

# **Statement of Scope**

## **Department of Children and Families**

**Rule Number:** DCF 61

**Relating to:** Qualified Residential Treatment Programs

**Rule Type:** Emergency and Permanent

This statement of scope was approved by the governor on June 3, 2021.

### **1. Exemption from finding of emergency for emergency rule**

Section 92 of 2021 Wisconsin Act 42 provides an exemption from a finding of emergency for the rule under s. 227.24, Stats.

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

The Family First Prevention Services Act of 2018 significantly changes the ways in which states may use federal funds for child welfare services, including new restrictions on federal reimbursement of state expenditures for the care and maintenance of children who are placed in congregate care settings.

Effective September 29, 2021, federal payments for the care and maintenance of a child placed in a residential care center for children and youth, group home, or shelter care facility, will only be available for 2 weeks, unless the child is placed in a qualified residential treatment program or other federally-authorized treatment program.

The emergency and proposed rules will specify the conditions that a program in a residential care center for children and youth, group home, or shelter care facility must meet to be considered a qualified residential treatment program and establish a process for the department to certify that a program meets these conditions. The conditions will be based on the federal requirements in 42 USC 672 (k) (4) with additional detail added to implement specific requirements and other criteria established by the department.

In addition, the rules will include provisions on the assessment and placement of a child in a qualified residential treatment program and other provisions related to the establishment, certification, operation, and monitoring of qualified residential treatment programs.

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

Section 48.675 (1), Stats., as created by 2021 Wisconsin Act 42, provides that the department may certify a residential care center for children and youth, group home, or shelter care facility to operate a qualified residential treatment program if it determines that the program meets the requirements of 42 USC 672 (k) (4) and any other requirements established by the department under this section. Section 48.675 (2), Stats., provides that the department may promulgate rules for the establishment, certification, operation, and monitoring of, and the placement of a child in, a qualified residential treatment program under sub. (1).

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.

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

200 hours

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

Group homes, residential care centers for children and youth, shelter care facilities, county social services and human services agencies, tribal child welfare agencies, and the department.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the rules**

**Foster care maintenance payments; limitation on federal financial participation**

42 USC 672 (k) (1) and (2) provide that beginning with the 3rd week for which foster care maintenance payments are made on behalf of a child placed in a child-care institution, no federal payments shall be made to the State for amounts expended for foster care maintenance payments on behalf of the child unless the child is placed in any of the following:

- A qualified residential treatment program as specified in 42 USC 672 (k) (4).
- A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
- For a child who has attained 18 years of age, a supervised setting in which the child is living independently.
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims.

**Qualified residential treatment program**

42 USC 672 (k) (4) provides that the term “qualified residential treatment program” means a program that meets all of the following conditions:

- Has a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and, with respect to a child, is able to implement the treatment identified for the child by the assessment of the child.
- Has registered or licensed nursing staff and other licensed clinical staff who provide care in the scope of their practice as defined by state law, are available 24 hours a day and 7 days a week, and are onsite if required by the treatment model. The nursing and behavioral health staff are not required to be employees.
- Facilitates participation of family members in the child’s treatment program if it is in the child’s best interests.
- Facilitates outreach to the family members of the child, including siblings; documents

how the outreach is made (including contact information); and maintains contact information for any known biological family and fictive kin of the child.

- Documents how family members are integrated into the treatment process for the child, including post-discharge, and how sibling connections are maintained.
- Provides discharge planning and family-based aftercare support for at least 6 months post-discharge.
- Is licensed in accordance with 42 USC 671(a) (10) and is accredited by any of the following:
  - The Commission on Accreditation of Rehabilitation Facilities.
  - The Joint Commission on Accreditation of Healthcare Organizations.
  - The Council on Accreditation.
  - Any other independent, not-for-profit accrediting organization approved by the Department of Health and Human Services.

In informal guidance, the Department of Health and Human Services has approved the Teaching-Family Association and the Educational Assessment Guidelines Leading toward Excellence as additional accrediting organizations.

#### **Assessment to determine appropriateness of placement in a qualified residential treatment program**

42 USC 672 (k) (3) provides if the assessment required under 42 USC 675a (c) (1) is not completed within 30 days after the placement of a child in a qualified residential treatment program is made, no federal payment shall be made to the State for any amounts expended for foster care maintenance payments on behalf of the child during the placement.

42 USC 675a (c) (1) (A) requires that within 30 days of the start of each placement in a qualified residential treatment program, a qualified individual shall do all of the following:

- Assess the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool approved by the Department of Health and Human Services.
- Determine whether the needs of the child can be met with family members or through placement in a foster family home or, if not, which setting from among the settings specified in 42 USC 672 (k) (2) would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child.
- Develop a list of child-specific short- and long-term mental and behavioral health goals.

Under 42 USC 675a (c) (1) (B), the State is required to assemble a family and permanency team for the child that consists of all appropriate biological family members, relative, and fictive kin of the child, as well as, as appropriate, professionals who are a resource to the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy. In the case of a child who has attained age 14, the family and permanency team shall include the members of the permanency planning team for the child that are selected by the child. The qualified individual conducting the assessment shall work in conjunction with the family of, and permanency team for, the child while conducting and making the assessment.

**Extended placements in a qualified residential treatment program**

42 USC 675a (c) (4) provides that as long as a child remains placed in a qualified residential treatment program, the State agency shall submit evidence at each status review and each permanency hearing held with respect to the child that does all of the following:

- Supports the determination that a qualified residential treatment program continues to be the most effective and appropriate level of care for the child in the least restrictive environment, and that the placement is consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child.
- Documents the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services.
- Documents the efforts made by the State agency to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

42 USC 675a (c) (5) provides that in the case of any child who is placed in a qualified residential treatment program for more than 12 consecutive months or 18 nonconsecutive months (or, in the case of a child who has not attained age 13, for more than 6 consecutive or nonconsecutive months), the State agency shall submit to the Department of Health and Human Services all of the following:

- The most recent versions of the evidence that the State submitted to the court as required under 42 USC 675a (c) (4).
- The signed approval of the head of the State agency for the continued placement of the child in the qualified residential treatment program.

In informal guidance, the Department of Health and Human Services has advised that in states with county-administered child welfare systems, the director of the local social or human services agency is responsible for approving the continued placement of a child in a qualified residential treatment program. Informal guidance has also provided that the director may not appoint a designee to sign the approvals.

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

Minimal or no economic impact on small business

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