

# Statement of Scope

## Department of Children and Families

**Rule Number:** Chapter DCF 52, 56, 57, and 59

**Relating to:** Supporting Normalcy for Children in Out-of-Home Care

**Rule Type:** Emergency and Permanent

This statement of scope was approved by the governor on May 19, 2016.

### 1. Finding/nature of emergency (for emergency rules only)

2015 Wisconsin Act 128, Section 91, authorizes the department to promulgate the rules required under ss. 48.383 (3), 48.67 (4) (a) 1m. and (5), and 938.383 (3), Stats., as created by 2015 Wisconsin Act 128, without providing a finding of emergency.

Effective October 1, 2016, s. 48.75 (3), Stats., as created by 2015 Wisconsin Act 378, will provide that before issuing a license to operate a foster home, a child welfare agency or public licensing agency shall require that each foster parent receive a favorable report following an investigation that is conducted in the same manner as an investigation under s. 48.88 (2) (aj), Stats., as created by 2015 Wisconsin Act 378. The emergency rules will incorporate this requirement into the licensing rules for foster homes.

### 2. Detailed description of the objective of the rule

The emergency and proposed rules will amend the department's licensing rules for residential care centers for children and youth, foster homes, group homes, and shelter care facilities to implement the requirements of ss. 48.383, 48.67 (4) (a) 1m. and (5), and 938.383, Stats., as created by 2015 Wisconsin Act 128, and Section 111 of the federal *Preventing Sex Trafficking and Strengthening Families Act*.

In addition, the rules will require that the department, county departments, and child welfare agencies use an assessment system that is approved by the department when conducting an investigation of an applicant for a license to operate a foster home.

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

Sections 48.383 (3) and 938.383 (3), Stats., as created by 2015 Wisconsin Act 128, require the department to promulgate rules to implement the requirements regarding the reasonable and prudent parent standard in s. 48.383, Stats.

Sections 48.383 (1), and 938.383 (1), Stats., as created by 2015 Wisconsin Act 128, require out-of-home care providers to use the "reasonable and prudent parent standard" in making decisions concerning a child's or juvenile's participation in "age or developmentally appropriate" extracurricular, enrichment, cultural, and social activities. In making decisions using the reasonable and prudent parent standard, an out-of-home care provider shall consider the restrictiveness of the child's placement and whether the child has the necessary training and safety equipment to safely

participate in the activity under consideration and may not make any decision that is in violation of any court order or any state or federal law, rule, or regulation.

Sections 48.383 (2) and 938.383 (2), Stats., as created by 2015 Wisconsin Act 128, provides that the information that a placing agency is required to provide to an out-of-home care provider at the time of placement include child-specific or juvenile-specific information that the provider must consider in making reasonable and prudent parenting decisions concerning the child's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

In preparing that information or any revisions of that information, the agency shall do all of the following:

- If reasonably possible to do so, consult with the child's parent concerning the child's participation in extracurricular, enrichment, cultural, and social activities and the child's cultural, religious, and tribal values and advise the parent that those values will be considered, but will not necessarily be the determining factor, in making decisions concerning the child's participation in those activities.
- Consult with the child in an age-appropriate manner about the opportunities of the child to participate in age or developmentally appropriate activities.

The placing agency shall explain to the out-of-home care provider the parameters of the considerations that the out-of-home care provider is required to take into account when making decisions concerning the child's or juvenile's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities. In explaining those parameters, the agency shall explain the considerations and prohibitions and shall advise the out-of-home care provider that in case of any disagreement over the application of the reasonable and prudent parent standard, the agency having placement and care responsibility for the child is ultimately responsible for decisions concerning the care of the child.

Sections 48.02 (14r) and 938.02 (14r), Stats., as created by 2015 Wisconsin Act 128, define the "reasonable and prudent parent standard" as a standard for an out-of-home care provider to use when making decisions concerning a child's or juvenile's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities that is characterized by careful and sensible parental decisions that maintain the health, safety, best interests, and cultural, religious, and tribal values of the child or juvenile while at the same time encouraging the emotional and developmental growth of the child or juvenile.

Sections 48.02 (1dm) and 938.02 (1g), Stats., as created by 2015 Wisconsin Act 128, define "age or developmentally appropriate activities" as activities that are generally accepted as suitable for children or juveniles of a given chronological age or level of maturity or that are determined to be developmentally appropriate for a child or juvenile based on the cognitive, emotional, physical, and behavioral capacities that are typical for children or juveniles of a given age or age group or, in the case of a specific child or juvenile, activities that are suitable for the child or juvenile based on the cognitive, emotional, physical, and behavioral capacities of that child or juvenile.

Section 48.67 (4) (a) 1m., Stats., as created by 2015 Wisconsin Act 128, directs the department to promulgate rules that require all foster parents to successfully complete training on the use of the reasonable and prudent parent standard in making decisions about a child's participation in age or developmentally appropriate activities, including all of the following:

- The stages in the development of cognitive, emotional, physical, and behavioral capacities of children.
- Applying the reasonable and prudent parenting standard in making decisions on all of the following:
  - A child's participation in extracurricular, enrichment, cultural, or social activities, such as sports, field trips, overnight, and other recreational activities.
  - The signing of permission slips and the arrangement of transportation to and from those activities.
  - The child's choices with respect to transportation, employment, peer relationships, and personal expression.

Those rules shall require a foster parent who has received that training to make reasonable and prudent parenting decisions in accordance with the reasonable and prudent parent standard.

Section 48.67 (5), Stats., as created by 2015 Wisconsin Act 128, directs the department to promulgate rules that require all residential care centers for children and youth, all group homes, and all shelter care facilities to designate an on-site staff member to make decisions concerning the participation of a child placed in the center, group home, or shelter care facility in age or developmentally appropriate activities. The designated staff member will be required to successfully complete the training described in s. 48.67 (4) (a) 1m., Stats. Those rules shall require the trained staff member to make reasonable and prudent parenting decisions in accordance with the reasonable and prudent parent standard.

Section 48.75 (3), Stats., as created by 2015 Wisconsin Act 378, provides that before a child welfare agency or public licensing agency issues a license to operate a foster home, the agency shall require that each foster parent receive a favorable report following an investigation that is conducted in the same manner as the investigation under s. 48.88 (2) (aj), Stats., as created by 2015 Wisconsin Act 378, is conducted.

Section 48.88 (2) (aj), Stats., as created by 2015 Wisconsin Act 378, provides the following:

- In determining whether the petitioner's home is suitable for the child, the agency or tribal child welfare department making the investigation shall consider whether the petitioner is fit and qualified to care for the child, exercises sound judgment, does not abuse alcohol or drugs, and displays the capacity to successfully nurture the child.
- The investigation shall be conducted using an assessment system that is approved by the department. The assessment system shall provide a reliable, comprehensive, and standardized qualitative evaluation of a petitioner's personal characteristics, civil and criminal history, age, health, financial stability, and ability to responsibly meet all requirements of the department.
- If the agency or tribal child welfare department making the investigation has special concern as to the welfare of the child or the suitability of the placement, the investigation may include a clinical assessment of the petitioner's mental health or alcohol or other drug use by an employee of the agency or tribal child welfare department who is not employed in the unit of the agency or tribal child welfare department that is making the investigation or by a person who is not employed by that agency or tribal child welfare department. A person who provides such an assessment shall be a licensed psychologist, licensed psychiatrist, certified advanced practice social worker, certified independent social worker, licensed clinical social worker, or licensed professional counselor.

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

300 hours

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

Division of Milwaukee Child Protective Services, county departments of social services and human services, child-placing agencies, residential care centers for children and youth, foster homes, group homes, and shelter care facilities.

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

States are required to implement the “reasonable and prudent parent” standard in Section 111 of the *Preventing Sex Trafficking and Strengthening Families Act*, Public Law 113-183, as a condition of funding under Title IV-E of the Social Security Act.

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

None or minimal

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