

Chapter HSS 50

ADOPTION OF CHILDREN WITH SPECIAL NEEDS

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Note: Sections PW-CY 40.30 to 40.35 were repealed effective January 31, 1984 and a new chapter HSS 50 was created effective February 1, 1984.

Subchapter I — General Provisions

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 by providing adoption assistance to families adopting children with special needs and by establishing an adoption information exchange to help find adoptive homes for these children.

(2) **PURPOSE OF RULES.** This chapter establishes criteria to be used by the department in determining when adoption assistance, as authorized by s. 48.975, Stats., may be provided, specifies limitations on the granting of adoption assistance, sets procedures for application for adoption assistance and establishes an adoption information exchange, as required by s. 48.55, Stats., to be operated by the department directly or through a contract with an individual or private agency to assist in finding the best adoptive homes available for the placement of children with special needs.

(3) **APPLICABILITY.** This chapter applies to the department, adoption agencies, any individual or private agency under contract to the department to operate the adoption information exchange, adoptive parents, prospective adoptive parents and special needs children.

(4) **DEFINITIONS.** In this chapter:

(a) "Administrative review" means a review of the plan of services for a child conducted by a panel of persons selected by the adoption agency, at least one of whom is not responsible for the case management or for the supervision or delivery of services to either the child who is subject to the review or the child's parents.

(b) "Adoption" means a method provided by law to establish the legal relationship of parent and child between persons who are not related by birth, with the same mutual rights and obligations that exist between children and their birth parents.

(c) "Adoption agency" means a county agency authorized to place children for adoption under s. 48.57, Stats., the department or an agency licensed under s. 48.60, Stats., and authorized under s. 48.61, Stats., to

accept guardianship and to place children under its guardianship for adoption.

(d) "Adoption assistance" 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.

(e) "Adoption information exchange" or "exchange" means a department program created to facilitate the adoption of special needs children by disseminating information about the children to adoption agencies and prospective adoptive families.

(f) "Adoption photo listing book" means a publication which lists individual special needs children and includes photographs and descriptions of them.

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

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

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

(j) "Division" means the department's division of community services.

(k) "Guardian" has the meaning prescribed in s. 48.02 (8), Stats.

(l) "Legal risk" means a condition of a child in which the severance of the legal rights of the child's birth parents through termination of parental rights proceedings under the laws of the state or the federal government has not been completed or the court's decision is being legally contested.

(m) "Legally free" means the status of a child when the legal rights of the birth parents of the child have been severed through a termination of parental rights proceedings according to the laws of the state or the federal government, or both, and the court has transferred guardianship and custody of the child pending adoptive placement.

(n) "Maintenance adoption assistance" 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 adoption assistance payment is made had been in a family foster home.

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

(p) "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 49.497, Stats.

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

(r) "Registration" means the required listing of information about special needs children or the voluntary listing of information about prospective adoptive families with the adoption information exchange.

(s) "Special needs child" means a legally free child for whom it is difficult to find an adoptive home.

(t) "Sustaining care" means the placement of children under s. 48.428, Stats.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; r. and recr. Register, July, 1985, No. 355, eff. 8-1-85; am. (1) and (2), renum. (d) to (s) to be (e) to (s) and (d), and am. (4) (d), (n), (o) and (p), Register, December, 1988, No. 396, eff. 1-1-89; correction in (4) (n), to (p) made under s. 13.93 (2m) (b) 1, Stats., Register, December, 1988, No. 396.

Subchapter II — Adoption Assistance

HSS 50.02 Adoption with adoption assistance. Sections HSS 50.03 to 50.06 specify procedures and criteria to be used in granting adoption assistance and apply to the department, adoption agencies and adoptive parents, except that the adoption of American Indian children is subject to 25 USC 1901 to 1963.

History: Cr. Register, July, 1985, No. 355, eff. 8-1-85; am. Register, December, 1988, No. 396, eff. 1-1-89.

HSS 50.03 Eligibility for adoption assistance. In order for a child to be adopted with adoption assistance 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 adoption assistance 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 high school equivalency diploma.

(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 3 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 or an adoption agency and the department or adoption agency decides that the child cannot or should not return to the home of his or her parents. If the

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child is an American Indian, adoption procedures shall be in accordance with 25 USC 1901 to 1963.

(d) *Wisconsin responsibility.* A child brought to Wisconsin for adoption from another state under the interstate compact on the placement of children, ss. 48.988 and 48.989, Stats., or from another nation under an orphan, relative or medical immigrant visa may not be provided adoption assistance from this state.

(2) **REASONABLE PLACEMENT EFFORT.** All reasonable efforts shall be made to place the child without adoption assistance, including the following:

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

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

(c) Registration of the child with the Wisconsin adoption exchange.

(3) **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 adoption assistance and, prior to making the adoption final, problems specified under sub. (1)(b)3 or s. HSS 50.05 (3) arise and the family requests adoption assistance.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; renum. from HSS 50.02 and am. (1) (c) and (2), r. (3), Register, July, 1985, No. 355, eff. 8-1-85; renum. (4) to be (3) under s. 13.93 (2m) (b) 1, Stats., correction in (3) (b) made under s. 13.93 (2m) (b) 7, Stats., Register July, 1985, No. 355; am. (intro.), (1) (a), (2) (Intro.) and (c) and (3) (b), cr. (1) (d), Register, December, 1988, No. 396, eff. 1-1-89.

HSS 50.04 Application for adoption assistance. (1) **TIMING.** An application for adoption assistance shall be completed and approved before an adoptive placement occurs, except under the circumstances noted in s.HSS 50.03 (3) (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.

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

(4) **ADOPTION ASSISTANCE AGREEMENT.** The parents' adoption assistance agreement shall be completed and signed by the parent or parents, the adoption worker and the division 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 adoption assistance 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 for Children, Youth and Families, Division of Community Services, P.O. Box 7851, Madison, WI 53707:

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; renum. from HSS 50.03, Register, July, 1985, No. 355, eff. 8-1-85; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, July, 1985, No. 355; am. (1) (3), (4) and (6), Register, December, 1988, No. 396, eff. 1-1-89.

HSS 50.05 Amount of adoption assistance. To determine the amount of adoption assistance, the following procedures shall apply:

(1) **MAINTENANCE ADOPTION ASSISTANCE.** (a) Each adoptive child's situation shall be considered individually in computing the adoption assistance which shall be 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 (3).

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

(c) Benefits paid under aid to families with dependent children (AFDC) are not considered unearned income and may not affect the amount of the adoption assistance.

(2) **MEDICAL SUBSIDY.** Medical adoption assistance shall be granted to all cases approved for maintenance adoption assistance.

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

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

(d) Medical benefits provided under title XIX of the Social Security Act of 1935, as amended, are available to the adoptee in accordance with the procedures of the state in which the adoptee resides. If an adoptee

with Wisconsin adoption assistance is not eligible in the state of residence, the department shall provide medical assistance in accordance with ss. 49.43 to 49.497, Stats., and chs. HSS 101 to 108. The department shall facilitate provision of eligible medical benefits through the interstate compact on adoption and medical assistance referenced in s. 48.9985, Stats.

(3) **NON-RECURRING ADOPTION EXPENSES.** When a child is adopted with adoption assistance, the department shall reimburse adoptive parents for non-recurring adoption expenses up to a \$2000 maximum. In this subsection, "non-recurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of state or federal laws.

(4) **FAMILY CIRCUMSTANCES.** The family's 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) Although the family's financial resources are substantial, 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.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; renum. from HSS 50.04 and cr. (1) (c) and (3), Register, July, 1985, No. 355, eff. 8-1-85; correction in (1) (a) made under s. 13.93 (2m) (b) 7, Stats., Register, July, 1985, No. 355; am. (intro.) and (1), renum. (2) (intro.) to (b) and (3) to be (2) (a) to (c) and (4) and am. (2) (a), cr. (2) (d) and (3), Register, December, 1988, No. 396, eff. 1-1-89.

HSS 50.06 Responsibilities under the program. (1) **ADOPTION ASSISTANCE AGREEMENT.** There shall be a written adoption assistance agreement signed by the adoptive parents and a division representative which shall cover:

(a) The amount of the adoption assistance;

(b) The responsibilities of the adoptive parents;

(c) The responsibilities of the department;

(d) Circumstances under which the adoption assistance 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;

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- (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 adoption assistance and:

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

2. Discontinue adoption assistance based on any of the following circumstances:

a. When the adoptee no longer meets the age criteria specified in s. HSS 50.03 (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 adoption assistance based on either of 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, except when these benefits are obtained as a result of a condition of an adoptive parent; 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.

History: Cr. Register, January, 1984, No. 337, eff. 2-1-84; renum. from HSS 50.05, Register, July, 1985, No. 355, eff. 8-1-85; correction in (3) (a) 2. a. made under s. 13.93 (2m) (b) 7, Stats., Register, July, 1985, No. 355; am. (1) (intro.), (a), (d), (3) (a) (intro.), 1. 2. intro. and 3., Register, December, 1988, No. 396, eff. 1-1-89.

Subchapter III — Adoption Information Exchange

HSS 50.07 Adoption information exchange. Sections HSS 50.07 to 50.10 establish an adoption information exchange to be operated by the department directly or through a contract with an individual or a private agency. These sections apply to the department, adoption agencies, prospective adoptive parents and to an individual or a private agency if under contract with the department to operate the adoption information exchange, except that Indian tribal child-placing agencies may draw upon services of the adoption information exchange but are not obligated under these rules to participate in the exchange.

History: Cr. Register, July, 1985, No. 355, eff. 8-1-85.

HSS 50.08 Adoption information exchange responsibilities. (1) **REGISTRATION.** The exchange shall maintain an ongoing central registry which shall include the following services:

(a) The exchange shall register all special needs children. Special needs children include:

1. Children who have special needs due to medical, psychological, developmental or behavioral conditions;
2. Children who have special needs due to special circumstances such as age, sibling group, sex, race or national or cultural origin;
3. Children who have not been placed for adoption within 60 days after being legally freed; or
4. Foreign-born children who have been referred to the department for adoptive placement in Wisconsin.

(b) Children may be considered to have special needs when they are placed in sustaining care or when they are at legal risk. However:

1. The exchange may register children who have been placed in sustaining care under s. 48.428, Stats., only when the court involved gives written permission; and
2. The exchange may register legal risk children either with the written consent of the court or by written consent of the adoption agency and the child's parent or guardian. The registration information shall include information describing the nature of the legal risk.

(c) The exchange shall register prospective adoptive families who have either referred themselves to the exchange or who have been referred to the exchange by an adoption agency.

(d) The exchange may register special needs children with out-of-state exchanges and use the resources of those exchanges, but only with written permission from the child's guardian or the agency responsible for the

child. The exchange may recommend the use of specific out-of-state exchanges for a particular child.

(e) The exchange shall withdraw a child's registration when the adoption agency notifies the exchange in writing that the child has been adopted, has reached age 18, has been emancipated by marriage or has died.

(f) The exchange shall withdraw a prospective adoptive family's registration when the family or agency notifies the exchange in writing that the family has adopted a child, that they are no longer interested in adopting a special needs child or after one year if the family or agency has not responded to inquiries from the exchange.

(2) MATCHING SERVICE. The exchange shall attempt to match children listed in the adoption photo listing book under sub. (3) and prospective adoptive families registered with the exchange by:

(a) Giving self-referred prospective adoptive families information about the exchange, special needs adoption and home study requirements; referring the family to adoption agencies serving their geographic area, and following up on the family's referral; and

(b) Contacting adoption agencies to provide them with information on registered prospective adoptive families that would be appropriate for a registered or photo-listed child based on the child's needs and circumstances.

(3) ADOPTION PHOTO LISTING BOOK. The adoption information exchange shall develop and maintain a book which shall:

(a) Include information about and a photograph of each registered child, except for a child deferred from the listing under s. HSS 50.10. This information shall be edited to concisely describe the child in a positive and uniform manner;