

ORDER OF THE DEPARTMENT
OF HEALTH AND FAMILY SERVICES REPEALING, AMENDING,
AND CREATING RULES

The Wisconsin Department of Health and Family Services proposes to repeal 50.06 (3) (a) 1., 50.08 (7) (b) and (g), and 50.10; to renumber 50.06 (3) (a) 2. a to f., 3. a. and b., and (b); to amend HFS 50.01 (4) (g), 50.03 (intro.), (1) (c) and (d), (2) (a) 2. and 3., and (c), 50.06 (2) (intro.), 50.07, 50.08 (1) (title) and (intro.), (a) (intro.), (b) 1. to 3., (d) and (e), (2) (intro.) and (b), (3) (title), (intro.) and (a), (4), and (7) (a) and (c) to (f), and (8), 50.09 (1) (intro.), (2) (title), (intro.), (a) (intro.) 1. and 2., and (b), and HFS 51.03 (3); to repeal and recreate HFS 50.01 (4) (j) and 50.06 (3) (a) (intro.); and to create HFS 50.03 (1) (Note), 50.06 (2) (Note), 50.08 (9), 50.09 (1) (title), (Note), and (3) and (4), relating to adoption assistance and the use of the state adoption information exchange to find adoptive families for children.

Analysis Prepared by the Department of Health and Family Services

The proposed rulemaking order amends several provisions of HFS 50 rules for facilitating the adoption of children with special needs to do the following: (1) establish exceptions to an adoption agency's photolisting requirements; (2) replace terms "photolisting book" and "book" to allow for alternative methods of photolisting, such as the Internet; (3) authorize the department to biannually notify adoptive parents of the family's post-placement responsibilities and remove the requirement that the department annually re-certify an adoptive family's need for continuing adoption assistance; (4) include an express time requirement within which an adoptive family must notify the department of changes in circumstances; (5) allow adoption assistance under the interstate compact when federally required; (6) include an express requirement that a child must be available for adoption in order to be eligible for adoption assistance; (7) require that only documented factors be used as a basis of determining that a child is at high risk of developing a moderate or intensive level of special needs; (8) require that the documentation evidencing a mother's drug or alcohol use be documented in a medical or hospital record or other records (9) require that any documentation evidencing inappropriate pre-natal care be documented in a medical or hospital record; (10) for clarification purposes, replace the term "registration" with "photolisting"; and (11) eliminate the need for an adoption agency to register or photolist a child when an adoption agency is not actively seeking an adoptive placement for the child.

The Department's authority to repeal, renumber, amend, repeal and recreate, and create these rules is found in ss. 48.55 (2), 48.975 (5), and 227. 11 (2) (a), Stats. The rule interprets s. 48.55 and s. 48.975, Stats.

SECTION 1. HFS 50.01 (4) (g) is amended to read:

HFS 50.01 (4) (g) "Adoption photolisting ~~book~~" means a publication that lists individual special needs children and includes photographs and descriptions of them.

SECTION 2. HFS 50.01 (4) (j) is repealed and recreated to read:

HFS 50.01 (4) (j) "Child at high risk" means a child in the guardianship of an adoption agency who does not have a known special need under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. but who is at high risk of developing a moderate or intensive level of special needs under s. HFS 50.03 (1) (b) 3. based on one or more of the following:

1. There is documented information that either or both birth parents have a medical diagnosis or medical history which could result in a condition for the child described in s. HFS 50.03 (1) (b) 3. at a later time.

2. The child has experienced 4 or more placements with extended family or foster homes that could affect the normal attachment process.

3. The child experienced neglect in the first 3 years of life or sustained physical injury or physical disease that could have a long-term effect on physical, emotional or intellectual development.

4. There is documented evidence in a medical or hospital record, law enforcement record, social or human service department record, court record, or a record of an agency under a contract with a county department or the department to provide child welfare services that the birth mother used harmful drugs or alcohol during pregnancy which could later result in the child developing special needs as described in s. HFS 50.03 (1) (b) 3.

5. There is documented evidence in a medical or hospital record that the birth mother received inappropriate prenatal care which could later result in the child developing special needs as described in HFS 50.03 (1) (b) 3.

SECTION 3. HFS 50.03 (intro.), (1) (c) and (d), are amended to read:

HFS 50.03 Eligibility for adoption assistance. In order for a child to be adopted with adoption assistance the child must be available for adoption and the following circumstances shall exist:

(1) ELIGIBILITY CRITERIA FOR THE CHILD. (c) *Availability for adoption.* A child shall be considered available for adoption if the child is in the guardianship of the department, a county department under s. 48.57(1)(hm), Stats., or an adoption agency and the department, county department, or adoption agency decides that the child cannot or should not return to the home of his or her parents. If the child is an American Indian, adoption procedures shall be in accordance with 25 USC 1901 to 1963.

(d) *Wisconsin responsibility.* A child brought to Wisconsin for adoption from another state under the interstate compact on the placement of children, ss. 48.988 and 48.989, Stats., except as mandated by federal statutes and regulations, or from another nation under an orphan, relative or medical immigrant visa may not be provided adoption assistance from this state.

SECTION 4. HFS 50.03 (1) (Note) is created to read:

HFS 50.03 (1) **Note:** Federal law interpretations as provided in ACYF-CB-PA-01-01 and ACYF-CB-IM-01-08 require that in an interstate adoption, when the sending state public child welfare agency does not have responsibility for placement and care of a child, the public child welfare agency in the adoptive parents' state of residence is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement, and paying the subsidy for a child who meets eligibility requirements for federally funded adoption assistance.

SECTION 5. HFS 50.03 (2) (a) 2. and 3., and (c) are amended to read:

(2) (a) 2. ~~Registering~~Photolisting the child with the adoption information exchange.

3. Working through the adoption information exchange to register the child with a national adoption exchange.

(c) If the child has a special need under sub. (1) (b) and if the circumstances of either this subsection or sub. (3) exist, the agency shall inform the family of the adoption assistance program and ask the proposed adoptive parents whether they are willing to adopt without adoption assistance. If the family is not willing to adopt without adoption assistance, the requirement that a reasonable, but unsuccessful, effort to place the child without adoption assistance is met. A request for adoption assistance shall not be a basis for removing a child from a current adoptive placement.

SECTION 6. HFS 50.06 (2) (intro.) is amended to read:

HFS 50.06 (2) POST-PLACEMENT RESPONSIBILITIES OF ADOPTIVE PARENTS. After the adoption assistance agreement has been signed and approved by the department and the child has been placed in the home, the adoptive parent shall notify the division within 30 days of the occurrence of any of the following circumstances:

SECTION 7. HFS 50.06 (2) (Note) is created to read:

HFS 50.06 (2) **Note:** Notice may be delivered in person, by mail, or facsimile (fax) to the Division of Children and Family Services, Bureau of Program and Policies, 1 W. Wilson St., P.O. Box 8916, Madison, WI 53708-8916. The toll free telephone number is 866-666-5532. The fax number is 608-264-6750.

SECTION 8. HFS 50.06 (3) (a) (intro.) is repealed and recreated to read:

HFS 50.06 (3) (a) Biannually send written notification to adoptive families of the post-placement responsibilities specified in s. HFS 50.06 (2) (a) to (j). Notification shall include adoptive families who have moved out of state.

SECTION 9. HFS 50.06 (3) (a) 1. is repealed.

SECTION 10. HFS 50.06 (3) (a) 2. a. to f. is renumbered HFS 50.06 (3) (b) 1. to 6.

SECTION 11. HFS 50.06 (3) (a) 3. a. and b. is renumbered HFS 50.06 (3) (c) 1. and 2.

SECTION 12. HFS 50.06 (3) (b) is renumbered HFS 50.06 (3) (d).

SECTION 13. HFS 50.07 is amended to read:

HFS 50.07 Adoption information exchange. Sections HFS 50.07 to ~~50.10~~ 50.09 establish an adoption information exchange to be operated by the department directly or through a contract with an individual or a private agency. These sections apply to the department, adoption agencies, prospective adoptive parents and to an individual or private agency if under contract with the department to operate the adoption information exchange, except that Indian tribal child-placing agencies may draw upon services of the adoption information exchange but are not obligated under these rules to participate in the exchange.

SECTION 14. HFS 50.08 (1) (title) and (intro.), (a) (intro.), (b) 1. to 3., (d) and (e), (2) (intro.) and (b), (3) (title), (intro.) and (a), (4), and (7) (a) are amended to read:

HFS 50.08 Adoption information exchange responsibilities. (1)

~~REGISTRATION~~PHOTOLISTING. The exchange shall maintain an ongoing central photolist registry which shall include the following services:

- (a) The exchange shall ~~register~~photolist all special needs children. Special needs children include:
 - (b) Children may be considered to have special needs when they are placed in sustaining care or when they are at legal risk. However:
 - 1. The exchange may ~~register~~photolist children who have been placed in sustaining care under s. 48.428, Stats., only when the court involved gives written permission; and
 - 2. The exchange may ~~register~~photolist ~~legal risk~~ children at legal risk either with the written consent of the court or by written consent of the adoption agency and the child's parent or guardian. The ~~registration~~photolist information shall include ~~information describing the nature~~ a description of the legal risk.
 - 3. Children who have not been placed for adoption within ~~60~~30 days after being legally freed; or
- (d) The exchange may ~~register~~ or photolist, as appropriate, special needs children with out-of-state exchanges and use the resources of those exchanges, but only with written permission from the child's guardian or the agency responsible for the child. The exchange may recommend the use of specific out-of-state exchanges for a particular child.
- (e) The exchange shall withdraw a child's ~~registration~~photolisting when the adoption agency notifies the exchange in writing that the child has been adopted, has reached age 18, has been emancipated by marriage or has died.

(2) **MATCHING SERVICE.** The exchange shall attempt to match children listed in the adoption ~~book~~ under sub. (3) and prospective adoptive families registered with the exchange by:

(b) Contacting adoption agencies to provide them with information on registered prospective adoptive families that would be appropriate for a ~~registered or photo-listed~~photolisted child based on the child's needs and circumstances.

(3) **ADOPTION PHOTOLISTING ~~BOOK~~.** The adoption information exchange shall develop and maintain a ~~book~~photolisting, which shall:

(a) Include information about and a photograph of each ~~registered~~ photolisted child, ~~except for a child deferred from the listing under s. HFS 50.10. This~~ The information included with the photolisting for a child shall be edited to concisely describe the child in a positive and uniform manner;

(4) **PROGRESS INQUIRIES.** The exchange shall make inquiries of adoption agencies at least semi-annually to determine the progress toward adoption of children ~~registered~~photolisted with the exchange.

(7) STATISTICAL REPORTING. The exchange shall compile statistics. If the exchange is operated by an individual or private agency under a contract, a semi-annual statistical report shall be submitted to the department and shall include the following information:

(a) The number of children ~~registered~~photolisted during the reporting period and the total number of children currently ~~registered~~ listed;

SECTION 15. HFS 50.08 (7) (b) is repealed.

SECTION 16. HFS 50.08 (7) (c) to (f) are amended to read:

(c) The number of children ~~listed in the adoption photo listing book~~ photolisted who were placed for adoption within the previous 6 months and the average number of days that a child was listed prior to adoptive placement;

(d) The number of adoption inquiries received for each child ~~listed in the adoption photo listing book~~ photolisted during the reporting period;

(e) ~~The number of children deferred from listing during the reporting period under each of the circumstances specified in s. HFS 50.10 (1).~~ A semi-annual financial report; and

(f) ~~A semi-annual financial report; and~~ Any other information requested by the department for program management.

SECTION 17. HFS 50.08 (7) (g) is repealed.

SECTION 18. HFS 50.08 (8) is amended to read:

(8) RECORDS RETENTION. The exchange shall destroy all records that pertain to a particular child within one year after the child's ~~registration~~photolisting is withdrawn or the child is adopted. The records shall be destroyed in a confidential manner.

SECTION 19. HFS 50.08 (9) is created to read:

HFS 50.08 (9) DISCONTINUANCE OF RECRUITMENT EFFORTS. The exchange shall discontinue photolisting and any other recruitment efforts for a child following receipt of a written notice from the adoption agency.

SECTION 20. HFS 50.09 (1) (title) and (Note) are created to read:

HFS 50.09 (1) PHOTOLISTING.

HFS 50.09 **Note:** Photolisting may also be used prior to termination of parental rights for children at legal risk in need of a foster or adoptive home who have a plan for adoption.

SECTION 21. HFS 50.09 (1) (intro.) and (2) (title), (intro.), (a) (intro.), 1. and 2. and (b) are amended to read:

HFS 50.09 Adoption agency responsibilities. (1) ~~Photo-listing~~ Photolisting of children a child may occur at any time before ~~or after the~~ termination of parental rights. ~~If within 60 days of the date of the termination of parental rights an adoption agency is not able to meet the requirements for reasonable efforts described in s. HFS 50.03(2), the agency shall register the~~

~~child on the exchange if the child is not currently listed and shall include the following information about the child; Except as provided in sub. (4), an agency shall photolist a child with the exchange within 30 days of the date the child is legally freed for adoption or from the date of an adoptive placement disruption, if the child is not currently photolisted. All of the following information about the child shall be included:~~

(2) ~~LISTING AND REGISTRATION~~ PHOTOLISTING UPDATES. The adoption agency shall provide ~~updating registration~~ updated information to the exchange as follows:

(a) Within 10 working days after a change occurs, the agency shall report changes in the child's status, including: the child's placement for adoption.

~~1. Circumstances relating to a change in the deferral from the child being listed in the adoption photo listing book; and~~

~~2. Notice of the child's placement for adoption.~~

(b) Within 10 working days after the first 12 months that a child has been ~~registered~~ photolisted and after each subsequent 12-month period, the adoption agency shall submit updating information which includes a new written description and recent photograph of the child.

SECTION 22. HFS 50.09 (3) and (4) are created to read:

(3) PHOTOLISTING AFTER DISCONTINUATION OF RECRUITMENT EFFORTS. If a child's photolisting has been discontinued under s. HFS 50.08 (9), and the exceptions in sub. (4), do not apply, an agency shall re-photo list the child with the exchange within 30 days of a change that creates a need for an adoptive placement. An agency that photolists a child with the exchange under this subsection shall include and update all of the information specified in s. HFS 50.09 (1) (a) to (i).

(4) EXCEPTIONS. Photolisting is not required if any of the following apply:

(a) The agency meets the requirements for reasonable placement efforts described in s. HFS 50.03 (2).

(b) An exception to reasonable placement efforts as specified in HFS 50.03 (3) is documented in the child's case record by the adoption agency.

(c) The permanency plan for the child includes documentation by the adoption agency that it is not appropriate to seek an adoptive placement.

SECTION 23. HFS 50.10 is repealed.

SECTION 24. HFS 51.03 (3) is amended to read:

HFS 51.03 (3) "Adoption information exchange" means the department program under ss. HFS 50.07 to ~~50.10~~ 50.09, intended to facilitate the adoption of special needs children by disseminating information about the children to adoption agencies and prospective adoptive families.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as stated in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health
and Family Services

Dated: October 14, 2002

By: _____
Phyllis J. Dubé
Secretary

Seal: