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# Wisconsin Legislative Council

## ACT MEMO

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Prepared by: Amber Otis, Senior Staff Attorney

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**2021 Wisconsin Act 42**  
[2021 Assembly Bill 143]

**Qualified Residential  
Treatment Programs**

### BACKGROUND

The federal Family First Prevention Services Act (FFPSA), enacted on February 9, 2018, affected many aspects of child welfare policy, including the ways in which states are eligible for federal funding under Title IV-E of the Social Security Act, by emphasizing prevention services and curtailing use of congregate or group care for children. Among its numerous provisions, the FFPSA contains a requirement related to children placed in congregate or group care settings for more than two weeks. In that circumstance, under the FFPSA, a child may be placed only in certain types of congregate or group care settings, such as a qualified residential treatment program (QRTP), in order for the state to qualify for reimbursement through federal Title IV-E funds.

### 2021 WISCONSIN ACT 42

2021 Wisconsin Act 42 creates the concept of a QRTP under state law and authorizes the Department of Children and Families (DCF) to certify and further regulate QRTPs by rule. Consistent with the FFPSA, the act requires both a specialized assessment by a qualified individual and certain findings by a court for a child or juvenile<sup>1</sup> to be placed in a certified QRTP at various stages of proceedings under ch. 48, Stats., known as the Children's Code, or ch. 938, Stats., known as the Juvenile Justice Code.

### Certification of QRTPs

The act grants DCF authority to certify a licensed residential care center for children and youth, group home, or shelter care facility to operate as a QRTP, if DCF determines that the entity meets the FFPSA's requirements for QRTPs and any other requirements established by DCF rule. The act requires a QRTP to meet the same requirements as provided under the FFPSA, including that the QRTP:

- 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.
- Is able to implement the treatment for the child, as identified in an assessment that must generally be completed within 30 days of the child's placement in a QRTP, described in more detail below.
- Has registered or licensed nursing staff and other licensed clinical staff on site.
- Facilitates participation of family members in the child's treatment program, to the extent appropriate and in accordance with the child's best interests.

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<sup>1</sup> For brevity, the term "child" throughout the remainder of this Act Memo refers to both a "child" under the Children's Code and a "juvenile" under the Juvenile Justice Code, unless otherwise specified.

- Facilitates outreach to the child's family members, documents how the outreach is made, and maintains contact information for any known biological family and fictive kin of the child.
- Provides discharge planning and family-based aftercare support for at least six months post-discharge.

## **Family Permanency Team**

Consistent with the FFPSA, the act creates the concept of a "family permanency team," meaning a team of individuals assembled upon a child's placement in a QRTP to participate in permanency planning. Specifically, if a child is placed in a QRTP, the agency that placed or arranged placement of the child, or is assigned primary responsibility for providing services to the child, must invite all of the following individuals to participate in permanency planning, and may invite others at the agency's discretion:

- All appropriate biological family members, relatives, and like-kin<sup>2</sup> of the child, as determined by the agency.
- Appropriate professionals who serve as a resource for the child's family, such as teachers, medical or mental health providers who have treated the child, or clergy.
- Others identified by a child over the age of 14 at the time that the agency responsible for preparing the permanency plan consults with the child, as required under current law.

In addition, a permanency plan of a child placed in a QRTP must include specific information, such as:

- Documentation of reasonable and good faith efforts to identify and include all required individuals on the family permanency team.
- If reunification is the child's permanency goal, information demonstrating that the parent from whom the child was removed provided input on the members of the family permanency team or why that input was not obtained.
- Information showing that the standardized assessment, as determined by DCF, was used to determine the appropriateness of the QRTP placement.
- The placement preferences of the family permanency team.
- If placement preferences of the family permanency team are not the placement recommended by the qualified individual who conducted the standardized assessment, the reasons why these preferences were not recommended.
- The recommendations of the qualified individual who conducted the standardized assessment, as described in more detail in the next section.

If a child is placed in a QRTP, the court, when conducting the child's permanency review hearings that are required to occur every six or 12 months, must consider certain information related to the continuing appropriateness of the QRTP placement and the agency's efforts to prepare the child to return home to be placed in other settings.

The act also requires that a permanency plan for any child who is a parent or is pregnant include an out-of-home care prevention strategy for any child born to the parenting or pregnant child, and a list of the

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<sup>2</sup> The act defines "like-kin" as a person who has a significant emotional relationship with a child or the child's family and who either: (a) had an existing relationship with the child or the child's family that is similar to a familial relationship, prior to the child's placement in out-of-home care; or (b) developed a relationship with the child or the child's family that is similar to a familial relationship, during the child's placement in out-of-home care.

services or programs to be provided to, or on behalf of, the child to ensure that the child is prepared and able to be a parent. This requirement applies to any child for whom a permanency plan is prepared, regardless of the type of placement.

### **Standardized Assessment by Qualified Individual**

If a child is held in custody at, or placed or proposed to be placed in, a certified QRTP at certain stages of proceedings under the Children's Code or the Juvenile Justice Code, the act requires that a qualified individual conduct a standardized assessment, meaning an assessment of the child's strengths and needs to determine appropriateness of a placement using a tool determined by DCF. After conducting the assessment, the qualified individual must prepare a recommendation that includes the following:

- Whether the proposed placement will provide the child with the most effective and appropriate level of care in the least restrictive environment.
- How the placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan.
- The reasons why the child's needs can or cannot be met by the child's family or in a foster home, with a shortage or lack of foster homes considered an unacceptable reason for determining that the child's needs cannot be met in a foster home.
- The family permanency team's placement preference and, if that preference is not the placement recommended by the qualified individual, why that recommended placement is not preferred.

The standardized assessment and qualified individual's recommendation must be submitted to the court, and to all persons required to receive a copy, no later than the date of the relevant hearing, the entry of a consent decree, or the filing of the request, depending on the applicable stage of the proceedings. However, if that information is not available by the applicable deadline, the standardized assessment and qualified individual's recommendation must be submitted no later than 30 days after the date on which the placement was made.<sup>3</sup>

The act also requires that the designated agency's court report, a document generally required to be submitted to the court before entry of a dispositional order, contain a statement indicating whether the recommended placement is a certified QRTP and, if so, the results of the standardized assessment and the qualified individual's recommendation. If that information is not available at the time of the report, the agency must submit it by the date of the dispositional hearing or, if not available, no later than 30 days after the date on which the placement was made.

### **Required Judicial Findings When Placing a Child in a QRTP**

If a child is held in custody at, or placed or proposed to be placed in, a QRTP at various stages of proceedings,<sup>4</sup> the court must, after considering the standardized assessment and the qualified individual's recommendation, include the following findings in its order:

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<sup>3</sup> In certain change-in-placement proceedings, the assessment and recommendation must be submitted to the court, and provided to individuals entitled to notice, no later than the filing of the written notice of the proposed change. However, if not available by that time, the assessment and recommendation must be submitted within 10 days of the notice's filing, unless the information is not available based on good cause shown, in which case they must be submitted no later than 30 days after the date on which the placement is made.

<sup>4</sup> The act requires a standardized assessment and related judicial findings for QRTP placements at the following stages of proceedings: (a) temporary physical custody of a child removed from the home or taken into custody under s. 48.21 or 938.21, Stats.; (b) a proposed change in the placement of a child held in temporary physical custody, including an

- Whether the needs of the child can be met through placement in a foster home.
- Whether placement of the child in a certified QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment.
- Whether the placement is consistent with the short-term and long-term goals for the child, as identified in the permanency planning.
- Whether the judge or court commissioner approves or disapproves the placement.

If the results of the standardized assessment and the qualified individual's recommendation are required but not available at the time of the order, the court must defer making the findings, though the court must issue an order with such findings no later than 60 days after the date on which the QRTP placement is made.

### **DCF's Rulemaking and Oversight Authority**

The act grants DCF the authority to promulgate rules for the establishment, certification, operation, and monitoring of, and the placement of a child in, a QRTP. DCF is also authorized to deny, suspend, restrict, refuse to review, or otherwise withhold a QRTP's certification based on a failure to comply with certification requirements established by rule. The act also expands DCF's inspection authority to QRTPs, meaning DCF may inspect a QRTP and must be given unrestricted access for that purpose.

The act further authorizes DCF to promulgate emergency rules that, if promulgated, may remain in effect until July 1, 2023, or the date on which permanent rules take effect, whichever is sooner. The act also exempts DCF from the requirements to make a finding of an emergency and to demonstrate the need for an emergency rule.

**Effective date:** The act generally takes effect on September 29, 2021, except for following provisions relating to DCF's authority, which took effect on May 23, 2021: (1) DCF's authority to certify an entity as a QRTP; (2) DCF's authority to deny, suspend, restrict, refuse to renew, or otherwise withhold a QRTP's certification based on a failure to comply with certification requirements established by DCF rules; (3) DCF's authority to visit and inspect a certified QRTP, including unrestricted access to the premises; and (4) DCF's authority to promulgate emergency rules, as described above.

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emergency change in placement, under s. 48.217 or 938.217, Stats.; (c) entry of a consent decree under s. 48.32 or 938.32, Stats.; (d) dispositional orders under s. 48.355 or 938.355, Stats.; (e) a proposed change in the placement of a child subject to a dispositional order, including an emergency change in placement, under s. 48.357 or 938.357, Stats.; and (f) a proposed change in the placement of a child whose parents have had their rights terminated and who is subject to a guardianship order, including an emergency change in placement, under s. 48.437, Stats.