

1 **AN ACT** *to amend* 48.64 (4) (a) of the statutes; **relating to:** fair hearings for head of
 2 foster, treatment foster, or group home.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the joint legislative council’s special committee on adoption and termination of parental rights law.

The bill draft provides that the head of a foster, treatment foster, or group home who receives notice of an appeal of a decision or order issued by an agency that affects the head of the home is a party to the proceeding and expands the documents and records that the head of the home may examine for purposes of such a proceeding.

3 **SECTION 1.** 48.64 (4) (a) of the statutes is amended to read:

4 48.64 (4) (a) Any decision or order issued by an agency that affects the head of a foster,
 5 treatment foster or group home or the children involved may be appealed to the department
 6 under fair hearing procedures established under department rules. The department shall, upon
 7 receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair
 8 hearing. The department may make such additional investigation as the department considers
 9 necessary. The department shall give notice of the hearing to the head of the home and to the
 10 departmental subunit, county department or child welfare agency that issued the decision or
 11 order. Each person receiving notice is entitled to be represented at the hearing. The head of
 12 a home who receives notice under this paragraph is a party to the proceeding. At all hearings
 13 conducted under this subsection, the head of the home, or a representative of the head of the
 14 home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to examine all
 15 documents and records ~~to be used at the hearing~~ at a reasonable time before the date of the

1 hearing as well as during the hearing, except that the department is not required to disclose
2 documents and records that identify a person who is not a party to the proceeding if that person
3 has a reasonable expectation that the document or record is confidential. The head of home,
4 or a representative of the head of home, shall also have adequate opportunity to bring
5 witnesses, to establish all pertinent facts and circumstances, and to question or refute any
6 testimony or evidence, including opportunity to confront and cross-examine adverse
7 witnesses. The department shall grant a continuance for a reasonable period of time when an
8 issue is raised for the first time during a hearing. This requirement may be waived with the
9 consent of the parties. The decision of the department shall be based exclusively on evidence
10 introduced at the hearing. A transcript of testimony and exhibits, or an official report
11 containing the substance of what transpired at the hearing, together with all papers and
12 requests filed in the proceeding, and the findings of the hearing examiner shall constitute the
13 exclusive record for decision by the department. The department shall make the record
14 available at any reasonable time and at an accessible place to the head of the home or his or
15 her representative. Decisions by the department shall specify the reasons for the decision and
16 identify the supporting evidence. No person participating in an agency action being appealed
17 may participate in the final administrative decision on that action. The department shall render
18 its decision as soon as possible after the hearing and shall send a certified copy of its decision
19 to the head of the home and to the departmental subunit, county department or child welfare
20 agency that issued the decision or order. The decision shall be binding on all parties
21 concerned.

NOTE: Under current law, any decision or order issued by the department of health and family services (DHFS), the department of corrections, a county department, or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes that affects the head of a foster, treatment foster, or group

home or the children involved may be appealed to DHFS under fair hearing procedures. DHFS must, upon receipt of an appeal, give the head of the home notice and the opportunity for a fair hearing. At all appeal hearings under this provision, the head of the home, or his or her representative, must have adequate opportunity to examine all documents and records to be used at the hearing.

The bill draft provides that a head of a home who receives notice of a fair hearing is a party to the proceeding. In addition, the bill draft allows the head of the home, or his or her representative, to examine all documents and records, except that DHFS is not required to disclose documents and records that identify a person who is not a party to the proceeding if that person reasonably expects that the document or record will remain confidential.