



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

NOTICE OF PUBLIC HEARING

DCF 21, 50, 52, 54, 55, 56, 57, and 58

**Extension of Out-of-Home Care to Children and Youth
18 Years of Age or Over, But Under 21 Years of Age**

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.366 (4) (b) and 938.366 (4) (b), Stats., as affected by 2013 Wisconsin Act 334; Sections 48.67 (intro.), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider emergency and proposed permanent rules relating the extension of out-of-home care to children and youth 18 years of age or over, but under 21 years of age, and affecting small businesses.

Hearing Information

**October 16, 2014
Thursday
2:00 p.m.**

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

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

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.366 (4) (b) and 938.366 (4) (b), Stats., as affected by 2013 Wisconsin Act 334; Sections 48.67 (intro.), and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 48.366, 48.57, 938.366, and 938.57, Stats., as affected 2013 Wisconsin Act 334; Sections 48.623, 48.66 (1) (c), and 48.975, Stats.

Related statute or rule: Sections 48.355 (4) (b) 4., 48.357 (6) (a) 4., 48.365 (5) (b) 4., 48.38 (5) (c) 9., 48.645, 938.355 (4) (b) 4., 939.357 (6) (a) 4., and 938.365 (5) (b) 4., Stats., as affected by 2013 Wisconsin Act 334.

Explanation of Agency Authority

Sections 48.366 and 938.366, Stats., as created by 2013 Wisconsin Act 334, permit a child placed in out-of-home care who is a full-time student at a secondary school or its vocational or technical equivalent and for whom an individualized education program (IEP) is in effect to continue in out-of-home care until the child is granted a high school or high school equivalency diploma or reaches 21 years of age, whichever occurs first under either an extended dispositional order of the juvenile court or a voluntary transition-to-independent-living agreement between the child, or the child's guardian on behalf of the child, and the agency primarily responsible for providing services to the child under the dispositional order.

Sections 48.366 (4) and 938.366 (4), Stats., as created by 2013 Wisconsin Act 334, provide that the department shall promulgate rules to implement the extended out-of-home care program that include all of the following:

- Rules permitting a foster home, group home, or residential care center for children and youth to provide care for persons who agree to continue in out-of-home care under an extension of an order described in ss. 48.366 (1) and 938.366 (1) Stats., or a voluntary agreement under ss. 48.366 (3) and 938.366 (3), Stats.
- Rules setting forth the conditions under which a person who has terminated a voluntary agreement under ss. 48.366 (3) and 938.366 (3), Stats., and the agency primarily responsible for providing services under the agreement may enter into a new voluntary agreement under ss. 48.366 (3) (c) and 938.366 (3) (c), Stats.

The department administers the kinship care program under ss. 48.57 (3m) and (3n), Stats.

Section 48.975 (3m), Stats., provides that adoption assistance may be provided after the adoptee reaches the age of 18 if the adoptee is a full-time high school student.

The department administers the subsidized guardianship program under s. 48.623, Stats., and s. 48.62 (5), 2009 Stats.

Section 48.66 (1) (c), Stats., prohibits the transfer of a license issued to a child welfare entity under s. 48.66 (1) (a) and (b), Stats.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments.

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

Summary of the Rule

DCF 21, Re-entry into Out-of-Home Care for Youth 18 years or Age or Over, But Under 21 Years of Age

The emergency and proposed DCF 21 provide conditions and procedures for youth to apply to re-enter out-of-home care and agencies to determine eligibility and supervise the youth's placement. The rules also provide appeal procedures to the agency, department, and the division of hearings and appeals if the youth's application is denied or eligibility is terminated.

DCF 50, Adoption Assistance

42 USC 675 (8) (B) (i) requires that any extension of foster care to children over 18 years of age also apply to adoption assistance agreements that became effective after a child attained 16 years of age. The proposed rule provides that adoption assistance may continue if the adopted person turned 18 years of age or over on or after 8/1/14, but is under 21 years of age; the adopted person is a full-time student at a secondary school or its vocational or technical equivalent; there is an individualized education program under s. 115.787, Stats., in effect for the adopted person; and the adoption assistance agreement for the adopted person became effective after the adopted person attained 16 years of age. An adoptive parent is required to provide a copy of the adopted person's individualized education program under s. 115.787, Stats., before the department may determine that the adopted person is eligible for assistance. Adoption assistance may be reinstated following termination of assistance by adoptive parents when the adopted person was 18 years of age or over if the adopted person meets the requirements above.

DCF 52, Residential Care Centers

- The emergency and proposed rules repeal and recreate the definition of "resident" to clarify the existing definition of "resident" and add 2 new provisions related to the extension of out-of-home care. The first new provision in the definition of "resident" is the person turned 18 years of age on or after August 1, 2014, but is under 21 years of age; the person is a full-time student at a secondary school or its vocational or technical equivalent; and there is an individualized education program under s. 115.787, Stats., in effect for the person. The other new provision incorporates into the definition children placed in a Wisconsin residential care centers who are under the placement and care responsibility of a state that has extended out-of-home care to children 18 years of age or over, but under 21 years of age, and elected different options than Wisconsin under 42 USC 675 (8) (B) (iv).
- The provision on information required to be in a center's treatment program and policies regarding the population served by the center is amended to include "transitioning to independence."
- A request to amend a license to serve a resident population that is 18 years of age or over, but under 21 years of age, and is transitioning to independence, shall be on a form prescribed by the department.
- The emergency and proposed rules repeal existing provisions on amendment to a license that appear to violate s. 48.66 (1) (c), Stats. Section 48.66 (1) (c), Stats., prohibits the

transfer of a license to operate a residential care center. The emergency and proposed rules repeal provisions allowing a license amendment if there is a change in the ownership of a center or a change in the address of the center. A new license application will be required in these circumstances.

- Throughout the rules, the undefined term “child” is replaced with the defined term “resident” when appropriate.
- The phrases “young adults ages 18, 19, or 20” and “young adult” are repealed throughout the rules and replaced with “children and youth under 21 years of age” or similar language.
- The provision on requesting an exception to a rule is amended to require the use of a form prescribed by the department.

DCF 54, Child-Placing Agencies

The definition of “child” is repealed and recreated to be the same as the new definition of “child” in the foster home and group home rules. Child-placing agencies license foster homes and place children in foster homes and group homes.

DCF 55, Subsidized Guardianship

- 42 USC 675 (8) (B) (i) requires that any extension of foster care to children over 18 years of age also apply to subsidized guardianship agreements that became effective after the child attained 16 years of age. The emergency and proposed rules provide that subsidized guardianship payments may continue if the child turned 18 years of age on or after August 1, 2014, but is under 21 years of age; the child is a full-time student at a secondary school or its vocational or technical equivalent; there is an individualized education program under s. 115.787, Stats., in effect for the child; and the subsidized guardianship agreement for the child became effective after the child attained 16 years of age. A guardian or interim caretaker is required to provide a copy of the child’s individualized education program under s. 115.787, Stats., before the agency may determine that the child is eligible for subsidized guardianship payments. Subsidized guardianship payments may be reinstated if a guardian or interim caretaker terminated the subsidized guardianship agreement when the child was 18 years of age or over and the child meets the requirements above.
- The rule clarify an existing provision on eligibility for a child who is 18 years of age or over by adding “or the equivalent” to a requirement that the child is enrolled in and attending a secondary education program leading to a high school diploma.

DCF 56, Foster Homes

- The emergency and proposed rules repeal and recreates the definition of “child” to clarify the existing definition of “child” and to add 2 new provisions regarding the extension of out-of-home care in specified circumstances. The first new provision in the definition of “child” is the person turned 18 years of age on or after August 1, 2014, but is under 21

years of age; the person is a full-time student at a secondary school or its vocational or technical equivalent; and there is an individualized education program under s. 115.787, Stats., in effect for the person. The other new provision covers children placed in a Wisconsin residential care centers who are under the placement and care responsibility of a state that has extended out-of-home care to children 18 years of age or over, but under 21 years of age, and elected different options than Wisconsin under 42 USC 675 (8) (B) (iv).

- The definition of “residential care center” is amended to remove the term “young adult” to correspond with the removal of the term from ch. DCF 52.
- In general, care and maintenance may be provided for no more than 4 children in a foster home. The emergency and proposed rules create a new exception for the purpose of maintaining previous existing connections. A licensing agency may grant an exception to allow 7 or fewer foster children in a foster home. A licensing agency shall apply to the department exceptions panel to place 8 or more children in a foster home if necessary to allow a child or youth who was previously placed in the foster home and was on a trial reunification or a youth who is under a voluntary transition-to-independent living agreement to return to the foster home.

DCF 57, Group Homes

- The emergency and proposed rules repeal and recreate the definition of “child” to clarify the existing definition of “child” and to add 2 new provisions regarding the extension of out-of-home care in specified circumstances. The first new provision in the definition of “child” is the person turned 18 years of age on or after August 1, 2014, but is under 21 years of age; the person is a full-time student at a secondary school or its vocational or technical equivalent; and there is an individualized education program under s. 115.787, Stats., in effect for the person. The other new provision incorporates into the definition children placed in Wisconsin foster homes who are under the placement and care responsibility of a state that has extended out-of-home care to children 18 years of age or over, but under 21 years of age, and elected different options than Wisconsin under 42 USC 675 (8) (B) (iv).
- The current permanent rule provides that a group home must have a program statement that includes a description of the type of resident population the group home will serve. A note following this requirement lists various types of resident populations. The emergency and proposed rules add “transitioning to independence” to that list.
- The current permanent rule provides that a staff member in a group home must be at least 21 years old, unless the staff member is a student who is 19 or 20 years old and majoring in a human services field. The emergency and proposed rules add the requirement that staff members other than the program director must also be at least 2 years older than the oldest resident. A staff member who is 21 years of age or over may retain employment or contract if the staff member is hired or contracted before a new resident who is 18 years of age or over is admitted to the group home.
- The emergency and proposed rules provide that a group home may admit a child 18 years of age or over, but under 21 years of age if the group home will not have more than 2

children 18 years of age or over, the group home has a license to serve a resident population that is 18 or over but under 21 and is transitioning to independence, or the group home has been granted an exception by the department to provide care and maintenance for more than 2 children who are 18 years of age or over.

- The current permanent rule requires the development of a treatment plan for each resident and lists issues that must be included in the plan. The emergency and proposed rules add to the list the consideration of additional requirements for the care of children who are 18 years of age or over, but under 21 years of age; full-time students at a secondary school or its vocational or technical equivalent; and have an individualized education program under s. 115.787, Stats., in effect. The emergency and proposed rules also add children who are 18 years of age or over, but under 21 years of age, and under the placement and care responsibility of another state.
- The current permanent rule provides that a resident who is 18 years of age or older may not share a bedroom with a resident who is under 18 years of age. The emergency and proposed rules add the exception “unless the resident who is 18 years of age or older is continuing to share a bedroom with a resident he or she had already been sharing the bedroom with before turning 18 years of age.”
- The current permanent rule requires that resident records be maintained by the licensee until the resident reaches the age of 19 or 7 years after the resident is discharged from the group home, whichever is later. The emergency and proposed rules change the “age of 19” to the “age of 21.”
- The provision on requesting an exception to a rule is amended to require the use of a form prescribed by the department.
- Throughout the rule, the term “child” is replaced with the term “resident” when appropriate.

DCF 58, Kinship Care

The kinship care rule is amended to provide extended out-of-home care to a person who turned 18 years of age on or after August 1, 2014, but is under 21 years of age, and is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent if there is an individualized education program under s. 115.787, Stats., in effect for the person.

Summary of Factual Data and Analytical Methodologies

The rule was developed with the assistance of the department’s Out-of-Home Care Committee and the Wisconsin Youth Advisory Council.

Summary of Related Federal Requirements

In general, a state can be eligible for federal funding under Title IV-E of the Social Security Act for foster care assistance if all of the following apply:

- The child was removed and placed in foster care in accordance with either of the following:
 - A voluntary placement agreement between the state agency, or any other agency acting on behalf of the state, and the parents or guardians. If the child has remained in voluntary placement for a period in excess of 180 days, a judicial determination must be made.
 - A judicial determination that:
 - The placement is in the best interests of the child.
 - Continuation in the home from which removed would be contrary to the welfare of the child and that reasonable or, in the case of an Indian child, active efforts have been made to preserve and unify the family, with the child's health and safety as the paramount concern.
- The child's placement and care are the responsibility of the state agency or any other public agency with which the state has made an agreement.
- The child has been placed in a foster home, group home, shelter care, or residential care center for children and youth.
- The child, while in the home, would have met the eligibility criteria for Aid to Families with Dependent Children as the program existed on July 16, 1996.

Under 42 USC 675 (8), the definition of "child" that applies to assistance under Title IV-E is the following:

A. Subject to subparagraph B, an individual who has not attained 18 years of age.

B. At the option of a State, the term shall include an individual for whom the following applies:

- (i)
 - (I) The individual is in foster care under the responsibility of the State.
 - (II) There is an adoption assistance agreement under 42 USC 673 in effect for the individual, and the individual attained 16 years of age before the agreement became effective.
 - (III) There is a kinship guardianship assistance agreement under 42 USC 673 (d) in effect for the individual, and the individual attained 16 years of age before the agreement became effective.
- (ii) The individual has attained 18 years of age.
- (iii) The individual has not attained 19, 20, or 21 years of age, as the State may elect.
- (iv) The individual is any of the following as the state may elect:
 - (I) Completing secondary education or a program leading to an equivalent credential.

- (II) Enrolled in an institution which provides post-secondary or vocational education.
- (III) Participating in a program or activity designed to promote, or remove barriers to, employment.
- (IV) Employed for at least 80 hours per month.
- (V) Incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

42 USC 675 (8) (B) (i) requires that any extension of foster care to children over 18 years of age also apply to adoption assistance and subsidized guardianship agreements that became effective after the child attained 16 years of age. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Program Instruction, *Guidance on the Fostering Connections to Success and Increasing Adoptions Act of 2008*, ACYF-CB-PI-10-11, July 9, 2010.

Comparison to Rules in Adjacent States

Illinois, Minnesota, and Michigan elected to extend foster care to all youth allowed under 42 USC 675 (8) (B).

Iowa elected to extend foster care to age 20 for youth attending high school or obtaining their GED.

Effect on Small Business

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

Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

Residential care centers, group homes, and licensed child-placing agencies will be affected by the rule changes, but the effect will be minimal.

Agency Contact Person

For foster care, kinship care, adoption assistance, and subsidized guardianship:

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Division of Safety and Permanence
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For group homes, residential care centers, and child-placing agencies:

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Licensing Section
Division of Safety and Permanence
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Place Where Comments are to be Submitted and Deadline for Submission

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

Elaine Pridgen
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Madison, WI 53707
(608) 267-9403
dcfpublichearing@wisconsin.gov

Written comments on the rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> website no later than October 17, 2014, will be given the same consideration as testimony presented at the hearing.

Eloise Anderson
Secretary or designee

September 10, 2014
Date