

Filed with LRB: August 31, 2010
Publication Date: September 2, 2010
Effective Dates: September 2, 2010 through January 29, 2011

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

Chapter DCF 57
Determination of Need for New Group Homes

The Wisconsin Department of Children and Families orders the creation of ss. DCF 57.485 and 57.49 (1) (am), relating to determination of need for new group homes.

Exemption from Finding of Emergency and Emergency Rule Time Limit

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 48.625 (1g), Stats., as created by 2009 Wisconsin Act 335, and s. 227.11 (2) (a), Stats.
Statutes interpreted: 48.625, Stats.

Explanation of Agency Authority

Any person who receives, with or without transfer of legal custody, 5 to 8 children to provide care and maintenance for those children must obtain a license to operate a group home from the department. To obtain a license to operate a group home, a person must meet the minimum requirements for a license established in chapter DCF 57, meet the background check requirements, pay the license fee, and meet the new determination of need requirement created by 2009 Wisconsin Act 335.

Section 48.625 (1g), Stats., as created by 2009 Wisconsin Act 335, provides that no person may apply for a license to operate a new group home or for an amendment to a license that would increase the bed capacity of an existing group home until the department has reviewed the need for the additional placement resources that would be made available by the issuance or amendment of the license and has certified in writing that a need exists for the proposed additional placement resources. The department shall promulgate rules to implement this subsection.

Summary of the Rule

The rule provides that an applicant for a determination of need for a new group home or for increased bed capacity in an existing group home shall submit all of the following documents to the department:

- A statement of support by one or more counties, the Bureau of Milwaukee Child Welfare, or the Department of Corrections stating that the proposed additional placement resources are needed.
- A detailed description of the methodology and findings that there is a need for this particular group home.
- A detailed plan for the operation of the proposed group home that includes all of the following:
 - The number, sex, and age range of the children to be served.
 - The type of needs or disabilities of children to be served.
 - Number of staff listed by job title, degree or certification, and full-time or part-time status.
 - A description of the proposed program and treatment goals.
 - The location of the group home and a drawing of the layout of the physical plant.

The department shall send written notice of its determination of need to the applicant with a specific reason for the determination within 90 days after the date on which the department received all required documents and information from an applicant. The department will consider an application that remains incomplete for a 90-day period after receipt of any documentation to be withdrawn.

Summary of Related Federal Requirements

None.

Summary of Factual Data and Analytical Methodologies

The rule regulates the establishment of new group homes and the expansion of existing group homes to control costs to Wisconsin citizens while ensuring an adequate number and variety of facilities to meet the needs of children who require out-of-home residential care.

Comparison to Adjacent States

The department is not aware of any requirements to obtain a certificate of need before applying for a license to operate a group home in adjacent states.

Agency Contact Person

Mary Morse, Child Welfare Licensing Section, Bureau of Permanence and Out-of-Home Care, mary.morse@wisconsin.gov, (608) 266-0415.

Text of Emergency Rule

SECTION 1. DCF 57.485 is created to read:

DCF 57.485 Determination of need. (1) NEED DETERMINATION BEFORE LICENSE APPLICATION. No person may apply for a license to operate a new group home or for an amendment to a license that would increase the bed capacity of an existing group home until the department has reviewed the need for the additional placement resources that would be made available by the issuance or amendment of the license and has certified in writing that a need exists for the proposed additional placement resources.

(2) DOCUMENTATION OF NEED. An applicant for a determination of need under sub. (1) shall submit all of the following documents to the department:

(a) A statement of support by one or more counties, the Bureau of Milwaukee Child Welfare, or the Department of Corrections stating that the proposed additional placement resources are needed.

(b) A detailed description of the methodology and findings that there is a need for this particular group home.

(c) A detailed plan for the operation of the proposed group home that includes all of the following:

1. The number, sex, and age range of the children to be served.
2. The type of needs or disabilities of children to be served.
3. Number of staff listed by job title, degree or certification, and full-time or part-time status.
4. A description of the proposed program and treatment goals.
5. The location of the group home and a drawing of the layout of the physical plant.

Note: Send the determination of need documentation to the Department of Children and Families, Bureau of Permanence and Out-of-Home Care, Child Welfare Licensing Section, 201 E. Washington Avenue, Madison, WI 53708.

(3) DEPARTMENT DETERMINATION. (a) The department shall review an applicant's documents for completeness and may ask the applicant for additional information that the department considers necessary to make the determination of need.

(b) Within 90 days after the date on which the department received all required documents and information from an applicant, the department shall send written notice of its determination of need to the applicant. The notice shall state the specific reason for the determination. If the department determines that the proposed additional placement resources are needed, the notice shall be accompanied by the department's certification of need.

(c) The department shall consider an application that remains incomplete for a 90-day period after receipt of any documentation to be withdrawn.

Note: A certification of need allows a person to apply for a group home license. It does not guarantee that the department will issue a license nor does it guarantee any placements.

SECTION 2. DCF 57.49 (1) (am) is created to read:

DCF 57.49 (1) (am) A certification of need issued by the department under s. DCF 57.485 (3) (b).

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication as provided in s. 227.24 (1) (c), Stats.