



## Legislative Fiscal Bureau

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May 27, 2009

Joint Committee on Finance

Paper #214

### **Graduated Foster Care Licensing (DCF -- Children and Families)**

[LFB 2009-11 Budget Summary: Page 135, #6]

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#### **CURRENT LAW**

*Kinship Care.* If placement of a child in out-of-home care is with a relative, other than a parent, and the relative is not a licensed foster parent, then the relative may qualify for the kinship care program. The kinship care program is designed to help support a child who resides outside of the home with a relative, rather than placing the child in foster care or other out-of-home placement, as long as such a placement is in the best interests of the child. Kinship care relatives who provide care and maintenance for one or more children may receive a kinship care payment of \$215 per month if eligible.

Counties, other than Milwaukee County, and most tribes are reimbursed for the costs of kinship care payments separately from children and family aids. In Milwaukee County, the Department of Children and Families (DCF) makes kinship care payments to eligible relatives. Kinship care payments are funded with federal temporary assistance for needy families (TANF) block grant funds.

Kinship care placements may be voluntary or court-ordered. The \$215 payment is the same whether the court orders the placement or not. In December of 2008, there were 5,669 children placed with relatives under the kinship care program. Of these, 1,550 were court-ordered.

To the extent TANF funds are not sufficient to fund kinship care costs, counties and tribes can either support these costs from other state aids, local property tax, or other funds or place cases on waiting lists. However, it is DCF policy that cases in any county or tribe under a court order for placement with a relative cannot be placed on waiting lists.

In 2008-09, \$23,579,800 is provided for kinship care under 2007 Wisconsin Act 20.

*Foster Homes.* A foster home is any facility operated by a person required to be licensed for the care and maintenance of no more than four foster children or, if necessary to keep siblings together, no more than six foster children. A person who wishes to operate a foster home must apply to a licensing agency for a foster home license. A licensing agency includes DCF, a county agency, or a licensed, private child-placing agency. In determining whether to issue a license for a foster home, the licensing agency must determine whether the licensee meets: (a) the qualifications set forth for licensees (such as a background check and stable finances); (b) physical environment requirements (such as adequate living area space, number of bathrooms, and number of beds); (c) safety requirements (such as storage of hazardous materials and equipment and fire safety); and (d) proper care requirements (such as nurturing children, supervision of children, and discipline of children).

*Treatment Foster Homes.* A treatment foster home is a family-oriented facility operated by a person or persons required to be licensed for the treatment, care, and maintenance of no more than four foster children. A person or persons who wish to operate a treatment foster home must apply to a licensing agency for a treatment foster home license. A licensing agency includes DCF, a county, or a child welfare agency which issues a treatment foster home license. Licensees must meet the foster home qualifications plus additional requirements, such as: (a) additional education and experience; (b) knowledge of skills and qualifications of specific behavioral, mental, or physical conditions or of equipment needed for these children; (c) participation in team planning; and (d) additional physical environment and care of children requirements to accommodate the additional needs of children in treatment foster homes.

*Funding for Foster Homes and Treatment Foster Homes.* For counties, other than Milwaukee County, funding for foster homes and treatment foster homes is provided under the children and family aids payments. Funding in Milwaukee County for foster homes and treatment foster homes is provided in the Department's Bureau of Milwaukee Child Welfare (BMCW).

The current basic monthly foster care rates are: (a) \$349 for children up to age five; (b) \$381 for children between the ages of five and 11; (c) \$433 for children between the ages of 12 and 14; and (d) \$452 for children 15 years old and older. In addition, foster parents may receive supplemental payments for children with special emotional, behavioral, or physical and personal needs and an exceptional payment to either enable the child to be placed in a foster home instead of being placed or remaining in a more restrictive setting or replace a child's basic wardrobe that has been lost or destroyed through other than normal wear or tear.

Finally, a one-time clothing allowance may be provided upon a child's initial placement in the amount of: (a) \$150 for children up to age five; (b) \$175 for children between the ages of five and 11; and (c) \$200 for children ages 12 and older.

## GOVERNOR

Provide \$880,000 (\$695,200 GPR and \$184,800 FED) in 2009-10, \$870,000 (-\$12,312,700 GPR and \$13,182,700 FED) in 2010-11, and 0.79 GPR position and 0.21 FED position, beginning in 2009-10, to create and implement a graduated foster care licensing system.

*Foster Care Policy Position.* Provide \$47,400 GPR and \$12,600 FED in 2009-10, \$63,200 GPR and \$16,800 FED in 2010-11, and 0.79 GPR position and 0.21 FED position, beginning in 2009-10, to fund a foster care policy position to develop levels of care (LOC) policies and procedures, modify administrative rules, and coordinate technical assistance to child welfare agencies.

*Regional Foster Care Coordinators.* Provide \$252,800 GPR and \$67,200 FED in 2009-10 and \$505,600 GPR and \$134,400 FED in 2010-11 to contract for nine regional foster care coordinators, beginning January 1, 2010, who would provide technical assistance to licensing agencies and monitor provider licensing to ensure consistency with the new licensing rules. Of these coordinators, five would be based in each of the five DCF administrative regions, three would be based in Milwaukee County, and one supervisor would work with the child welfare licensing section in the Department's Division of Safety and Performance.

*eWISACWIS.* Provide \$197,500 GPR and \$52,500 FED in 2009-10 on a one-time basis to modify the electronic statewide child welfare information system to accommodate the necessary changes for the new graduated foster care licensing system, including: (a) providing support for the formal placement needs assessments for children; (b) setting the LOC levels for providers; (c) reflecting the appropriate information on the provider license; (d) tracking provider training and experience; and (e) modifying the rate setting functionality.

*Consulting Contract.* Provide \$197,500 GPR and \$52,500 FED in 2009-10 and \$118,500 GPR and \$31,500 FED in 2010-11 to contract with a consultant to help DCF establish the formal assessment process and develop education materials regarding the LOC approach. The consultant would assist DCF in the selection of assessment tools, develop training for licensing agency staff on how to use the tools, and provide education materials to explain the system to kinship care providers and foster parents.

*Title IV-E Reimbursement for Kinship Care.* Reduce funding by \$13,000,000 GPR and increase funding by \$13,000,000 FED in 2010-11 to reflect additional Title IV-E funds. Under the graduated foster care licensing system, court-ordered kinship care providers would be licensed under the provisions described below. Out-of-home care costs may not be reimbursed under Title IV-E unless the child is placed in a licensed out-of-home care placement. Under current law, kinship care providers are not licensed and, therefore, not entitled to reimbursement under Title IV-E. The licensing of court-ordered kinship providers under this provision would allow reimbursement under Title IV-E. The new system would not take effect until January 1, 2010. The bill assumes no new Title IV-E reimbursement until 2010-11.

*Licensing System.* Require DCF, the Department of Corrections, or a county department of human/social services, beginning January 1, 2010, to reimburse a person who is licensed, or considered to be licensed, to operate a foster home at the appropriate rate determined by that Department or county department under rules promulgated by DCF. A person would be considered to be licensed if: (a) that person is licensed to operate a treatment foster home on December 31, 2009, for the remainder of the term of the treatment foster home license; or (b) that person is receiving kinship care or long-term kinship care payments on December 31, 2009, for the care and maintenance of a child, and is not ineligible for a license to operate a foster home, until the time the next review of the child's placement would take place.

*Rules.* Require DCF to promulgate rules related to foster homes that address the following:

a. Levels of care that a foster home would be licensed to provide. The LOC would have to be based on the level of knowledge, skill, training, experience, and other qualifications required of the licensee, the level of responsibilities expected of the licensee, the needs of the children placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that DCF promulgates by rule.

b. Standardized assessment tools that would be used to assess the needs of a child placed, or to be placed, outside the home, the LOC required to meet those needs, and placement of the child that meets those needs. A foster home licensed to provide a given level of care under the rules could provide foster care for any child whose needs would be assessed at or below the LOC that the foster home would be licensed to provide.

c. Monthly rates of reimbursement for foster care commensurate with the LOC that the foster home would be licensed to provide and the needs of the child placed in the foster home. The rates would have to include rates for supplemental payments for special needs, exceptional circumstances, and initial clothing allowances for children placed in a foster home.

d. Monthly retainer fees for foster homes that agree to maintain openings for emergency placements.

Require DCF to submit the rules in proposed form to the Legislative Council staff no later than the first day of the third month beginning after the bill's general effective date. Authorize DCF to promulgate emergency rules until the permanent rules take effect without being required to provide evidence that the emergency rule would be necessary for the preservation of the public peace, health, safety, or welfare or to provide a finding of emergency.

## **DISCUSSION POINTS**

1. According to the Foster Family-Based Treatment Association (FFTA), in a 2005 paper *Levels of Care and Treatment Foster Care*, LOC systems are a growing trend in foster care to provide accountability and cost containment. LOC systems typically involve: (a) structured

assessment tools to determine a child's level of needs; (b) different LOCs, with each level addressing progressively more significant needs of a child as determined by the assessment; and (c) funding proportional to the child's assessed level of need, rather than the provider's authorized level of services. Changes in a child's needs result in a change in the LOC and funding for the child.

2. The FFTA paper analyzed an LOC system implemented by Kentucky. The paper concluded that the assessors were consistent in their LOC placements with an inter-rater reliability of over 90% and that providers agreed with the assigned LOC more than 90% of the time. In addition, outcomes appeared to have improved for children and the cost on a per-child basis decreased with the use of an LOC system. However, Kentucky's LOC system included residential care centers, and cost savings may have resulted from moving children from residential care centers to treatment foster homes, so any comparison may not apply to the graduated foster care licensing system proposed by the Governor. In addition, Kentucky's LOC system allowed some safeguards for providers against financial loss, including performance incentives if the provider's services resulted in a decrease of a child's level of need. It was also noted that there was an increase in administrative workloads and a reduction in the independence of providers.

3. Maine has also implemented an LOC system. Conversion to an LOC system began as a pilot program and was then implemented statewide. An evaluation of the pilot program also found that all assessors performed the assessments similarly. Six people had been trained to conduct the assessments. Preliminary figures indicated that more than half of the children were placed in a level such that there was an increase in reimbursement rates and less than half were placed in a level such that there was a decrease in reimbursement rates. To address the financial loss to providers that would result from a decrease in reimbursement rates, reimbursement rates were frozen without changes due to the LOC system for a period of 15 months. Communication with providers about the LOC system, through an explanatory letter and 12 follow-up informational meetings, was used to develop LOC policy and modifications to the system.

4. Data from the Child Welfare League of America's National Data Analysis System shows that in 2004, 24 states and the District of Columbia had some LOC system for children in out-of-home care, 16 states had no LOC system, and data was not available for 10 states. Of these 10 states, six had an LOC system in 2002, one did not, and three had no data available in 2002 either.

5. AB 75 would require DCF to create and implement an LOC system for out-of-home care. Under the graduated foster care licensing system, DCF would promulgate rules to specify the standardized assessment tools to be used in determining the needs of children placed in out-of-home care, the different LOCs, and the rates of reimbursement based on a child's needs and the LOC provided.

6. No details are provided under AB 75 regarding the assessment tools, LOC levels, or funding for the different LOC levels for the graduated foster care licensing system. However, information from DCF suggests the system would have five levels.

Level 1 would license court-ordered kinship care providers and, in addition, require minimal safety standards. Level 1 would include relative caregivers and other individuals who have an ongoing substantial relationship with the child.

Level 2 would consist of foster care providers under current law. Level 2 would include the minimum safety requirements of Level 1, the additional requirements currently required to license foster care providers, and new training requirements. Level 2 foster parents could provide services to a child with needs assessed at Levels 1 or 2.

To move to Level 3, a foster parent would have to hold a Level 2 license for a minimum of two years plus meet the current requirements for a treatment foster care provider. In addition, advanced ongoing training would be required, with an exam to demonstrate knowledge and skills. Level 3 foster parents could provide services to a child with needs assessed at Levels 1, 2, or 3.

To move to Level 4, a foster parent would have to hold a Level 3 license for a minimum of two years, meet additional training requirements, with an exam to demonstrate knowledge and skill, and provide two additional references. Level 4 foster parents could provide services to a child with needs assessed at Levels 1, 2, 3, or 4.

Finally, Level 5 would consist of shift-staffed facilities in a home-like setting with 24-hour awake staff. Level 5 providers would serve children who need supervision 24 hours a day, such as a child with certain medical needs. Level 5 foster parents would have to meet the minimum requirements under Level 3, have the necessary staff, and have identified children or the need for their specific home. Level 5 foster parents could only provide services for children assessed at Level 5.

7. To begin to better define the graduated foster care licensing system, DCF held a series of meetings and workgroups over a period of five days (March 16, 17, 18, 23, and 24). Representatives from county departments of human/social services, tribes, and private child placing agencies were invited to participate. Issues discussed include: (a) which crimes would bar licensing; (b) requirements of child welfare agencies at each LOC; (c) experience, education, and other requirements of foster parents at each LOC; and (d) which assessment tool(s) should be adopted.

8. In addition, participants in these meetings and workgroups expressed concerns about the creation and implementation of the graduated foster care licensing system. Concerns include: (a) adequate training for child welfare staff to uniformly assess a child's need and a foster parent's licensing level; (b) increased workload due to these assessments; (c) whether there would be an adequate supply of foster parents at each LOC; (d) whether there would be difficulty recruiting foster parents at each LOC; (e) the need for uniformity versus the need for flexibility; (f) reimbursement rates at each LOC; and (g) issues surrounding the conversion of the existing foster care licensing system to the graduated foster care licensing system. The attachment lists issues to consider in an LOC system as noted in the FFTA paper. Many of these issues reflect the concerns of the interested parties affected by the conversion to an LOC system.

9. Under AB 75, the graduated foster care licensing system would begin January 1, 2010. To assist in the conversion process, a foster care policy position would be created, with a start date of October 1, 2009, to develop LOC policies and procedures, modify administrative rules, and coordinate technical assistance to child welfare agencies. Funding would also be provided to modify eWISACWIS and to contract with a consultant to help DCF establish the formal assessment process, develop educational materials to explain the system to providers and other stakeholders, and develop training for licensing staff on how to use the assessment tools. In addition, DCF would contract with nine regional foster care coordinators, beginning January 1, 2010, to provide technical assistance to licensing agencies, monitor provider licensing, and ensure consistency with the new licensing rules.

10. Although AB 75 provides some support for the conversion from the current licensing process to the graduated foster care licensing system, concerns from county departments and other local child welfare agencies regarding workload and funding may not be fully addressed. The Committee could direct DCF to include in their promulgated rules a provision that grandfathers current reimbursement rates for a period of time, such as six months (the remainder of 2009-10), that provides supplemental payments as an incentive for foster parents whose services result in reducing the needs of a child, or some other provision that would safeguard providers against some of the financial loss (Alternative 2).

11. The Committee could also require DCF to evaluate the graduated foster care licensing system in terms of cost-effectiveness, consistency in LOC placements, outcomes for children placed in out-of-home care, and the increase or decrease of available foster parents in each LOC as a result of the implementation of this system. DCF could also be required to report the results of this evaluation to the Governor and to the Joint Committee on Finance no later than February 1, 2011, such that the report can be considered when determining funding for the 2011-13 biennium (Alternative 3).

12. Finally, the Committee could also delete this provision (Alternative 4). Implementation of the graduated foster care licensing system could prove to be an unfunded administrative burden on county departments and other local child welfare agencies. In addition, this licensing system could remove flexibility from local child welfare agencies as to the best method to provide services needed by a child in favor of uniformity. For example, currently a child may be placed in a lower-cost foster home, but provided with extra "wrap-around" services to provide for the child's needs. Under the graduated foster care licensing system, a Level 2 provider would not be able to have a child with Level 3 needs placed with them even if extra services were provided to the child placed with the Level 2 provider.

13. However, the details of the graduated foster care licensing system are not specified in statute. Therefore, some of these concerns and details may be addressed through rules promulgated by DCF, which would have legislative oversight.

14. AB 75 also assumes savings of \$13,000,000 GPR in 2010-11 for Milwaukee child welfare aids as a result of receiving an increase of federal Title IV-E funds of \$13,000,000 due to

licensing kinship care providers. These savings assume that all court-ordered kinship care providers would want to be licensed and would qualify for a license. These assumptions overestimate actual savings because some court-ordered kinship care providers may not want to go through the process of licensure or may not qualify for licensure (current standards for a kinship care provider are less stringent than those of a licensed foster care provider under the first level of the LOC system). A more recent estimate from DCF of savings generated by licensing kinship care providers is \$6,524,300 in 2010-11. This estimate assumes that 90% of court-ordered kinship care providers will be licensed under this LOC system, but that it would take 12 months to fully phase in. This estimate assumes a monthly court-ordered kinship care caseload of 1,491 and a Title IV-E kinship administrative reimbursement amount of \$748 per kinship care case. The actual court-ordered kinship care caseload in 2007 was 1,617. If the court-ordered kinship care caseload is higher than estimated, then the savings would be greater than estimated. However, if less than 90% of the court-ordered kinship care becomes licensed, then the savings could be less than estimated.

15. The Governor's proposal should be modified to reflect that Title IV-E funding generated by the licensing of court-ordered kinship care providers would be \$6,524,300, rather than \$13,000,000 in 2010-11. In addition, funding for Milwaukee child welfare aids should be reduced by \$6,524,300 GPR and replaced with the \$6,524,300 FED from Title IV-E funds (rather than reduce \$13,000,000 GPR and replace it with \$13,000,000 FED under AB 75). Compared to the bill, funding should be reduced by \$6,475,700 FED in 2010-11 and increased by \$6,475,700 GPR in 2010-11 (Alternative 1).

16. It should be noted that if this provision is deleted, an additional \$6,524,300 GPR in 2010-11 would have to be restored to fully fund Milwaukee child welfare aids.

**ALTERNATIVES**

1. Modify the Governor's recommendation to create and implement a graduated foster care licensing system, beginning January 1, 2010. Provide \$880,000 (\$695,200 GPR and \$184,800 FED) in 2009-10, \$870,000 (-\$5,837,000 GPR and \$6,707,000 FED) in 2010-11, and 0.79 GPR position and 0.21 FED position, beginning in 2009-10, to fund a foster care policy position, to contract for nine regional foster care coordinators, to update eWISACWIS, to contract for consulting services, and to replace GPR in Milwaukee child welfare aids with Title IV-E funds.

<b>ALT 1</b>	<b>Change to Bill Funding</b>
GPR	\$6,475,700
FED	<u>- 6,475,700</u>
Total	\$0

2. Modify the Governor's recommendation to direct DCF to include in the rules promulgated to create and implement a graduated foster care licensing system safeguards for providers against financial loss, such as:



a. Extend reimbursement rates that were paid on December 31, 2009, for providers from January 1, 2010, through June 30, 2010.

b. Provide supplemental incentive payments to foster parents whose services resulted in a decrease to the level of a child's need, such that the child moved to a lower LOC.

c. Some other funding payment such that any loss sustained by a provider would be reduced.

3. Require DCF to evaluate the graduated foster care licensing system in terms of cost-effectiveness, consistency in LOC placements, outcomes for children placed in out-of-home care, and the increase or decrease of available foster parents in each LOC as a result of the implementation of this system. Require DCF to report the results of this evaluation to the Governor and to the Joint Committee on Finance no later than February 1, 2011.

4. Delete provision.

ALT 4	Change to Bill	
	Funding	Positions
GPR	\$11,617,500	- 0.79
FED	<u>- 13,367,500</u>	<u>- 0.21</u>
Total	<u>- \$1,750,000</u>	<u>- 1.00</u>

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## **ATTACHMENT**

### **Issues to Consider in a Levels of Care System**

1. The providers in LOC systems should function within a collaborative partnership between themselves and the funding agency and the service providers.
2. The LOC funding system should be applicable to all providers who provide the same services, so that a child receives the same funding regardless of which agency provides the services within a type of placement.
3. LOCs should be determined by the child's needs and strengths and be connected to the level of funding. LOCs should not determine the type of placement. For example, recent research on in-home services and treatment foster care indicate that children with severe needs can be appropriately treated at a lower LOC with effective support services.
4. The per diem associated with each LOC should be determined by a cost finding process that is based on the actual costs of providing the services necessary to meet children's needs at each level, and should be periodically updated.
5. LOC determinations should not be influenced by funding available. Individuals who assign LOCs, whether state employees or private contractors, should not have those decisions influenced by financial considerations. At the end of the budget year, the likelihood of receiving a high LOC should be the same as at the beginning of the budget year. Nor should the persons who assign LOCs be penalized by granting too many high LOC placements.
6. The persons making LOC decisions should be professionally competent. They should have the training, experience, and supervision needed to accurately assess children's needs and strengths.
7. The LOC determination is an assessment. Therefore, the LOC system should be able to have demonstrated reliability and validity. Different LOC reviewers should arrive at the same LOC, and the LOC should be correlated to other instruments that are intended to measure the same constructs. Moreover, the LOC should be able to predict future resource utilization and costs. The LOC should also be based on multiple sources of information.
8. The LOC determination should be completed in a timely manner to meet the children's needs for continuity in placement and service planning. There should be specific expectations about how long it should take to do an initial LOC assessment, an LOC review, and an appeal (LOC redetermination). Timeliness of each is important, as they influence the children's access to needed services and ultimately permanency.
9. If the child's needs increase, it should be possible to increase funding through an

appeal by requesting a redetermination of the LOC at any time during the placement. This should be able to be initiated by any interested party, such as the service provider, state worker, advocate, youth, or parent, supplying evidence of the increased need.

10. If the result of an appeal is not satisfactory to the requestor, there should be a process for a higher level appeal outside the LOC provider, perhaps with the LOC funding agency.

11. The criteria and process of determining LOCs should be transparent and open to public review. The LOC reviewer should be able to state the rationale for each LOC in such a way that an outsider can determine whether or not the evidence supports that LOC.

12. The LOC provider should be publicly accountable. For example, there should be a mechanism for a provider organization to ask for a review of the pattern of LOCs given or otherwise question LOC decisions.