

CR 86-244

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CERTIFICATE

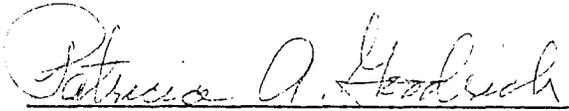
STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Patricia A. Goodrich, Deputy Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to determination of need for additional child care institution beds were duly approved and adopted by this Department on August 24, 1988.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the 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 24th day of August, 1988.

SEAL:

  
Patricia A. Goodrich, Deputy Secretary  
Department of Health and Social Services

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ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING AND RECREATING AND CREATING RULES

Revisor of Statutes  
Bureau

To repeal and recreate HSS 52.02(3)(a), (d) and (f), and to create Subchs. I (title) and II of ch. HSS 52, relating to the Department's determination of need for new or expanded placement resources in child care institutions.

Analysis Prepared by the Department of Health and Social Services

Child care institutions are residential treatment facilities for adolescents and some older teenagers and younger children who have emotional and behavioral problems. The Department is responsible under ss. 48.60 and 48.66, Stats., for promulgating and enforcing standards for the care and protection of children in these institutions and, before issuing a license for a new institution or a license amendment to permit the addition of beds at an existing institution, to review need for additional placement resources. Recently there has been an increase in requests to add beds at these expensive and very restrictive residential facilities. Heretofore the Department has reviewed requests for approval to add beds without the benefit of rules. It has now become apparent that rules are needed.

Sections HSS 52.50 to 52.54, Wis. Adm. Code, require interested persons to obtain a certificate of need from the Department before making application for a license to operate a new child care institution or for a license amendment to add beds at an existing institution. The rules require an applicant for a certificate to give the Department a proposed plan of operation for the new facility or new beds, and to demonstrate need by documenting that (1) existing child care institution placement resources are not adequate to meet the needs of children who require the type of treatment the applicant will provide, (2) these children cannot be served satisfactorily in less restrictive settings, and (3) placement agencies will refer enough children to the child care institution for the first two years after approval to ensure that the resident population does not fall beneath 80% of licensed capacity. The rules also specify the process for evaluating applicant documentation materials and establish the timeframe within which the Department must notify the applicant of the need determination decision and of the applicant's right to appeal an unfavorable decision.

The Department's authority to repeal and recreate and create these rules is found in ss.48.60(3) and 48.67, Stats. The rules interpret s.48.60(3), Stats.

SECTION 1. Subchapter I (title) of HSS 52 is created to read:

SUBCHAPTER I - GENERAL PROVISIONS AND LICENSING OF CHILD CARE INSTITUTIONS

SECTION 2. HSS 52.02(3)(a), (d) and (f) are repealed and recreated to read:

(3) APPLICATION. (a) All applications for a license shall be on forms prescribed by the department, shall be signed by the chief officer of the board of directors and the institution executive and shall be submitted to the department.

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

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

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

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

4. A description of the job responsibilities for each type of position proposed for the institution;

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

6. A list of the board members; and

7. A copy of the certificate of need obtained under ss. HSS 52.50 to 52.55.

(f) The following material shall accompany subsequent applications for a license:

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

2. The budget for the current fiscal year and the financial audit of the past year;

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

4. The number, names, qualifications and classifications of current staff;
5. A copy of the current staff organization chart;
6. A description of any program review and evaluation and changes in program content and purpose which have occurred since the last license was issued;
7. If the expiring license is provisional, a statement showing whether the requirements on which a provisional license was based have been met or, if not, plans for meeting them;
8. A copy of any revisions of personnel practices that have been made since the last license was issued; and
9. If the applicant desires to expand the bed capacity of an existing child care institution, a copy of the certificate of need obtained under ss. HSS 52.50 to 52.55.

SECTION 3. Subchapter II of HSS 52 is created to read:

SUBCHAPTER II - DETERMINATION OF NEED FOR ADDITIONAL CHILD CARE  
INSTITUTION BEDS

HSS 52.50 INTRODUCTION. (1) AUTHORITY AND PURPOSE. Sections HSS 52.50 to 52.55 are promulgated pursuant to s. 48.60(3), Stats., to regulate the establishment of new child care institutions and to control the expansion of existing child care institutions in order to ensure an adequate number and variety of facilities to meet the needs of Wisconsin children who require out-of-home residential care and to prevent unnecessary expansion of child care institutions and the resulting increase in costs to Wisconsin citizens.

(2) TO WHOM THE RULES APPLY. This subchapter applies to all new applicants for a child care institution license and to existing child care institution licensees wishing to expand the child care capacity of their facilities.

HSS 52.51 DEFINITION. In this subchapter, "applicant" means any person wishing to apply for a license to begin operation of a new child care institution or any person wishing to expand the capacity of an existing child care institution. "Applicant" does not include a person who by reason of consolidation or other acquisition acquires control or ownership of child care institution beds, which consolidation or other acquisition results in no increase in or a reduction of the existing state-wide child care institution bed capacity.

HSS 52.52 CERTIFICATION OF NEED REQUIREMENT. (1) No person may apply for a license under s. HSS 52.02(3) (a) to (d) to operate a new child care

institution or for a license amendment under s.HSS 52.02(3)(g) to expand the bed capacity of an existing child care institution until the department has reviewed the need for the additional placement resources which would be created and has certified to the applicant in writing that a need exists for the proposed new placement resources.

(2) The department shall give the applicant a copy of this subchapter and any informational material relating to the application and evaluation of need process.

HSS 52.53 DEMONSTRATION OF NEED. To enable the department to make a determination of need for a new child care institution or for additional beds at an existing child care institution, the applicant shall submit the following documentation materials to the department:

(1) A detailed plan for the operation of the proposed child care institution which includes:

- (a) The number, sex and age range of the children to be served;
- (b) The type or types of needs or disabilities of children to be served;
- (c) The facility staffing, including a list of full-time and part-time positions by job titles and numbers;
- (d) A description of the proposed program and treatment goals;
- (e) A proposed budget, including the current or projected per diem rate; and
- (f) The location of the facility and a drawing of the layout of the physical plant;

(2) A detailed written description of the methodology and findings which document the reasons why the unserved children under sub. (1)(a) cannot be served satisfactorily in less restrictive settings such as in their own homes with treatment services provided to the children and their families, in specialized treatment foster homes or in group homes;

(3) Documentation that existing Wisconsin child care institution placement resources are not adequate to meet the needs of Wisconsin children who require the type or types of care and treatment services the applicant proposes to provide. No beds occupied or to be occupied by children who are placed primarily for educational purposes may be considered in determining need under this section. Of the remaining beds, for purposes of determining need and establishing waiting lists, not more than 40% shall be considered available for out-of-state children; and

(4) Information that supports the probability that the new or expanded facility will be used by Wisconsin placement sources, and that an expanded facility will attain and maintain an average monthly occupancy rate of 80% or more over the first 2 years of operation and that a new facility will have an average monthly occupancy rate of not less than 80% at the end of the second year.

Note: Applicants should send their plan of operation and documentation of need for additional placement resources to: Bureau for Children, Youth and Families, Division of Community Services, P.O. Box 7851, Madison, WI 53707.

HSS 52.54 PUBLICATION OF NOTICE--PARTY STATUS. (1) Upon receipt of the documentation materials listed in s. HSS 52.53, the department shall publish a class 2 notice under ch. 985, Stats., in the official state newspaper designated under s. 985.04, Stats., and in a newspaper likely to give notice in the area of the proposed facility. The notice shall include a statement that the department has received an application for a certificate of need to operate a new child care institution or to expand the bed capacity of an existing child care institution. The notice shall also include the number of additional beds, the geographic location of the facility, the geographic area to be served, the types of children to be accepted for care, the services to be provided and program objectives.

(2) The notice shall invite the submission of written comments, factual data and reasons why the application should be granted or denied from any person within 30 days after the publication of the notice. The notice shall advise persons submitting written comment to indicate their interest in the application and whether the individual commentator wants to be considered for party status in any later proceedings.

Note: Persons submitting written comments on an application should send their comments to: Bureau for Children, Youth and Families, Division of Community Services, P.O. Box 7851, Madison, Wisconsin 53707.

HSS 52.55 NEED DETERMINATION. (1) EVALUATION PROCEDURES. (a) The department shall review the applicant's documentation materials for completeness and may ask the applicant for additional materials or information that the department considers necessary for evaluation purposes.

(b) Except as provided under par. (c), the administrator of the department's division of community services or his or her designee shall make the need determination decision based on the following criteria:

1. The compatibility of the applicant's proposed plan of operation or expansion with the stated treatment goals for the program;

2. The validity of the research methodology used to document need for the proposed program;

3. The congruence of the conclusions reached in the applicant's needs research with department data on current county child care placement needs and available beds in existing child care institutions providing similar services;

4. The correctness of the applicant's contention that the proposed facility is more appropriate than less restrictive child care arrangements;

5. The applicant's documentation supporting the argument that existing Wisconsin child care institution placement resources are not adequate to meet the needs of Wisconsin children who require the type or types of care and treatment services the applicant proposes to provide; and

6. The applicant's documentation of the probability that the expanded facility will attain and maintain an average monthly occupancy rate of 80% or higher for the first 2 years of operation or, if a new facility, not less than an average monthly occupancy rate of 80% at the end of the second year.

(c) An application for expansion of an existing child care institution by 3 or fewer additional beds shall be presumed to meet the criteria under par. (b) unless:

1. The child care institution has submitted another application for expansion of bed capacity within a 2 year period; or

2. There is clear and convincing evidence that the criteria under par. (b) are not met.

(2) NOTICE OF DECISION. (a) Within 90 calendar days after the date on which all required documentation materials were received from an applicant, the department shall send written notice of the decision to the applicant and to anyone who commented in writing on the application. The notice of decision shall state the specific reason for the decision.

(b) Notification of a favorable decision shall include approval to submit an application for a license to operate a new child care institution or to add beds to an existing institution.

(c) The duration of the approval under par. (b) shall be limited to 18 months from the date that it is issued, except that the department may grant one 6-month extension if the institution has a good reason for the delay in becoming operational and documents to the satisfaction of the department that it will be operational within that 6-month period. Any request for extension shall be filed prior to the expiration of the initial 18-month period. If the proposed child care institution is not operational during that 18 month time period, or the extended period, the need determination shall be considered invalid and the approval shall be cancelled. In this paragraph, "operational" means in regard to a new facility that the child care institution has been licensed and has admitted

one or more children, and in regard to expansion of an existing facility, that the child care institution is fully licensed to operate with additional beds. Acceptable reasons for an extension under this paragraph shall include unforeseen delay in obtaining adequate financing approval, in staffing or in construction.

(3) APPEAL. (a) An applicant or a party adversely affected by the decision issued under sub. (2)(a) may request an administrative hearing under s. 227.42, Stats., within 30 days after the date of the decision. This hearing shall be a class 1 proceeding.

(b) The standard of review for the hearing shall be whether the record contains the quantity and quality of evidence that a reasonable person could accept as adequate to support the decision.

(c) The hearing examiner may require the parties to attend a prehearing conference. The hearing examiner may issue a preliminary certification of parties at any prehearing conference.

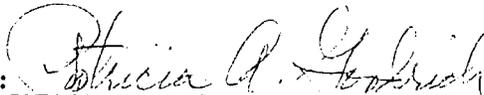
Note: The request for a hearing should be sent to the Office of Administrative Hearings, P.O. Box 7875, Madison, WI 53707.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and  
Social Services

Dated: August 24, 1988

By:



Patricia A. Goodrich  
Deputy Secretary

Seal:



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson  
Governor

RECEIVED

Timothy F. Cullen  
Secretary

August 24, 1988

AUG 25 1988

Mailing Address:  
Post Office Box 7850  
Madison, WI 53707

Revisor of Statutes  
Bureau

Mr. Orlan Prestegard  
Revisor of Statutes  
7th Floor - 30 on the Square  
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 52.02 and 52.50 to 52.55, administrative rules relating to determination of need for additional child care institution beds.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

Sincerely,

Patricia A. Goodrich  
DEPUTY SECRETARY

Enclosure