

Chapter HFS 50

FACILITATING THE 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Note: Sections PW-CY 40.30 to 40.35 were repealed effective January 31, 1984 and a new chapter HSS 50 was created effective February 1, 1984. Chapter HSS 50 was renumbered chapter HFS 50 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, May, 1999, No. 521.

Subchapter I — General Provisions

HFS 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 applying for adoption assistance and for amending the adoption assistance agreement 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 so related by birth, with the same mutual rights and obligations that exist between the child and the child's birth parents.

(c) "Adoption agency" or "agency" means a Wisconsin county department authorized under s. 48.57 (1) (e) or (hm), Stats., to place children for adoption, the department, a licensed child welfare agency authorized under ss. 48.60 and 48.61 (5), Stats., to accept guardianship and to place children under its guardianship for adoption or an American Indian tribal agency in this state.

(d) "Adoption assistance" means assistance provided under agreement by the department to the parents of an adopted child or the prospective adoptive parents of a child placed for adoption, when the family has signed and the department has approved an agreement that is designed to assist in the cost of care of the child after adoption or after the child has been placed for adoption.

(e) "Adoption assistance for medical care" means the program under Title XIX of the Social Security Act as codified in 42 USC 1396, ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108.

(f) "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.

(g) "Adoption photolisting" means a publication that lists individual special needs children and includes photographs and descriptions of them.

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

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

(j) "Child at high risk" means a child in the guardianship of an adoption agency who does not have a known special need under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. but who is at high risk of developing a moderate or intensive level of special needs under s. HFS 50.03 (1) (b) 3. based on one or more of the following:

1. There is documented information that either or both birth parents have a medical diagnosis or medical history which could result in a condition for the child described in s. HFS 50.03 (1) (b) 3. at a later time.

2. The child has experienced 4 or more placements with extended family or foster homes that could affect the normal attachment process.

3. The child experienced neglect in the first 3 years of life or sustained physical injury or physical disease that could have a long-term effect on physical, emotional or intellectual development.

4. There is documented evidence in a medical or hospital record, law enforcement record, social or human service department record, court record, or a record of an agency under a contract with a county department or the department to provide child welfare services that the birth mother used harmful drugs or alcohol during pregnancy which could later result in the child developing special needs as described in s. HFS 50.03 (1) (b) 3.

5. There is documented evidence in a medical or hospital record that the birth mother received inappropriate prenatal care which could later result in the child developing special needs as described in s. HFS 50.03 (1) (b) 3.

(k) "Department" means the Wisconsin department of health and family services.

(L) "Division" means the department's division of children and family services.

(m) "Guardian" has the meaning given in s. 48.02 (8), Stats.

(n) "Legal risk" means a status of a child in which the severance of the legal rights of the child's birth parents through a termination of parental rights proceeding under the laws of the state

or tribal court have not been completed or the court's decision is being legally contested.

(o) "Legally free" means the status of a child when the legal rights of the child's birth parents have been severed through death of a parent or a termination of parental rights proceeding according to the laws of the state or the tribal court, and the court has transferred guardianship and custody of the child to a placement agency pending adoptive placement.

(p) "Medical adoption assistance card" means a card issued for the purpose of identifying a person as a recipient of adoption assistance for medical care.

(q) "Monthly adoption assistance payment" means a monthly payment amount described in an adoption assistance agreement to help with the expense of raising the child made by the department to the parents or prospective parents of an adopted child with special needs and also means the \$0 payment to the adoptive parents or prospective adoptive parents receiving adoption assistance in the form of medical assistance and to the adoptive parents or prospective parents of a child at high risk.

(r) "Registration" means the listing of information about special needs children or the listing of information about approved prospective adoptive families with the adoption information exchange for the purpose of locating a prospective adoptive family.

(s) "Special needs child" means a legally free child for whom it is difficult to find an adoptive home and who meets the eligibility criteria for adoption assistance under s. HFS 50.03.

(t) "Substantial change in circumstances" means that a documented change related to the risk that qualified the child as a child of high risk under par. (j) has occurred to the child in one or more areas of special needs, including physical, behavioral or emotional special needs, that would result in a change in the supplemental rate as determined by the uniform foster care rate schedule under s. HFS 56.11.

(u) "Sustaining care" means the placement of a child 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; am. (4) (d), r. (4) (n) to (q), cr. (4) (dr), (n) and (o), renum. (4) (r) to (t) to be (4) (p) to (r), Register, September, 1992, No. 441, eff. 10-1-92; emerg. am. (2), r. and recr. (4), eff. 11-16-99; am. (2), r. and recr. (4), Register, July, 2000, No. 535, eff. 8-1-00; correction in (4) (t) made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563; CR 02-101: am. (4) (g), r. and recr. (4) (j), Register November 2002 No. 563, eff. 12-1-02.

Subchapter II — Adoption Assistance

HFS 50.02 Adoption with adoption assistance. Sections HFS 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.

HFS 50.03 Eligibility for adoption assistance. In order for a child to be adopted with adoption assistance the child must be available for adoption and the following circumstances shall exist:

(1) **ELIGIBILITY CRITERIA FOR THE CHILD.** (a) *Age.* The child shall be under 18 years of age at the time of adoption.

(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. HFS 56.11 (3);

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; or

5. The child is a child at high risk of developing a moderate or intensive level of special needs under subd. 3.

(c) *Availability for adoption.* A child shall be considered available for adoption if the child is in the guardianship of the department, a county department under s. 48.57 (1) (hm), Stats., or an adoption agency and the department, county department, or adoption 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 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., except as mandated by federal statutes and regulations, or from another nation under an orphan, relative or medical immigrant visa may not be provided adoption assistance from this state.

Note: Federal law interpretations as provided in ACYF-CB-PA-01-01 and ACYF-CB-IM-01-08 require that in an interstate adoption, when the sending state public child welfare agency does not have responsibility for placement and care of a child, the public child welfare agency in the adoptive parents' state of residence is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement, and paying the subsidy for a child who meets eligibility requirements for federally funded adoption assistance.

(2) **REASONABLE PLACEMENT EFFORTS TO ASSURE ADOPTION PLACEMENT.** (a) Reasonable efforts shall be made to assure a timely placement of the child with the best available family without adoption assistance. The agency shall make efforts to consider a number of families in order to locate the most suitable family for the child, including a review of all approved families associated with the agency, and consideration given, as required by s. 48.833, Stats., to the availability of an adoptive placement with a relative of the child, and those efforts shall be documented in the child's record. If 2 or more appropriate families are not approved and available within the agency, the agency shall make a timely effort to locate additional families by doing any of the following:

1. Contacting other adoption agencies.

2. Photolisting the child with the adoption information exchange.

3. Working through the adoption information exchange to photolist the child with a national adoption exchange.

(b) Once the agency has determined that placement with a specific family would be the most suitable for the child, the agency shall make a full disclosure to the family of the child's background, to the extent known, as well as any existing or potential problem related to the child known to the adoption unit of the agency.

(c) If the child has a special need under sub. (1) (b) and if the circumstances of either this subsection or sub. (3) exist, the agency shall inform the family of the adoption assistance program and ask the proposed adoptive parents whether they are willing to adopt without adoption assistance. If the family is not willing to adopt without adoption assistance, the requirement that a reasonable, but unsuccessful, effort to place the child without adoption assistance is met. A request for adoption assistance shall not be a basis for removing a child from a current adoptive placement.

(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. HFS 50.05 (4) 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; r. and recr. (2), Register, September, 1992, No. 441, eff. 10-1-92; correction in (1) (b) 3. and (3) (b), made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1994, No. 463; emerg. am. (1) (b) 3. and 4., cr. (1) (b) 5., r. and recr. (2), eff. 11-16-99; am. (1) (b) 3. and 4., cr. (1) (b) 5. and r., recr. (2), Register, July, 2000, No. 535, eff. 8-1-00; **correction in (1) (b) 3. made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563; CR 02-101: am. (intro.), (1) (c) and (d), (2) (a) 2., 3., and (c), Register November 2002 No. 563, eff. 12-1-02.**

HFS 50.04 Application for adoption assistance.

(1) TIMING. Except in extenuating circumstances as provided in s. HFS 50.065 (2), an initial application for adoption assistance shall be completed and approved no later than the time the adoptive placement of the child occurs in. The prospective adoptive parents may file an application for adoption assistance under the circumstances noted in s. HFS 50.03 (3) (b) or in sub. (4) and adoptive parents may request an amendment to an existing agreement under the circumstances noted in s. HFS 50.044 or 50.045.

(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 a representative of the department designated for this purpose and a copy shall be given to the parent or parents and copies shall be kept in the parent and child file.

(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 a representative of the department designated for this purpose.

(4) ADOPTION ASSISTANCE AGREEMENT. The adoption assistance agreement shall be completed and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. If at any time prior to the adoption the prospective adoptive parent or parents believe there has been a substantial change in circumstances, the prospective adoptive parent or parents may file an application for an amended agreement. The agency, subject to department review, shall assess the current special needs of the child and, as appropriate, the department shall offer to amend the agreement. The amended agreement shall be agreed to and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. Copies of the signed agreement shall be given to the adoptive parent or parents and placed in the child's adoption record. For purposes of amending an agreement following adoption, the agreement in effect at the time of adoption is considered the original agreement.

(5) PAYMENT AUTHORIZATION. The adoption worker shall complete the payment authorization form and send a copy to the division prior to the initiation of adoption assistance benefits.

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 Programs and Policies, Division of Children and Family Services, P.O. Box 8916, Madison, WI 53708-8916.

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; am. (2) (b), (3) to (5), Register, September, 1992, No. 441, eff. 10-1-92; r. (6), Register, July, 1994, No. 463, eff. 8-1-94; emerg. am. (1) and (4), eff. 11-16-99; am. (1) and (4), Register, July, 2000, No. 535, eff. 8-1-00.

HFS 50.044 Request to amend the adoption assistance agreement for a child at high risk of developing special needs.

(1) REQUEST FOR REVIEW. At least 12 months after the date of adoption, the adoptive parents who signed an adoption assistance agreement for a child at high risk may request that the agreement be amended because they now believe a substantial change in circumstances has occurred. If the request results in an amended agreement, any subsequent request for an amended agreement shall be made under s. HFS 50.045. If the request does not result in an amended agreement, the adoptive parents may request that the agreement be amended no earlier than 12 months after the date of the receipt of the last request by the department.

(2) FAMILY RESPONSIBILITY. To request that an agreement be amended, the adoptive family shall do all of the following:

(a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

(b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.

(c) If requested by the department, provide additional information about the child's current functioning.

(d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

Note: A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from the Department by writing to: Bureau of Program and Policies, Division of Children and Family Services, P. O. Box 8916, Madison WI 53708-8916.

(3) DEPARTMENT RESPONSIBILITY. If a request to amend an agreement is received, the department shall do all of the following:

(a) From a review of the information submitted by the family under sub. (2), determine whether a substantial change in circumstances exists to meet the eligibility requirements of s. HFS 50.03 (1) (b) 3. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(b) Contact the appropriate human service agency or agencies in the jurisdiction where the adoptive parents have resided since the placement of the child to request information concerning any substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes a moderate or an intensive level in one or more categories of the supplemental payments schedule, and there has not been a substantiated report of abuse or neglect of the child or any other child by the adoptive or proposed adoptive par-

ents, offer to adjust the amount of adoption assistance for maintenance for up to one year based upon the uniform foster care rate in effect under s. HFS 56.11 (2) and (3) at the time the request for adoption assistance amendment form is received in the department. Payment shall include the basic rate, plus any supplemental payment calculated under s. HFS 56.11 (2) and (3) indicated in the uniform foster care rate. No exceptional payment may be established.

(d) If the adoptive or proposed adoptive parent agrees with the proposed amount of adoption assistance maintenance payment, offer to amend the original agreement in writing for up to one year to specify the new monthly adoption assistance maintenance payment amount.

(e) Review under s. HFS 50.045 (3) (e) the circumstances of a child with a previously amended adoption assistance agreement under this section by contacting the adoptive parent or parents prior to the expiration of the amended agreement. The department shall notify the adoptive parents, in writing, at least 120 days before the expiration of the amended adoption assistance agreement and provide the adoptive parents the expiration date, a request for an adoption assistance amendment form and instructions for completing the form.

History: Emerg. cr., eff. 11-16-99; cr. Register, July, 2000, No. 535, eff. 8-1-00; corrections in (3) (c) made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563.

HFS 50.045 Request to amend the adoption assistance agreement following adoption. (1) REQUEST FOR REVIEW. Twelve months or more following adoption of a child with special needs under s. HFS 50.03 (1) (b) 1., 2., 3. or 4., at least 12 months since the receipt of a previous request under this section by the department, at least 12 months following an amended agreement under s. HFS 50.044, or within 120 days prior to the expiration of an amended agreement, adoptive parents with a current adoption assistance agreement and with a maintenance payment in the amount of \$0 or greater may file a request with the department for amendment of the agreement because they believe a substantial change in circumstances has occurred since the agreement was signed. If an amendment is in effect as a result of approval of an adoption assistance amendment request, the amendment will be in effect until the expiration date specified. The purpose of the amended agreement would be to change the amount of the monthly adoption assistance maintenance payment. An adoption assistance agreement may be amended more than once under the provisions of this section.

(2) FAMILY RESPONSIBILITY. To request that an agreement be amended, the adoptive family shall do all of the following:

(a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

(b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.

(c) If requested by the department, provide additional information about the child's current functioning.

(d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

Note: A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from the Department by writing to: Bureau of Program and Policies, Division of Children and Family Services, P. O. Box 8916, Madison WI 53708-8916.

(3) DEPARTMENT RESPONSIBILITY. If a request to amend an agreement is received, the department shall do all of the following:

(a) From the information submitted by the family under sub. (2), determine whether a substantial change in circumstances exists. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense so that the department will have the information it needs to make the determination.

(b) Contact the appropriate human services agency or agencies in the jurisdiction where the adoptive parents have resided since the placement of the child to request information concerning any substantiated report of abuse or neglect of the child by the adoptive parents.

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes an increase in special needs to the moderate or intensive level in one or more categories of the supplemental payments schedule, or a new category of special needs at the minimum, moderate or intensive level, and there is no substantiated report of abuse or neglect of the child by the adoptive parents, offer to amend the amount of adoption assistance for maintenance for up to one year. The department may not increase the amount in the agreement above the amount allowed under 42 USC 673 or any other federal law. The new rate shall include the basic rate in the existing agreement and any exceptional rate in the existing agreement and an adjusted supplemental payment calculated under s. HFS 56.11 (2) and (3) indicated in the uniform foster care rate. If the original or amended agreement has not established a basic rate, the new rate shall include the basic rate effective on the date the request was received in the department and an adjusted supplemental payment calculated under s. HFS 56.11 (2) and (3) indicated in the uniform foster care rate. If the level of points in a supplemental rate category is at the highest number of points in an intensive level of need category, no increase in payment may be offered in that category. No adjustment may be made to an existing exceptional rate and no exceptional rate may be established.

(d) If the adoptive parent agrees with the proposed amount of the payment, offer to amend the agreement in writing to specify the new monthly adoption assistance amount.

(e) Review an amended adoption assistance agreement, as follows:

1. Prior to the expiration of the amended agreement and annually thereafter for the duration of the adoption assistance agreement the department shall contact the adoptive parent or parents to request information concerning the circumstances of the child. The department shall notify the adoptive parents, in writing, at least 120 days before the expiration of the amended adoption assistance agreement and provide the adoptive parents the expiration date, a request for an adoption assistance amendment form and instructions for completing the form.

2. The department may require the adoptive parent or parents to provide documentation of the current circumstances of the child. The department shall review the information to determine whether the reasons for the change in circumstances continue to exist or not and shall notify the family whether the amount of adoption assistance will be continued, reduced, or returned to the amount in the original agreement or previous amended agreement.

History: Emerg. cr. eff. 11-16-99; cr. Register, July, 2000, No. 535, eff. 8-1-00; corrections in (3) (c) made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563.

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

(1) MONTHLY ADOPTION ASSISTANCE PAYMENT. (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. 48.62 (4), Stats., and difficulty-of-care levels specified in s. HFS 56.11 (3).

(b) The amount of adoption assistance shall be the total monthly adoption assistance payment as indicated on the adoption assistance agreement or as revised by an amendment to the adoption assistance agreement signed by both the adoptive parent or parents and the department. The initial rate for a child at high risk is \$0 in the original adoption assistance agreement if no special needs category under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. applies to the child. The rate may increase or decrease as described in an amendment to the original agreement and law.

(c) The effective date for a rate increase for an amended agreement shall be the first day of the month the department received the request to amend the adoption assistance agreement, except that no increase shall be made prior to 12 months from a prior rate increase. The effective date for a rate decrease for an amended agreement shall be the first day of the month following the month that the amended agreement expires. The effective date for discontinuing adoption assistance for any reason shall be the last day of the month that eligibility for benefits ends.

(2) MEDICAL ADOPTION ASSISTANCE. (a) Adoption assistance for medical care shall be granted to all cases with an approved adoption assistance agreement.

(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. HFS 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 an approved adoption assistance agreement, 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 amount of adoption assistance shall take into consideration the circumstances of the adoptive family and the needs of the child being adopted. In negotiating the amount of the monthly adoption assistance payment within the

limits of sub. (1), the department shall consider family circumstances such as the following:

(a) The burden on the family's financial resources is significant because of a need to provide for the adoptee;

(b) Although the family's financial resources are substantial, unusual circumstances have placed demands on the family income to the extent that providing for an adoptee would result in a significant financial burden;

(c) The family lacks health insurance or sufficient insurance to cover the expected medical needs of the adoptee; and

(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; r. and recr. (2) (a), (4) (intro.) to (c), Register, September, 1992, No. 441, eff. 10-1-92; am. (1) (b), r. (1) (c), Register, July, 1994, No. 463, eff. 8-1-94; emerg. am. (1) (b), (2) (a) and (3), cr. (1) (c), eff. 11-16-99; am. (1) (b), (2) (a) and (3), cr. (1) (c), Register, July, 2000, No. 535, eff. 8-1-00; correction in (1) (a) made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563.

HFS 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 increased, decreased, terminated or temporarily suspended; 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-PLACEMENT RESPONSIBILITIES OF ADOPTIVE PARENTS. After the adoption assistance agreement has been signed and approved by the department and the child has been placed in the home, the adoptive parent shall notify the division within 30 days of the occurrence of any 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 adopting parents are no longer supporting the adoptee; and

(j) If the adoptee has been placed in an institution or other alternate care facility at public expense.

Note: Notice may be delivered in person, by mail, or facsimile (fax) to the Division of Children and Family Services, Bureau of Program and Policies, 1 W. Wilson St., P.O. Box 8916, Madison, WI 53708-8916. The toll free telephone number is 866-666-5532. The fax number is 608-264-6750.

(3) POST-PLACEMENT RESPONSIBILITIES OF THE DEPARTMENT. After the adoption agreement has been signed and approved by the department and the child has been placed in the home, the department shall:

(a) Biannually send written notification to adoptive families of the post-placement responsibilities specified in s. HFS 50.06 (2) (a) to (j). Notification shall include adoptive families who have moved out of state.

(b) Discontinue adoption assistance based on any of the following circumstances, as determined by the department:

1. When the adoptee reaches 18 years of age, except that eligibility for adoption assistance may continue to age 19 if the adopted person is a full-time student in high school or the equivalent. Benefits may continue to age 21 if the adopted person is a full-time student in high school or the equivalent, the department determines that the adopted person has a mental or physical handicap which warrants the continuation of assistance under 42 USC 673, the adopted person is not eligible for other benefits such as supplemental security income and the adopted person otherwise lacks adequate resources to continue in high school or the equivalent;

2. Upon the marriage of the adoptee;
3. When the adoptee is no longer receiving support from the parents;
4. Upon death of the adoptee;
5. When there is a change in the adoptee's guardian; or
6. When the parents are no longer legally responsible for the support of the adoptee except as provided in subpar. a; or

(c) Temporarily suspend or adjust adoption assistance based on either of the following circumstances:

1. The adoptee is no longer receiving support from the adoptive parents; or
2. An adjustment is offered by the department in a written revision or amendment to the agreement, the adoptive parents concur with the adjustment and the adjustment reflects changed circumstances consistent with s. HFS 50.05 (1); and

(d) 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; am. (2) (intro.) and (1), r. and recr. (3) (intro.) and (a), r. (3) (b), renum. (3) (c) to be (3) (b), Register, September, 1992, No. 441, eff. 10-1-92; emerg. am. (1) (d), eff. 11-16-99; am. (1) (d), Register, July, 2000, No. 535, eff. 8-1-00; **CR 02-101: am. (2) (intro.), r. and recr. (3) (a) (intro.), r. (3) (a) 1., renum. (3) (a) 2. a. to f. to be (3) (b) 1. to 6. and (3) (a) 3. a. and b. to be (3) (c) 1. and 2., and (3) (b) to be (3) (d)** Register November 2002 No. 563, eff. 12-1-02.

HFS 50.065 Appeal process. (1) BEFORE ADOPTION IS FINAL. If an applicant for adoption assistance is not satisfied with the action taken by the department on the application or if a prospective adoptive parent who has been approved for or is receiving adoption assistance is not satisfied with the conditions governing the award, the applicant or prospective adoptive parent, prior to the adoption being declared final by the court, may request a review of the decision by the division administrator or designee or may appeal the decision under ch. 227, Stats., to the department of administration's division of hearings and appeals.

Note: A request for review of a decision should be addressed to the Administrator, Division of Children and Family Services, P.O. Box 7851, Madison, WI 53707. A request for a hearing should be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707.

(2) AFTER ADOPTION IS FINAL. An adoptive parent, after an adoption has been declared final by a court, may appeal any of the following under ch. 227, Stats., to the department of administration's division of hearings and appeals:

(a) A department decision after the adoption became final not to approve an application for adoption assistance under s. HFS 50.03 or a department decision before the adoption became final relating to the amount of adoption assistance under s. HFS 50.05, provided that:

1. The conditions of s. HFS 50.03 for eligibility for adoption assistance existed at the time the adoption became final;
2. One of the following extenuating circumstances occurred:
 - a. Facts regarding the child, the child's biological family or the child's background that were relevant to the proposed adoption were known to the adoption worker who served as the child's guardian and who represented the department which placed the

child for adoption, to another agency authorized to place children for adoption and which placed the child for adoption or to an American Indian tribal agency in this state that was guardian of the child and that placed the child for adoption, but were not presented to the adoptive parents by the adoption agency or by another source, such as the child's physician or the agency that originally placed the child for foster care, before the adoption became final;

- b. Adoption assistance was denied based upon a means test of the adoptive family;
- c. The determination by the department that the child was ineligible for adoption assistance was erroneous; or
- d. The adoptive parents were not advised by the adoption agency or by another source, such as a social worker or another adoptive parent, about the availability of adoption assistance and had not previously adopted with adoption assistance; and

3. It has been less than 3 years since the adoptive parents knew or reasonably should have known of the circumstance which is the basis for the hearing request under subd. 2.; or

(b) The failure of the department to comply with a condition of the adoption assistance agreement under s. HFS 50.06, provided that the request is initiated within one year after the failure began.

Note: A request for a hearing should be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707.

(c) A department decision on a request under s. HFS 50.044 to amend an adoption assistance agreement regarding a child at high risk. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

(d) A department decision on a request under s. HFS 50.045 to amend an adoption assistance agreement. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

History: Cr. Register, July, 1994, No. 463, eff. 8-1-94; emerg. am. (2) (intro.), cr. (2) (c) and (d), eff. 11-16-99; am. (2) (intro.), (a) 2. (intro.), r. and recr. (2) (a) (intro.) and cr. (2) (c) and (d), Register, July, 2000, No. 535, eff. 8-1-00.

Subchapter III — Adoption Information Exchange

HFS 50.07 Adoption information exchange. Sections HFS 50.07 to 50.09 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 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; **CR 02-101: am. Register November 2002 No. 563, eff. 12-1-02.**

HFS 50.08 Adoption information exchange responsibilities. (1) PHOTOLISTING. The exchange shall maintain an ongoing central photolist registry which shall include the following services:

(a) The exchange shall photolist 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 30 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 photolist 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 photolist children at legal risk either with the written consent of the court or by written consent of the adoption agency and the child's parent or guardian. The photolist information shall include a description 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 or photolist, as appropriate, 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 photolisting 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 photolisting 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 photolisted child based on the child's needs and circumstances.

(3) ADOPTION PHOTOLISTING. The adoption information exchange shall develop and maintain a photolisting, which shall:

(a) Include information about and a photograph of each photolisted child. The information included with the photolisting for a child shall concisely describe the child in a positive and uniform manner;

(b) Be made available to all adoption agencies in the state, adoptive parent groups, child advocacy groups, other interested groups and child-placing agencies in other states;

(c) Be updated at least quarterly to revise, add to or delete from the listing of available special needs children; and

(d) Include a listing of out-of-state special needs children. If the exchange is operated by an individual or private agency under a contract with the department, there shall be written case-by-case approval by the department for each out-of-state special needs child listed.

(4) PROGRESS INQUIRIES. The exchange shall make inquiries of adoption agencies at least semi-annually to determine the progress toward adoption of children photolisted with the exchange.

(5) TELEPHONE INFORMATION SERVICE. The exchange shall maintain a central telephone number which people can call to get information about the exchange and about adoption of special needs children and shall publish and disseminate the telephone number of the exchange.

(6) PUBLIC INFORMATION. The exchange shall develop and distribute informational pamphlets, brochures, displays and media

outreach materials to provide information regarding the services available from the exchange and to promote the adoption of special needs children.

(7) STATISTICAL REPORTING. The exchange shall compile statistics. If the exchange is operated by an individual or private agency under a contract, a semi-annual statistical report shall be submitted to the department and shall include the following information:

(a) The number of children photolisted during the reporting period and the total number of children currently listed;

(c) The number of children photolisted who were placed for adoption within the previous 6 months and the average number of days that a child was listed prior to adoptive placement;

(d) The number of adoption inquiries received for each child photolisted during the reporting period;

(e) A semi-annual financial report; and

(f) Any other information requested by the department for program management.

(8) RECORDS RETENTION. The exchange shall destroy all records that pertain to a particular child within one year after the child's photolisting is withdrawn or the child is adopted. The records shall be destroyed in a confidential manner.

(9) DISCONTINUANCE OF RECRUITMENT EFFORTS. The exchange shall discontinue photolisting and any other recruitment efforts for a child following receipt of a written notice from the adoption agency.

History: Cr. Register, July, 1985, No. 355, 8-1-85; cr. (8), Register, September, 1992, No. 441, eff. 10-1-92; emerg. am. (3) (c), eff. 11-16-99; am. (3) (c), Register, July, 2000, No. 535, eff. 8-1-00; **CR 02-101: am. (1) (intro.), (a) (intro.) and 3., (b) (intro.) and 1. and 2., (d) and (e), (2) (intro.) and (b), (3) (intro.) and (a), (4), (7) (a), (c) to (f) and (8), r. (7) (b) and (g), cr. (9), Register November 2002 No. 563, eff. 12-1-02.**

HFS 50.09 Adoption agency responsibilities.

(1) PHOTOLISTING. Photolisting of a child may occur at any time before termination of parental rights. Except as provided in sub. (4), an agency shall photolist a child with the exchange within 30 days of the date the child is legally freed for adoption or from the date of an adoptive placement disruption, if the child is not currently photolisted. All of the following information about the child shall be included:

(a) The child's name, birth date, sex, race and the birth parents' religious preference;

(b) A recent black and white photograph of the child;

(c) A brief narrative description of the child;

(d) The name, date of birth and sex of any of the child's siblings who are also available for adoption, and whether they are being placed individually or as a sibling group;

(e) A brief social history, including the child's placement history, and the date when guardianship becomes effective;

(f) An assessment of the child's current abilities and projected functional level as an adult;

(g) The child's school placement level and an assessment of his or her special education needs;

(h) Other information as needed to be compatible with out-of-state exchanges for children to be listed also with those exchanges; and

(i) A description of the nature of legal risk if adoption of the child is considered a legal risk.

Note: Photolisting may also be used prior to termination of parental rights for children at legal risk in need of a foster or adoptive home who have a plan for adoption.

(2) PHOTOLISTING UPDATES. The adoption agency shall provide updated information to the exchange as follows:

(a) Within 10 working days after a change occurs, the agency shall report changes in the child's status, including the child's placement for adoption.

(b) Within 10 working days after the first 12 months that a child has been photolisted and after each subsequent 12-month period, the adoption agency shall submit updating information which

includes a new written description and recent photograph of the child.

(c) Within 10 working days after a change occurs, the agency shall give notice that a prospective adoptive family has either adopted a child or is no longer interested in adopting a special needs child.

(3) PHOTOLISTING AFTER DISCONTINUATION OF RECRUITMENT EFFORTS. If a child's photolisting has been discontinued under s. HFS 50.08 (9), and the exceptions in sub. (4), do not apply, an agency shall re-photo list the child with the exchange within 30 days of a change that creates a need for an adoptive placement. An agency that photolists a child with the exchange under this subsection shall include and update all of the information specified in s. HFS 50.09 (1) (a) to (i).

(4) EXCEPTIONS. Photolisting is not required if any of the fol-

lowing apply:

(a) The agency meets the requirements for reasonable placement efforts described in s. HFS 50.03 (2).

(b) An exception to reasonable placement efforts as specified in s. HFS 50.03 (3) is documented in the child's case record by the adoption agency.

(c) The permanency plan for the child includes documentation by the adoption agency that it is not appropriate to seek an adoptive placement.

History: Cr. Register, July, 1985, No. 355, eff. 8-1-85; emerg. am. (1) (intro.), eff. 11-16-99; am. (1) (intro.), Register, July, 2000, No. 535, eff. 8-1-00; **CR 02-101: am. (1) (intro.), (2) (intro.), (a) (intro.) and (b), r. (2) (a) 1. and 2., cr. (3) and (4), Register November 2002 No. 563, eff. 12-1-02.**

HFS 50.10 Deferral from listing a special needs child in the adoption photo listing book. Cr. Register, July, 1985, No. 355, eff. 8-1-85; **CR 02-101: r. Register November 2002 No. 563, eff. 12-1-02.**