

# Statement of Scope

## Department of Children and Families

**Rule Number:** Chapters DCF 42, 50, and 51

**Relating to:** Public adoptions and training for prospective adoptive parents

**Rule Type:** Emergency and permanent

This statement of scope was approved by the governor on July 26, 2017.

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

It is necessary to promulgate the changes to the training requirements for prospective adoptive parents in ch. DCF 51 as an emergency rule to avoid potential challenges to adoptions based on noncompliance with s. 48.84, Stats., as affected by 2015 Wisconsin Act 379. The Act was effective the day after publication, but requires the department to promulgate rules on the topics of the training.

### **2. Detailed description of the objective of the rules**

The proposed and emergency rules will update ch. DCF 51 to incorporate changes to the training requirements for prospective adoptive parents in s. 48.84, Stats., as affected by 2015 Wisconsin Act 379.

The proposed rules will also update home study requirements to incorporate changes in s. 48.88, Stats., as affected by 2015 Wisconsin Act 378.

In addition, the proposed rules will reorganize and clarify the information in chs. DCF 50 and 51. The current organization is confusing because parts of the department's efforts to facilitate the adoption of children in the public child welfare system appear in each chapter, and ch. DCF 51 includes some provisions that apply only to the adoption of children in the public child welfare system and some sections that apply to all prospective adoptive parents.

Under the proposed rules, all provisions relating to facilitating the adoption of children in the public child welfare system will be in ch. DCF 50 and will be organized in the order that they might affect the adoption of a specific child. Ch. DCF 51 will focus on the training requirements for all prospective adoptive parents who are planning to adopt a child in this state.

The proposed ch. DCF 50 will also include procedural simplifications to the adoption assistance program that are the result of the department's implementation of the "Lean Government" initiative under Executive Order #66. The order directed 16 state agencies, including the department, to look for ways to reduce workload, improve processes, and improve customer satisfaction.

In addition, ch. DCF 42, *State Adoption Information Center*, will be renumbered to be ch. DCF 49 to make it easier for the public to find all of the department's rules related to adoption. The current ch. DCF 49, *Juvenile Worker Intake Training*, is obsolete and will be repealed. Ch. DCF 82 is the current juvenile worker intake training rule.

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

Section 48.55 (1), Stats., provides that the department shall establish a state adoption information exchange for the purpose of finding adoptive homes for children with special needs who do not have permanent homes.

Section 48.55 (2), Stats., provides that the department shall promulgate rules governing the adoption information exchange.

Section 48.84, Stats., as affected by 2015 Wisconsin Act 379, requires a proposed adoptive parent who has not previously adopted a child to complete preadoption preparation before any of the following may occur:

- A child is placed in the proposed adoptive parent's foster home for adoption under s. 48.833, Stats.
- A petition is filed for placement of a child in a proposed adoptive parent's foster home for adoption under s. 48.837, Stats.
- A proposed adoptive parent brings a foreign child into this state for adoption under s. 48.839, Stats.

The department shall promulgate rules establishing the topics to be covered in the preadoption preparation. The preparation shall include training on issues that may confront adoptive parents, in general, and that may confront adoptive parents of special needs children or foreign children. In all cases, the training shall cover the topics of attachment, trauma, neglect, and abuse, including sexual abuse.

A proposed adoptive parent shall obtain at least 25 hours of preadoption preparation. At least 6 hours of training must be provided in person, and at least 6 hours of training is required to be specific to the needs of the child to be adopted. A person that provides the required preadoption training is also required to offer the adoptive parent at least 6 additional hours of post-adoption training that is appropriate to the needs of the family.

The department administers s. 48.88, Stats., as affected by 2015 Wisconsin Act 378, relating to investigations to determine whether a prospective adoptive parent's home is suitable for the child.

Section 48.975 (5), Stats., provides that the department shall promulgate rules necessary to implement adoption assistance that include all of the following:

- A rule defining the extenuating circumstances under which an initial agreement to provide adoption assistance under sub. (4) (a) may be made after adoption. This definition shall include all circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assistance are available to the state if an initial agreement is made after adoption, but may not include circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assistance are not available if an initial agreement is made after adoption.
- A rule defining a child with special needs, which shall include a child who the department determines has, at the time of placement for adoption, moderate or intensive difficulty-of-care problems, as defined by the department, or who the department determines is, at the time of placement for adoption, at high risk of developing those problems.
- A rule defining the substantial change in circumstances under which adoptive or proposed adoptive parents may request that an agreement made under sub. (4) be amended to increase the amount of adoption assistance for maintenance. The definition shall include all of the following:
  - Situations in which a child who was defined as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems has developed those problems.
  - Situations in which a child's difficulty-of-care problems have increased from the moderate level to the intensive level as set forth in the department's schedule of difficulty-of-care levels promulgated by rule.
- Rules establishing requirements for submitting a request under sub. (4) (b), criteria for determining the amount of the increase in adoption assistance for maintenance that the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of

abuse or neglect of the child by the adoptive or proposed adoptive parents, and the procedure to appeal the decision of the department regarding the request.

- Rules establishing the criteria for determining the amount of the decrease in adoption assistance for maintenance that the department shall offer under sub. (4) (bm) if a substantial change in circumstances no longer exists and the procedure to appeal the decision of the department regarding the decrease. The criteria shall provide that the amount of the decrease offered by the department under sub. (4) (bm) may not result in an amount of adoption assistance for maintenance that is less than the initial amount of adoption assistance for maintenance provided for the child under sub. (3) (a) 1., 2. or 3.

- A rule regarding when a child must be photolisted with the adoption information exchange under s. 48.55, Stats., in order to be eligible for adoption assistance. The rule may not require photolisting under any circumstances in which photolisting is not required by federal statutes, regulations or guidelines as a prerequisite for the state to receive federal matching funds for adoption assistance.

Rules governing the provision of adoption assistance for the care of a child after the child attains 18 years of age.

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.

2015 Wisconsin Act 380 repeals the requirement that the department approve the adoption of a child from a foreign country by a resident of this state when the adoption was finalized in the child's country. The department has been requiring that the adoptive parents complete the training requirements in s. 48.84, Stats., as a condition of approval of foreign adoption decrees.

#### **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**

County departments of social services and human services, child-placing agencies, tribal child welfare agencies, prospective adoptive parents who intend to adopt a child in this state, and parents receiving adoption assistance following the adoption of a child who had been in the public child welfare system.

#### **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**

##### Domestic adoptions

42 USC 673 requires foster parents to be prepared adequately with appropriate knowledge and skills before a child is placed in their foster home and requires that the preparation be continued as necessary after the placement of the child.

##### Intercountry adoptions

In intercountry adoptions, Department of State regulations at 22 CFR Part 96 require prospective adoptive parents to use a primary adoption services provider that is an accredited agency or approved person under the regulations and is responsible for ensuring that adoption services comply with the regulations.

Under 22 CFR 96.48, the accredited agency or approved person is required to provide prospective adoptive parents with at least 10 hours of preparation and training before they travel to adopt a child or a child is

placed with the prospective adoptive parents for adoption. The required topics include intercountry adoption processes, conditions in the child's country of origin, and the effects of institutionalization on children. Counseling on a particular child's history; known health risks where the child resides; and any other medical, social, educational, and developmental history about the child is also required.

The Department of State regulations have applied to all adoptions of a foreign child by a U.S. citizen since July 14, 2014, when *The Intercountry Adoption Universal Accreditation Act of 2012* (UAA) went into effect. The UAA assures families pursuing an intercountry adoption that regardless of the country from which they intend to adopt, the adoption service provider will need to comply with the same ethical standards of practice and conduct. From July 1, 2008, to July 13, 2014, the Department of State regulations only applied to adoption services provided for a U.S. prospective adoptive parent if the child resided in a country that was a party to the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*. The Hague Convention is a multi-lateral treaty that entered into force in the U.S. on July 1, 2008.

Proposed changes to the Department of State rules on intercountry adoptions were published in the *Federal Register* on September 8, 2016. On April 4, 2017, the Department of State withdrew the proposed rules and announced that it will be drafting new rules that are expected to be published later this year.

In addition, a U.S. Citizenship and Immigration Services regulation requires that prospective adoptive parents who obtain guardianship of a child from a foreign country with the intent of adopting the child in their state of residence must have completed any preadoption training required by their state of residence before the child's immigration petition will be approved. 8 CFR 204.305

**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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