

**State of Wisconsin
Department of Children and Families**

NOTICE OF PUBLIC HEARING

**Information to Be Provided to Physical Custodians
of Children in Out-of-Home Care**

DCF 37

NOTICE IS HEREBY GIVEN that pursuant to s. 48.67 (intro.) and 895.485 (4), Stats., the Department of Children and Families proposes to hold a public hearing to consider proposed rules relating to relating to information to be provided to physical custodians of children in out-of-home care.

Hearing Information

**January 21, 2016
Thursday
1:30 p.m.**

**MADISON
GEF 1 Building, Room H206
201 E. Washington Avenue**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 422-7077 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.67 (intro.) and 895.485 (4), Stats.

Statutes interpreted: Sections 48.67 (intro.) and 895.485, Stats.

Related statute or rule: Section 48.371, Stats.

Explanation of Agency Authority

Section 895.485 (4), Stats., provides that the department shall promulgate rules specifying the kind of information that an agency that places a child in a foster home or family-operated group home shall disclose to the foster parent or family-operated group home operator that relates to a medical, physical, mental, or emotional condition of the child.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Summary of the Proposed Rule

The current ch. DCF 37, *Information to be Provided to Foster Parents*, requires placing agencies to use the forms in Appendices A and B to provide information to a foster parent or operator of a family-operated group home about a child who may be placed or has been placed in the foster home or the family-operated group home. The current rule and forms have not been updated since the rule became effective in 1995.

Among other reasons, the forms need to be revised to respond to the finding by the Administration for Children and Families that the Wisconsin child welfare system needs to do all of the following:

- Improve the assessment of a child's needs and provide that information to caregivers providing services to the child.
- Provide consistent information to all out-of-home care providers.
- Establish plans for caregivers to follow to manage challenging behaviors by the child.

The revised forms will incorporate basic information and language from the Child and Adolescent Needs and Strengths (CANS) assessment tool that was implemented in 2011 and will be organized in a more logical manner for communicating the child's needs. Also, under the proposed rules, the placing agency will be required to use the forms when a child is placed with any physical custodian, including a foster parent; the operator of a group home; the operator of a residential care center for children and youth; a person who is not a relative with whom the child is placed under s. 48.207 (1) (f), Stats.; or a relative with whom the child has been placed by order of the court under ch. 48 or ch. 938, Stats. Under the current rule, the forms are required only when a child is placed in a foster home or a family-operated group home. In addition, the revised forms will require a plan for managing challenging behaviors by the child.

Under the proposed rule, the actual forms will not be in rule, so minor updates to the form can be made in a timely manner. The rule will include the types of information that placing agencies will be required to gather to complete the forms.

Timing. The proposed rule provides that before a prospective physical custodian agrees to placement of a child, the placing agency shall gather information required by the forms, enter it on the appropriate form or attach it to the form, and provide the forms to the prospective physical custodian.

After the placing agency provides the forms to the prospective physical custodian, the agency is required to make reasonable attempts to gather information required by the forms that was not available to the agency before providing the forms to the physical custodian. For information required under s. DCF 37.04 (4) (a) to (k), the placing agency shall provide the information it receives after providing the forms to the physical custodian as soon as possible, but no later than 2 days after the date that the child is placed with the physical custodian. For information

required under s. DCF 37.04 (4) (L) to (y), the placing agency shall provide the information it receives after providing the forms to the physical custodian as soon as possible, but no later than 7 days after the date that the child is placed with the physical custodian.

An exception requires the agency to provide information it determines is of critical importance to the health, safety, or welfare of the child or the physical custodian to the physical custodian no later than 2 days after receiving the information.

If the placing agency receives information required by the forms that the agency has not provided to the physical custodian, the agency shall provide the information to the physical custodian as soon as possible, but no later than 7 days after the date that the agency receives the information, except the agency shall provide information it determines is of critical importance to the health, safety, or welfare of the child or the physical custodian no later than 2 days after receiving the information.

Allegation. The placing agency may not include information on the forms regarding the child or the child's family that is an allegation, unless the placing agency determines that, if substantiated, the allegation would have a significant impact on the success of the placement and related services or on the health, safety, or welfare of the child, the physical custodian, others in the physical custodian's home or facility, or the community. If the placing agency informs the physical custodian of an allegation about the child or the child's family, the agency shall record the allegation in the child's case record and shall include the justification for providing the information.

Exception. A placing agency may make an exception to the provision of any information to a physical custodian for either of these reasons:

- The information is confidential, the placing agency does not have access to the information, and the placing agency has made a reasonable effort to obtain the information through appropriate releases of information.
- The exception does not jeopardize the health, safety, or welfare of the child, the physical custodian, others in the physical custodian's home or facility, or the community and the information is not critical to the success of the placement and related treatment or services.

Except as permitted under s. 252.15 (6), Stats., a physical custodian that receives information on these forms, other than the information regarding the child's religious affiliation or belief, shall keep the information confidential and may disclose that information only for the purposes of providing care for the child or participating in a court hearing or permanency plan review concerning the child.

Summary of Factual Data and Analytical Methodologies

The non-statutory provisions of the proposed rules and the revised forms are based on suggestions from the Out-of-Home Care/Adoption Committee, Case Process Committee, Foster Parent Advisory Committee, and meetings with county foster care coordinators.

Summary of Related Federal Law

The current 42 USC 671 (a) (24) requires that the state plan under Title IV-E of the Social Security Act for foster care and adoption assistance include a certification that, before a child in foster care is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that the preparation will be continued, as necessary, after the placement of the child.

Effective September 29, 2015, the “Preventing Sex Trafficking and Strengthening Families Act” (Public Law 113-183) amends 42 USC 671 (a) (24) to require that foster parent preparation include knowledge and skills relating to the “reasonable and prudent parenting standard” for the participation of the child in “age or developmentally-appropriate” activities to support normalcy for children in foster care.

Under 45 CFR 1337.20, “foster care” means 24-hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility, including placements with a relative caregiver or in a foster home, group home, shelter care, or residential care center for children and youth.

Comparison to Adjacent States

Minnesota. Minnesota requires that the agency placing the child fully inform foster care providers on the reasons for placement of the child; specific actions to be taken by the child, the child’s parent or guardian, or foster care providers to correct the problems or conditions identified as a reason or the child’s removal; needs of the child or family for treatment, care, or rehabilitation; services requested or needed by the child, the child’s parent or guardian, and foster care providers; visitation rights and obligations of the parents, guardians, or other relatives; decisions about the child that the agency will make and decisions that will require the consent of the parents; authority of the foster care provider to arrange for the education of the child and to meet with the teachers regarding the child’s progress; date on which the child is expected to return home; information about the child’s immunizations and other pertinent health data; and whether the child has a communicable disease.

Illinois. Illinois requires the department to provide information to a foster parent or other caregiver on the child’s medical history, educational history, client service plan, case history behavior problems, prior criminal history, habits, likes, dislikes, and other relevant background information.

Iowa. Iowa requires that at the time of placement, an agency shall provide foster parents with the name of the child, agency caseworker, and referring agency; information about the child's known behavioral characteristics including safety-related information, needs, and plans for the child and family; written consent to obtain routine, nonsurgical medical care and to authorize emergency medical and surgical treatment, anesthesia, and immunizations; and a copy of the child's current physical examination and medical history.

Michigan. Before the placement of a child, Michigan requires that an agency provide a foster parent with information on the child’s name; date of birth; available known information about the child’s health; any known history of abuse or neglect of the child; all known emotional and psychological problems of the child; all known behavioral problems of the child; circumstances necessitating placement of the child; any other known information to enable the foster parent to provide a stable, safe, and healthy environment for the foster child and the foster

family; name of assigned social service worker; and authorization to provide routine and emergency medical care.

Effect on Small Businesses

The proposed rule will affect small businesses as defined in s. 227.114 (1), Stats.

Analysis Used to Determine Effect on Small Businesses

The rule will affect private child-placing agencies that are licensed under s. 48.60, Stats., but the effect will be minimal. The time and effort required to complete the forms that will be required under the proposed rules is similar to the existing forms required under ch. DCF 37, Appendices A and B, and pre-placement forms required by group homes and residential care centers.

The Department's Small Business Regulatory Coordinator is Elaine Pridgen, (608) 422-7077, elaine.pridgen@wisconsin.gov.

Agency Contact Person

Jonelle Brom, Bureau of Permanence and Out-of-Home Care, (608) 422-6930, jonelle.brom@wisconsin.gov.

Place Where Comments are to be Submitted and Deadline for Submission

A copy of the emergency and proposed permanent rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rules or fiscal estimate by contacting:

Elaine Pridgen
Department of Children and Families
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Madison, WI 53707
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Written comments on the rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> website no later than January 22, 2016, will be given the same consideration as testimony presented at the hearing.