

## Statement of Scope

### Department of Children and Families

**Rule Number:** Chapter DCF 56

**Relating to:** Foster Care Licensing

**Rule Type:** Permanent

This revised statement of scope modifies, SS 060-23, which was approved by the Governor on August 17, 2023, published in Register 812A3, on August 21, 2023, and approved by Secretary Emilie Amundson on September 6, 2023. This revised statement of scope was approved by the Governor on November 2, 2023.

#### 1. Finding/nature of emergency (for emergency rules only)

Not applicable

#### 2. Detailed description of the objective of the rules

This revised statement of scope adds to the scope of the proposed rules the development of foster care licensing standards for relatives and like-kin that differ from the standards used for individuals who are not relatives or like-kin. The federal Department of Health and Human Services published a final rule allowing states to have separate licensing standards for relative or kinship foster family homes on September 28, 2023.

The proposed rules will also more closely align the department's foster care licensing rules with the Department of Health and Human Services *National Model Foster Family Home Licensing Standards* when appropriate and allowed under state law, remove barriers to licensure, and reduce workload for licensing agencies.

The department will appoint an advisory council to review the entire rule and recommend revisions. The DCF 56 Advisory Council will include county foster care licensors, supervisors, and ongoing services professionals; parents, youth, and relative caregivers with lived experience to the extent possible; and representatives from the Wisconsin County Human Services Association, the Wisconsin Association of Family & Children's Agencies, tribal child welfare agencies, private child-placing agencies, and the Division of Milwaukee Child Protective Services. Other experts may be invited to participate in meetings in which their area of expertise is discussed.

#### 3. Detailed explanation of statutory authority for the rule

##### **Section 48.619, Stats., Definition of "child" for purposes of ch. 48, Stats., subch. XIV, Foster homes**

"Child" means a person under 18 years of age. For purposes of the authority to provide care and maintenance for a child and of counting the number of children for whom a foster home or group home may provide care and maintenance, "child" also includes a person 18 years of age or over, but under 21 years of age, who resides in the foster home or group home under an order under s. 48.355, 48.357, 48.365, 938.355, 938.357, or 938.365, Stats., that terminates after the person attains 18 years of age, under a voluntary transition-to-independent-living agreement under s. 48.366 (3) or

938.366 (3), Stats., or under the placement and care responsibility of another state under 42 USC 675 (8) (B) (iv).

**Section 48.62, Stats., Licensing of foster homes; rates**

(1) Any person who receives, with or without transfer of legal custody, 4 or fewer children or, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different *number of children*, the number of children permitted under those rules, to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75, Stats.

(6) The department or a county department may recover an overpayment from a foster parent who continues to receive those payments by reducing the amount of the foster parent's monthly payment. The department may by rule specify other methods for recovering those *overpayments*. A county department that recovers an overpayment under this subsection due to the efforts of its officers and employees may retain a portion of the amount recovered, as provided by the department by rule.

(8) The department shall promulgate rules relating to foster homes as follows:

(a) Rules providing *levels of care* that a foster home is licensed to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that the department may promulgate by rule.

(b) Rules establishing a *standardized assessment tool* to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs. A foster home that is certified to provide a given level of care may provide foster care for any child whose needs are assessed to be at or below the level of care that the foster home is certified to provide. A foster home that is certified to provide a given level of care may not provide foster care for any child whose needs are assessed to be above that level of care unless the department, county department, or child welfare agency issuing the foster home license determines that support or services sufficient to meet the child's needs are in place and grants an exception to that prohibition.

(c) Rules providing monthly *rates* of reimbursement for foster care that are commensurate with the *level of care* that the foster home is licensed to provide and the *needs of the child* who is placed in the foster home. Those rates shall include rates for *supplemental payments for special needs, exceptional circumstances, and initial clothing allowances* for children placed in a foster home that is receiving an age-related monthly rate under sub. (4). In promulgating the rules under this paragraph, the department shall provide a mechanism for equalizing the amount of reimbursement received by a foster parent prior to the promulgation of those rules and the amount of reimbursement received by a foster parent under those rules so as to reduce the amount of any reimbursement that may be lost as a result of the implementation of those rules.

(d) Rules providing a monthly retainer fee for a foster home that agrees to maintain openings for emergency placements.

**Section 48.67, Stats., Rules governing child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments**

(intro.) 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. The department shall consult with the department of safety and professional services, the department of public instruction, and the child abuse and neglect prevention board before promulgating those rules. For foster homes, those rules shall include the rules promulgated under s. 48.62 (8), Stats. Those rules shall include rules that require all of the following:

(4) (a) That all foster parents successfully complete training in the care and support needs of children who are placed in foster care that has been approved by the department. The training shall be completed on an ongoing basis, as determined by the department. The department shall promulgate rules prescribing the training that is required under this subsection and shall monitor compliance with this subsection according to those rules. The training shall include training in all of the following:

1. Parenting skills, including child development; infant care, if appropriate; the effects of trauma on children; communicating with children in an age-appropriate manner; and recognizing issues such as drug use or addiction or attachment disorder.

1m. Knowledge and skills relating to the use of the reasonable and prudent parent standard in making decisions concerning a child's participation in age or developmentally appropriate activities including all of the following

- The stages in the development of cognitive, emotional, physical, and behavioral capacities of children.
- Applying the reasonable and prudent parent standard in making decisions on all of the following:
  - A child's participation in extracurricular, enrichment, cultural, or social activities, such as sports, field trips, overnight, and other recreational activities.
  - The signing of permission slips and the arrangement of transportation to and from those activities.
  - The child's choices with respect to transportation, employment, peer relationships, and personal expression.

2. For foster parents caring for children 11 years of age or older, teaching and encouraging independent living skills, including budgeting, health and nutrition, and other skills to promote the child's long-term economic independence and well-being.

3. Issues that may confront the foster parents, in general, and that may confront the foster parents of children with special needs.

4. Child abuse and neglect prevention.

5. The proper use of foster care payments.

6. The availability of resources for foster parents in the local community.

7. Other topics, as determined by the department.

(c) For a foster parent receiving an initial license, the training under par. (a) shall be completed before the first child is placed with the foster parent.

**Section 48.383 and 938.383, Stats., Reasonable and prudent parenting standard**

Sections 48.383 (1), and 938.383 (1), Stats., require that out-of-home care providers use the "reasonable and prudent parent standard" in making decisions concerning a child's or juvenile's

participation in “age or developmentally appropriate” extracurricular, enrichment, cultural, and social activities. Sections 48.383 (3) and 938.383 (3), Stats., require the department to promulgate rules to implement requirements regarding the reasonable and prudent parent standard.

Sections 48.02 (14r) and 938.02 (14r), Stats., define the “reasonable and prudent parent standard” as a standard for an out-of-home care provider to use when making decisions concerning a child’s or juvenile’s participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities that is characterized by careful and sensible parental decisions that maintain the health, safety, best interests, and cultural, religious, and tribal values of the child or juvenile while at the same time encouraging the emotional and developmental growth of the child or juvenile.

Sections 48.02 (1dm) and 938.02 (1g), Stats., define “age or developmentally appropriate activities” as activities that are generally accepted as suitable for children or juveniles of a given chronological age or level of maturity or that are determined to be developmentally appropriate for a child or juvenile based on the cognitive, emotional, physical, and behavioral capacities that are typical for children or juveniles of a given age or age group or, in the case of a specific child or juvenile, activities that are suitable for the child or juvenile based on the cognitive, emotional, physical, and behavioral capacities of that child or juvenile.

In making decisions using the reasonable and prudent parent standard, an out-of-home care provider shall consider the restrictiveness of the child’s placement and whether the child has the necessary training and safety equipment to safely participate in the activity under consideration and may not make any decision that is in violation of any court order or any federal or state law, rule, or regulation.

**Section 48.627 (2), Stats., Foster parent insurance and liability**

(a) Before the department, a county department, or a licensed child welfare agency may issue, renew, or continue a foster home license, the licensing agency shall require the applicant to furnish proof satisfactory to the licensing agency that he or she has homeowner’s or renter’s liability insurance that provides coverage for negligent acts or omissions by children placed in a foster home that result in bodily injury or property damage to 3rd parties.

(b) A licensing agency may, in accordance with rules promulgated by the department, waive the requirement under par. (a) if the applicant shows that he or she is unable to obtain the required insurance, that he or she has had a homeowner’s or renter’s liability insurance policy canceled or that payment of the premium for the required insurance would cause undue financial hardship.

(d) The licensing agency shall specify the amounts of liability insurance coverage required under par. (a).

**Section 48.64 (4) (a), Stats., Placement of children in out-of-home care**

ORDERS AFFECTING THE HEAD OF HOME OR THE CHILDREN. (a) Except as provided in par. (d), any decision or order issued by an agency that affects the head of a foster home or group home, the head of the home of a relative other than a parent in which a child is placed, or the child involved may be appealed to the department under fair hearing procedures established under rules promulgated by the department.

**Sections 48.75 (3) and 48.88, Stats., Home visit**

Section 48.75 (3), Stats., provides that before a child welfare agency or public licensing agency issues a license to operate a foster home, the agency shall require that each foster parent receive a favorable report following an investigation that is conducted in the same manner that the investigation under s. 48.88 (2) (aj), Stats., is conducted. Section 48.88 (2) (aj), Stats., provides the following:

- In determining whether the petitioner's home is suitable for the child, the agency or tribal child welfare department making the investigation shall consider whether the petitioner is fit and qualified to care for the child, exercises sound judgment, does not abuse alcohol or drugs, and displays the capacity to successfully nurture the child.
- The investigation shall be conducted using an assessment system that is approved by the department. The assessment system shall provide a reliable, comprehensive, and standardized qualitative evaluation of a petitioner's personal characteristics, civil and criminal history, age, health, financial stability, and ability to responsibly meet all requirements of the department.
- If the agency or tribal child welfare department making the investigation has special concern as to the welfare of the child or the suitability of the placement, the investigation may include a clinical assessment of the petitioner's mental health or alcohol or other drug use by an employee of the agency or tribal child welfare department who is not employed in the unit of the agency or tribal child welfare department that is making the investigation or by a person who is not employed by that agency or tribal child welfare department. A person who provides such an assessment shall be a licensed psychologist, licensed psychiatrist, certified advanced practice social worker, certified independent social worker, licensed clinical social worker, or licensed professional counselor.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule**

2000 hours

**5. List with description of all entities that may be affected by the rule**

Foster parents and applicants, foster children, county departments of human and social services, tribal child welfare agencies, licensed child-placing agencies, and the department's Division of Milwaukee Child Protective Services.

**6. Summary of any federal statute or regulation that is intended to address the activities to be regulated by the rule**

**42 USC 671 (a), State plan requirements for foster care and adoption assistance (related to foster care licensing)**

In order for a state to be eligible for payments under this part, it shall have a plan approved by the Secretary which--

(10) provides--

(A) for the establishment or designation of a state authority or authorities that shall be

responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for the institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and which shall permit use of the reasonable and prudent parenting standard.

(C) that the standards established pursuant to subparagraph (A) shall include policies related to the liability of foster parents and private entities under contract by the State involving the application of the reasonable and prudent parent standard, to ensure appropriate liability for caregivers when a child participates in an approved activity and the caregiver approving the activity acts in accordance with the reasonable and prudent parent standard.

(D) that a waiver of any standards established pursuant to subparagraph (A) may be made only on a case-by-case basis for nonsafety standards (as determined by the State) in relative foster family homes for specific children in care.

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness.

(18) (A) prohibits denying any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved.

(20) provides that a state must provide procedures for criminal records checks, including fingerprint-based checks of national crime information databases, for all prospective foster or adoptive parents. A state must also check any child abuse and neglect registry maintained by the state or another state in which any prospective foster or adoptive parent or other adult living in the home has resided in the preceding 5 years.

(24) requires that the state plan for foster care and adoption assistance include a certification that, before a child in foster care under the responsibility of the state 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 such preparation will be continued, as necessary, after the placement of the child.

(31) provides that a state must provide that reasonable efforts are made to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the state documents that such joint placement would be contrary to the safety or well-being of any of the siblings. If siblings are not jointly placed, the state must provide for frequent visitation or other ongoing interaction between the siblings, unless that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

#### **42 USC 672 (c) (1), Foster care maintenance payments; foster family home**

In general, a foster parent may care for not more than 6 children in foster care. State flexibility to exceed this limit is allowed for any of the following reasons:

- To allow a parenting youth in foster care to remain with the child of the parenting youth.
- To allow siblings to remain together.
- To allow a child with an established meaningful relationship with the family to remain with the family.
- To allow a family with special training or skills to provide care to a child who has a severe disability.

**National Model Foster Family Home Licensing Standards, Department of Health and Human Services, Administration on Children, Youth, and Families, Children’s Bureau, Information Memorandum 19-01, Attachment A, issued February 4, 2019**

The Department of Health and Human Services, Children’s Bureau, developed the *National Model Foster Family Home Licensing Standards* in response to a directive in The Family First Prevention Services Act to identify reputable model licensing standards for the licensing of foster family homes (Public Law 115-123, Section 50731). The model standards are available at <https://www.acf.hhs.gov/cb/policy-guidance/im-19-01>.

**Separate Licensing Standards for Relative or Kinship Foster Family Homes, Department of Health and Human Services, 88 Federal Register 66700 (September 28, 2023) (to be codified at 45 CFR 1355.20 and 45 CFR 1356.21)**

The final rule allows state and tribal Title IV–E agencies to adopt a set of foster home licensing or approval standards for individuals related to a child by blood, marriage or adoption and other individuals who have an emotionally significant relationship with the child, including fictive kin, that differ from the foster home licensing or approval standards used for individuals who are not relatives or fictive kin.

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses)**

None or minimal

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Approved this    day of October 2023.

DEPARTMENT OF CHILDREN AND FAMILIES

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Secretary or designee