

Clearinghouse Rule 24-006

State of Wisconsin Department of Children and Families.

Fees for Child Welfare and Community-Based Youth Justice Services

Chapter DCF 1

The Wisconsin Department of Children and Families proposes to create ch. DCF 1, relating to fees for child welfare and community-based youth justice services.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.345 (14) (g) and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 48.839 (1) (d) and (e), 48.98 (2) (d), 49.32 (1), and 49.345 (14), Stats.

Related law: Sections 46.03 (18), 46.10 (14), 48.30 (6) (b), 48.31 (7) (b), 48.33 (4) (b) and (4m), 48.357 (5m), 48.36, 48.362 (4) (c), 49.34 (4) (e), 301.12 (14), 701.0503 (2), 859.02, 859.07 (2) (a), 859.15, 893.40, and 893.87, Stats.; Chapters DHS 1 and DCF 150

Explanation of Agency Authority

Section 49.32 (1), Stats., provides that the department shall establish a uniform system of fees for services provided or purchased by the department or by a county department of social services or human services under the children's code in ch. 48, Stats.; children and family support services under subch. III of ch. 49, Stats.; and community-based juvenile delinquency-related services under ch. 938, Stats., except as provided under ss. 49.345 (14) (b) and (c) and 49.22 (6), Stats. The uniform system of fees does not apply when the department determines that a fee is administratively unfeasible or would significantly prevent accomplishing the purpose of the service.

Section 49.345 (14) (a), Stats., provides that, except when child support is ordered under s. 49.345 (14) (b) and (c), Stats., liability for care and maintenance of persons under 18 years of age in residential, nonmedical facilities such as group homes, foster homes, subsidized guardianship homes, and residential care centers for children and youth is determined in accordance with the cost-based fee established under s. 49.32 (1), Stats.

Section 49.345 (14) (g), Stats., provides that for purposes of determining child support under s. 49.345 (14) (b), Stats., the department shall promulgate rules related to the application of the standard established by the department under s. 49.22 (9), Stats., to a child support obligation for the care and maintenance of a child who is placed by a court order under s. 48.32, 48.355, 48.357, 938.183, 938.355, or 938.357, Stats., in a residential, nonmedical facility, such as a foster home, group home, subsidized guardianship home, or residential care center for children and youth. The rules shall take into account the needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.

Section 227.11 (2) (a) (intro.), 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 Proposed Rule

Under the proposed rule, a county department or the department may establish fees for child welfare services under ch. 48, Stats., and community-based youth justice services under ch. 938, Stats., purchased or provided for a client. Billing for fees is based on a liable individual's ability to pay. A maximum monthly payment amount is determined based on the income of the liable individual's family, the number of individuals in the family, and the maximum monthly payment schedule. County departments and the department are required to send a monthly bill to liable individuals if the family's maximum monthly payment amount is above \$0 and may not engage in collection efforts if the family's maximum monthly payment amount is \$0.

The procedures required under ch. DCF 1 are largely the same as those under the ch. DHS 1 fee rule. County departments of social and human services indicated to the department that this is important to them since clients will often be receiving services from programs administered by both departments. The minor differences between the two rules include the following:

- The establishment of some fees under ch. DHS 1 require county board approval. Chapter DCF 1 requires that county departments and the department make printed and electronic information widely available on the services for which a fee is charged and the amount of the fees. It also requires written notice to liable individuals about a fee before the service is provided or as soon as feasible after the service begins.
- Chapter DCF 1 allows use of information in the county department's or the department's records about the liable individual and the individual's family when determining a family's maximum monthly payment amount in addition to, or in place of, information on a financial responsibility form completed by a liable individual.
- Chapter DCF 1 requires that a single maximum monthly payment amount be determined for a family who lives together regardless of the number of liable individuals in the family, the number of family members receiving services, the number of agencies providing services, or whether fees were established under ch. DCF 1 or DHS 1.
- If a liable individual refuses to complete a financial responsibility form or misrepresents information in the form, ch. DHS 1 provides that the individual's fee debt may not be waived. Chapter DCF 1 provides that the county department or department shall bill the individual for the total outstanding liability and leaves the option of waiver at any time over the life of the debt to the discretion of the county department or department.
- Chapter DCF 1 expressly allows the release of financial and service information to qualified staff within the county department or the department for billing and collection purposes.

Chapter DCF 1 also complies with the requirement in s. 49.345 (14) (g), Stats., that the department promulgate rules on the application of the child support guidelines in ch. DCF 150 to child support ordered in children's or juvenile court under s. 49.345 (14) (b), Stats. The rule provides that the court may determine the amount of a parent's child support obligation for a child placed in a residential, nonmedical facility or juvenile detention facility by a court order using ch. DCF 150 subject to a provision on determining the proportionate share of support for a specific

child. Support is determined for a full sibling group based on the percentages in ch. DCF 150 and then the proportionate share is determined for the child who is placed in a residential, nonmedical facility or juvenile detention facility.

Summary of Data and Analytical Methodologies

The fee provisions are based on the ch. DHS 1 fee rule with minor revisions. Child welfare services have historically been covered by the ch. DHS/DHFS/DHSS 1 fee rule until the new version of ch. DHS 1 was created in 2020.

A fee rule allowing payments based on ability to pay is new for youth justice services, which were transferred from the Department of Corrections to DCF in 2016. The Department of Corrections does not have a fee rule. Youth justice services were covered by the DHSS 1 fee rule from 1978 until they were transferred to the Department of Corrections in 1996.

Summary of Related Federal Law

There is no relevant federal law on fees for child welfare or youth justice services or on child support determined in children's or juvenile court.

Comparison to Adjacent States

Illinois. If a child is placed in out-of-home care and the child's parents have not been ordered to pay child support, the human services department may charge the parents a fee under a maximum fee schedule that is based on family size and income. The human services department requests updated financial information from the parents on a semiannual basis. 89 Ill. Adm. Code Ch. III (3), Subch. C, Pt. 352.

Iowa. The department may charge a fee for child welfare services. The fee shall be based upon the person's ability to pay and consideration of the fee's impact upon the liable person's family and the goals identified in the case permanency plan. The fees may not exceed the cost of services. I.C.A. 234.8.

Michigan. There do not appear to be statutes or rules governing fees charged by the department of human services or counties for child welfare or juvenile justice services, other than juvenile justice fees ordered by a court.

Minnesota. There do not appear to be statutes or rules governing fees charged by the department of human services or counties for child welfare or juvenile justice services, other than juvenile justice fees ordered by a court.

Effect on Small Businesses

The proposed rule does not affect small businesses as defined under s. 227.114 (1), Stats.

Analysis Used to Determine Effect on Small Businesses

The proposed rule applies to county departments and families who receive child welfare or community-based youth justice services and does not apply to private or nonprofit businesses.

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Place Where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Elaine Pridgen, Department of Children and Families, 201 W. Washington Ave, P.O. Box 8916, Madison, WI, 53708-8916 or dcfpublichearing@wisconsin.gov. The comment deadline is March 5, 2024.

RULE TEXT

SECTION 1. Chapter DCF 1 is created to read:

Chapter DCF 1

**FEES FOR CHILD WELFARE AND COMMUNITY-BASED
YOUTH JUSTICE SERVICES**

DCF 1.01 Purpose. This chapter specifies the conditions under which the department establishes and collects fees and delegates to county departments the authority to establish and collect fees under ss. 49.32 (1) and 49.345 (14) (a), Stats. The chapter also specifies the manner of application of ch. DCF 150 when determining child support under s. 49.345 (14) (b) and (c), Stats., and procedures for collecting support under s. 49.345 (14) (e), Stats.

DCF 1.02 Definitions. Unless otherwise specified, in this chapter:

(1) “Child-placing agency” means an agency licensed under ch. DCF 54 and s. 48.66, Stats., or a similar agency licensed in another state.

(2) “Client” means an individual who receives child welfare services under ch. 48, Stats., or community-based youth justice services under ch. 938, Stats., that are purchased or provided by the department or a county department.

(3) “Collection period” means the period of time that begins on the day a unit of service is provided and ends when the fee for the service is paid in full, when the fee is waived, or as provided under the applicable statute of limitations.

(4) “Community-based youth justice services” has the meaning given for “community-based juvenile delinquency-related services” in s. 49.11 (1c), Stats.

(5) “County department” means a county department of social services under s. 46.215 or 46.22, Stats., or a county department of human services under s. 46.23, Stats.

(6) “Department” means the department of children and families.

(7) “Fee” means the amount established as a charge for a service under s. DCF 1.03.

(8) “Foster home” has the meaning given in s. 48.02 (6), Stats.

(9) “Group home” has the meaning given in s. 48.02 (7), Stats.

(10) “Juvenile detention facility” has the meaning given in s. 938.02 (10r), Stats.

(11) “Maximum monthly payment amount” means the amount an individual has been determined to have the ability to pay toward fee liability per month based on the gross monthly income and number of individuals living in the family as indicated in the schedule in s. DCF 1.05 (2) (a).

(12) “Medical Assistance” has the meaning given in s. 49.43 (8), Stats.

(13) “Minor” means an individual under 18 years of age.

(14) “Parent” means any of the following:

(a) An individual who has legal custody of a minor at the time a service is provided.

(b) A resident of this state who brought a minor into the state for the purpose of adoption under s. 48.839, Stats.

(15) “Residential care center for children or youth” has the meaning given in s. 48.02 (15d), Stats.

(16) “Residential nonmedical facility” means a foster home, subsidized guardianship home, group home, residential care center for children and youth, or shelter care facility.

(17) “Service” includes care, maintenance, supplies, and other services purchased or provided by a county department or the department under ch. 48, Stats., or as a community-based youth justice service under ch. 938, Stats.

(18) “Shelter care facility” has the meaning given in s. 48.02 (17), Stats.

(19) “Social Security Disability Insurance” means payments under 42 USC 401 to 433 for individuals determined disabled under program requirements.

(20) “Spouse” means an individual who is married to a client at the time a service is provided or at the time a county department or the department is attempting to collect a fee.

(21) “Subsidized guardianship home” means the home of an individual receiving payments under s. 48.623, Stats.

(22) “Supplemental Security Income” means payments under 42 USC 1381 to 1385.

DCF 1.03 Fees. (1) ESTABLISHMENT OF FEES. Except for services for which charging a fee is prohibited under sub. (2), a county department or the department may establish fees for child welfare services under ch. 48, Stats., and community-based youth justice services under ch. 938, Stats., purchased or provided for a client.

(2) SERVICES FOR WHICH FEE IS PROHIBITED. A county department or the department may not charge a fee for a service if any of the following conditions is met:

(a) State or federal law prohibits charging a fee for the service.

(b) The county department or the department has determined that charging a fee for the service would be administratively unfeasible or would significantly prevent accomplishing the purpose of the service.

(c) The service is a children and family support service provided under subch. III of ch. 49, Stats.

(3) RESIDENTIAL SERVICES FEE. A county department or the department may charge a child's parent a fee for the care and maintenance of the child in a residential nonmedical facility or juvenile detention facility only if the parent has not been ordered to pay child support as provided under s. 49.345 (14) (b) or (c) or ch. 767, Stats., for placement of the child in a residential nonmedical facility or a juvenile detention facility.

(4) TRANSPARENCY AND NOTICE. A county department or the department shall do all of the following:

(a) Make both printed and electronic information widely available on all of the following:

1. The services for which a fee is charged.
2. The fee amounts charged for the services or the method for determining the fee amounts.

(b) Make reasonable efforts to provide written notice of the amount of any fee that will be charged to all individuals who may be liable for the fee before the service is provided or as soon as feasible after the service begins.

DCF 1.04 Fee liability, exemptions, and waivers. (1) PERSONS LIABLE. Except as provided in sub. (2), all of the following persons shall be liable for a fee:

(a) A client who is not a minor at the time the service is provided.

Note: An adult is not liable for a fee for services received as a minor.

(b) A parent of a minor client.

(c) The spouse of a client.

(d) The surety company if the condition of a bond under s. 48.839 (1) or 48.98 (2), Stats., is met.

(e) Under s. 48.98, Stats., a person, other than a county department or a licensed child-placing agency, that brought a child into this state for the purpose of placing the child in a foster home.

(f) Any other person liable by contract, law, or as determined by a court.

(2) FEE PROHIBITED. A county department or the department may not charge a fee to any of the following persons:

(a) A client who is a minor at the time the service is provided.

(b) Any other person determined not liable by a court.

(3) DISCRETIONARY WAIVER. (a) A county department or the department may refrain from charging a fee, compromise the amount of a fee, or forgive all or part of a fee debt if the county department or the department determines that any of the following:

1. The individual receives Medical Assistance, Supplemental Security Income, or Social Security Disability Insurance.

2. No payments are currently required because the individual's maximum monthly payment amount is \$0.

3. Collection is inappropriate due to the needs of the individual or the individual's family.

4. Collection is administratively unfeasible.

5. Collection would significantly prevent accomplishing the purpose of the service.

(b) A county department or the department may waive all or part of an individual's fee liability for a reason specified in par. (a) at any time.

(c) The county department or the department shall document any fee liability that is waived as provided in s. DCF 1.05 (7) (a) 4.

Note: See s. DCF 1.05 (8) on noncompliance.

DCF 1.05 Billing. (1) MONTHLY BILL IF ABILITY TO PAY. Each month during the collection period, a county department or the department shall issue a billing statement to each liable individual whose current maximum monthly payment amount is more than \$0.

Note: A joint billing statement may be sent to all liable individuals who live at the same address.

(2) DETERMINING THE MAXIMUM MONTHLY PAYMENT AMOUNT. (a) *Maximum monthly payment schedule.* 1. Subject to par. (c), a county department or the department shall determine a liable individual's maximum monthly payment amount using information under par. (b) and the maximum monthly payment schedule issued by the department. The maximum monthly payment schedule indicates the maximum amount that the department determines a liable individual has the ability to pay toward fee liability per month based on gross monthly income and number of individuals living the family.

2. The department may collaborate with the department of health services to use a common maximum monthly payment schedule for this chapter and ch. DHS 1.

3. The maximum monthly payment schedule shall be updated annually based on the consumer price index for the midwest region issued by the federal department of labor.

Note: The maximum monthly payment schedule is available at <https://www.dhs.wisconsin.gov/uniform-fee/index.htm>

(b) *Financial circumstances.* A county department or the department may determine the gross monthly income and number of individuals living in the liable individual's family using any of the following:

1. A completed financial responsibility form that gives due regard to the relationships and the present needs of the individual or of the lawful dependents and documentation that verifies the information provided in the form.

Note: A county department may use the financial responsibility form that is available at <https://www.dhs.wisconsin.gov/forms/f8/f80130.pdf> or may develop their own form that meets the conditions of this subdivision.

2. Information in the county department's or the department's records about the liable individual and the individual's family.

(c) *Single maximum monthly payment amount.* A county department or the department shall determine a single maximum monthly payment amount for a family who lives together regardless of the number of liable individuals in the family, the number of family members receiving services, the number of agencies providing services, or whether fees were established under this chapter or ch. DHS 1.

(3) WHEN THE MAXIMUM MONTHLY PAYMENT AMOUNT IS DETERMINED. (a) *Mandatory determination.* Subject to sub. (8), a county department or the department shall determine a liable individual's maximum monthly payment amount at all of the following times during the collection period:

1. When services begin or as soon as the county department or the department has sufficient information on the individual's financial circumstances under sub. (2) (b).

2. When the county department or the department receives notice that there has been a change in the financial circumstances of the liable individual or the individual's family.

3. Every 12 months while services are being provided.

(b) *Discretionary determination.* A county department or the department may determine a liable individual's maximum monthly payment amount at any of the following times during the collection period:

1. At the conclusion of services to the client.

2. Periodically after services have concluded.

(4) OPTIONAL SHORT-CUT METHOD. A county department or the department may determine that a liable individual's maximum monthly payment amount is \$0 if the individual is receiving Medical Assistance, Social Security Disability Insurance, or Supplemental Security Income.

(5) RETROACTIVE ADJUSTMENT. Following a redetermination of a liable individual's maximum monthly payment amount, the county department or the department may retroactively apply the new maximum monthly payment amount for up to 90 days prior to receipt of the updated financial information.

(6) DISCLOSURE. A county department or the department may release financial and service information to qualified staff within the county department or the department for billing and collection purposes.

(7) BILLING STATEMENTS. (a) A county department or the department shall include all of the following in each billing statement issued under sub. (1) or (8):

1. An itemization of any services provided during the billing period, including the date the service was provided, the number of units, and the fee amount.
2. The date and amount of any payments received during the billing period.
3. The total outstanding liability as of the date of the statement.
4. Any liability that was waived under s. DCF 1.04 (3).
5. The due date and amount of the monthly payment due.

(b) A county department or the department may do any of the following:

1. Require a monthly payment amount that is less than the maximum monthly payment amount.
2. Bill for the current monthly amount due and any unpaid amounts due in previous months.
3. Issue billing statements to any liable person who is not an individual as the county department or department determines appropriate.

Note: The monthly billing requirement and the ability to pay provisions do not apply to liable entities, such as surety companies and child-placing agencies.

(8) NONCOMPLIANCE. A county department or the department shall issue monthly billing statements for a liable individual's total outstanding liability if any of the following conditions is met:

(a) The individual is informed of the right to maximum monthly payment amounts based on the individual's ability to pay and knowingly refuses to complete a financial responsibility form or to provide verifying documentation under sub. (2) (b) 1.

(b) The individual intentionally misrepresents any information provided in the financial responsibility form under sub. (2) (b) 1.

Note: The county department or the department may also refuse to grant a waiver under s. DCF 1.04 (3).

(9) OTHER REQUIREMENTS. Each county department and the department shall do all of the following:

(a) Maintain documentation of compliance with this section. A county department shall provide the documentation to the department upon request.

(b) Establish a written procedure to periodically review accounts for accuracy and compliance with this chapter and follow the procedure established.

(c) Provide a written grievance procedure for disputes relating to liability, billing, and collections.

DCF 1.06 Collections. (1) NONPURSUIT. A county department or the department may not engage in efforts to collect from a liable individual whose maximum monthly payment amount is \$0.

(2) DELINQUENT ACCOUNT. (a) A county department or the department may consider an account to be delinquent if all of the following have occurred:

1. The monthly payment due has not been received for 90 consecutive days.

2. Notices stating that the monthly payment amount has not been received were sent to all liable persons after 30 days, 60 days, and 90 days of noncompliance.

(b) The county department or the department shall maintain documentation of notices sent under par. (a) 2.

(3) TAX INTERCEPT. A county department or the department may certify a fee debt for setoff by the department of revenue under s. 71.93 or 71.935, Stats., if the liable person has been provided with reasonable notice and an opportunity to be heard with regard to the debt.

(4) COLLECTION AGENCIES. A county department or the department may establish an agreement with a collection agency in compliance with s. 218.04, Stats., to collect a fee debt. The county department or the department shall monitor accounts sent to the collection agency.

(5) STATUTE OF LIMITATIONS. (a) A county department or the department may collect a fee debt within the following timeframes:

1. Within 10 years after the cause of action accrues as provided under s. 893.87, Stats.

2. Within 20 years after a judgment is entered as provided under s. 893.40, Stats.

(b) For purposes of par. (a) 1., the cause of action accrues in the month that the service is provided.

Note: Under s. DCF 1.04 (3) (b), a county department or the department may waive liability for all or part of fee debt for a reason specified in s. DCF 1.04 (3) (a) at any time.

DCF 1.07 Child support determined in children's or juvenile court. (1) DEFINITION. In this section, "child" means any of the following:

(a) An individual who is under 18 years of age.

(b) An individual who is 18 years of age or over but under 19 years of age and is a full-time student at a secondary school or its vocational or technical equivalent.

(2) DETERMINATION OF CHILD SUPPORT AMOUNT. The amount of a parent's child support obligation under s. 49.345 (14) (b) or (c), Stats., for a child placed in a residential, nonmedical facility or a juvenile detention facility by a court order shall be determined under ch. DCF 150, subject to the following:

(a) *Proportionate share.* The court may determine the amount of a parent's child support obligation for a child placed in a residential, nonmedical facility or juvenile detention facility by a court order in the following manner:

1. Count the child placed in a residential, nonmedical facility or juvenile detention facility; any full siblings who are also placed in a residential, nonmedical facility or juvenile detention facility; and full siblings who remain in the home as a single group of children who constitute one child support obligation.

2. Use the percentages in ch. DCF 150 to determine the child support obligation for the sibling group and then determine the proportionate share for the child who is placed in a residential, nonmedical facility or juvenile detention facility, in conjunction with other applicable provisions in ch. DCF 150.

(b) *Adoption assistance.* If an adoption assistance agreement under s. 48.975 (4), Stats., is in effect for the child, the parent's child support amount is as follows:

1. An amount that does not exceed the amount of any adoption assistance maintenance payments the parent is receiving under s. 48.975 (3) (a), Stats.

2. Zero dollars if the adoption assistance agreement provides for maintenance payments of \$0 under s. 48.975 (3) (a) 3., Stats.

(3) COURT DEVIATION. Upon request by a parent, the court may deviate from the child support amount determined under sub. (2) if, after considering the factors specified in s. 49.345 (14) (c), the court finds by the greater weight of the credible evidence that the amount is unfair to the child or to either of the parents.

(4) ASSIGNMENT AND COLLECTION. (a) An order issued under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), Stats., for child support under s. 49.345 (14) (b) or (c), Stats., constitutes an assignment of all of the following to the county department in the county where the order was entered or to the department:

1. Salaries, wages, earnings, and commissions.
2. Worker's compensation benefits under ch. 102, Stats.
3. Unemployment insurance benefits under ch. 108, Stats.
4. Pension benefits.
5. Income continuation insurance benefits under s. 40.62, Stats.
6. Duty disability benefits under s. 40.65, Stats.
7. Any other money due or to be due to the parent in the future.

(b) Except as provided in par. (c), for each payment made under the assignment, the person from whom the payer under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed \$3, which shall be deducted from the money to be paid to the payer.

(c) Unemployment insurance payments under ch. 108, Stats., may be assigned and withheld only as provided in s. 108.13 (4), Stats. When money is to be withheld from these payments, no fee may be deducted from the amount withheld and no fine may be levied for failure to withhold the money.

(d) No employer may use an assignment as a basis for the denial of employment to a person,

the discharge of an employee, or any disciplinary action against an employee. Any violation is subject to penalties specified in s. 49.345 (14) (e) 4., Stats.

SECTION 2. EFFECTIVE DATE. These rules shall take effect the first day of the month following publication in the Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.,