the adoption has been made final, the department shall:

(a) Review annually the need for continuing, temporarily suspending or adjusting the subsidy, and:

1. Recertify if continuation of the subsidy is justified even if an adoptive family and adoptee move to another state;

2. Discontinue the subsidy based on one of the following circumstances:

a. When the adoptee no longer meets the age criteria specified in s.HSS 50.02(1)(a);

b. When the adoptee is emancipated because of marriage prior to age 18;

c. When the adoptee is emancipated and the parents are no longer supporting the adoptee;

d. Upon death of the adoptee; or

e. When there is a change in the adoptee's guardian; or

3. Temporarily suspend or adjust the subsidy based on the following circumstances:

a. When the adoptee becomes eligible for or there is a change in the amount of special benefits such as social security, veterans or other benefits; or

b. When the adoptee has been placed in an institution or other alternate care facility at public expense;

(b) Honor the conditions of the application and agreement for a subsidy, and not adjust, suspend or discontinue the subsidy without the consent of the adoptive parents or without being requested by the adoptive parents, except as provided in par. (a) 2. or 3; and

(c) Offer short-term services to the adoptive family or adult adoptee upon request of either party and refer the family to other community resources for services if appropriate.

SECTION 3. HSS 54.04(1)(g)12 of the Wisconsin Administrative Code is created to read:

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.

The repeal and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s.227.026(1), Stats.

Department of Health and Social Services

Dated: 12-12-83

By: 

Linda Reivitz
Secretary

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