



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON CHILD WELFARE PROVIDER RATE IMPLEMENTATION

FROM: Laura Rose, Deputy Director; and Anne Sappenfield, Senior Staff Attorney

RE: Background Information on Child Welfare Provider Rates

DATE: September 18, 2009

INTRODUCTION

2009 Wisconsin Act 28, the 2009-2011 Biennial Budget Act, created a new process for establishing payment rates for services provided by child welfare providers (specifically, residential care centers (RCCs) for children and youth, group homes, and treatment foster homes) that provide out-of-home care to children and youth. As part of that process, Act 28 requires the Joint Legislative Council to study the implementation of this new payment system. The Special Committee on Child Welfare Provider Rate Implementation was established by the Joint Legislative Council by a mail ballot dated August 20, 2009, in response to that requirement.

This Memo provides background information on child welfare provider payments. First, it describes current laws and procedures relating to payment of child welfare providers. The Memo then describes changes made to the child welfare provider rate system as enacted in Act 28.

BACKGROUND INFORMATION ON CURRENT RATE SETTING PROCESS

Description of Facilities Covered

An RCC is a facility operated by a child welfare agency for the care and maintenance of children residing in that facility. An RCC provides treatment services and custodial services for children, youth, and young adults age 18, 19, and 20. [s. 48.02 (15d), Stats.; s. DCF 52.03 (23), Wis. Adm. Code.]

A group home is any facility operated by a person required to be licensed by the Department of Children and Families (DCF) under s. 48.625, Stats., for the 24-hour care and maintenance of five to eight children. [s. 48.02 (7), Stats.; s. DCF 56.04 (16), Wis. Adm. Code.]

A treatment foster home is any facility that is operated by a person required to be licensed under s. 48.62 (1) (b), Stats., that is operated under the supervision of DCF, a county department of human or social services, or a licensed child welfare agency, and that provides to no more than four children care, maintenance, and structured, professional treatment by trained individuals, including the treatment foster parents. The care provided is meant to be family-oriented and not shift-staffed. [s. 48.02 (17q), Stats.; s. DCF 38.03 (28), Wis. Adm. Code.]

It should be noted that this definition of “treatment foster home” will be repealed when the new graduated foster care licensing system is implemented by the Department of Children and Families (DCF) in 2010.

Number of Children in Out-of-Home Care

As of August 31, 2009, there were 6,623 children in out-of-home care. 5,560 of these children were in family foster home settings, with 1,116 in treatment foster care. 814 children were in group settings, including 359 in 130 group homes and 366 in 35 RCCs. 151 children were in other types of institutional settings.

Table 1 shows the distribution of children in out-of-home care, by type of residential setting. Table 2 shows a 13 month count for children in out-of-home care.

TABLE 1

Wisconsin Children in Out of Home Care
on
August 31, 2009

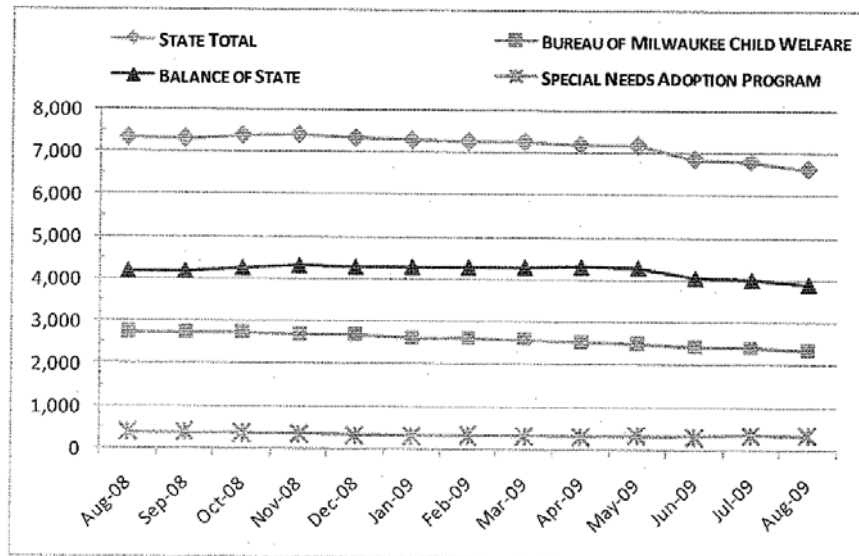
Grouped Placement Settings Totals with Percent of State Total		
Placement Setting by Group	State Total	State %
Family Foster Home Setting	5,560	83.95%
Foster Family Home (Non Relative)	2,225	33.60%
Foster Family Home (Relative)	325	4.91%
Kinship Care - Court-Ordered	1,262	19.05%
Non-Relative-Unlicensed	47	0.71%
Relative - Unlicensed	436	6.58%
Pre-Adoptive Home	127	1.92%
Receiving Home	22	0.33%
Treatment Foster Home	1,116	16.85%
Group Setting	814	12.29%
Group Home	359	5.42%
RCC	386	5.83%
Shelter	55	0.83%
Institutions	151	2.28%
Adult Corrections	2	0.03%
Detention	23	0.35%
Hospital	15	0.23%
Youth Correctional Facility	111	1.68%
Trial Reunification	19	0.29%
Missing From Out-of-Home Care	79	1.19%
Total	6,623	100.0%

Source: Wisconsin Department of Children and Families
Division of Safety and Permanency/Bureau of Program Integrity/Research Unit
September 2009

TABLE 2

**Wisconsin Children in Out of Home Care
13 Month Count with Corresponding Graph
For 2009**

Month - Year	State Total	Bureau of Milwaukee Child Welfare	Balance of State	Special Needs Adoption Program
August 31, 2009	6,623	2,364	3,903	356
July 31, 2009	6,796	2,424	4,006	366
June 30, 2009	6,843	2,455	4,052	336
May 31, 2009	7,161	2,528	4,285	348
April 30, 2009	7,179	2,541	4,306	332
March 31, 2009	7,229	2,614	4,288	327
February 28, 2009	7,242	2,616	4,285	341
January 31, 2009	7,274	2,651	4,288	335
December 31, 2008	7,314	2,696	4,280	338
November 30, 2008	7,390	2,719	4,309	362
October 31, 2008	7,368	2,737	4,251	380
September 30, 2008	7,294	2,735	4,173	386
August 31, 2008	7,314	2,750	4,170	394



Source: Wisconsin Department of Children and Families
Division of Safety and Permanency/Bureau of Program Integrity/Research Unit
September 2009

Rate Setting Prior to Act 28

The procedure for RCCs and group homes to establish rates is set forth in s. 49.343, Stats. Prior to the enactment of 2009 Wisconsin Act 28, s. 49.343 provided that each RCC and each group home “shall establish a per client rate for its services and shall charge all purchasers the same rate.” However, the DCF, a county department, or group of county departments was allowed to negotiate a per client rate for the services of that RCC or group home, if DCF, a county department or group of county departments, agreed to place 75% or more of the residents in that RCC or group home during the period for which that rate is effective. An RCC or group home that negotiated a per client rate was required to charge that rate to all purchasers of its services.

Section 49.343 (2), Stats., also required an RCC or group home to submit to DCF the rate it charges and any change in that rate before a charge was made to any purchaser. DCF was required to provide forms and instructions for the submission of rates and changes in rates, and the RCC or group home that was required to submit a rate or rate change was required to submit it using these DCF forms and instructions.

Finally, s. 49.343 (3), Stats., permitted the DCF to require an audit of any RCC or group home for the purpose of collecting federal funds.

For treatment foster homes, the same process outlined above was followed for establishing the administrative rate for treatment foster homes. The “administrative rate” is the difference between the rate charged by a child welfare agency to a purchaser of treatment foster care services and the rate paid by the child welfare agency to a treatment foster parent for the care and maintenance of a child. The rate for payment to the treatment foster home parent is the same as the uniform foster care rate set forth in s. 48.62, Stats.

It should be noted that entities receiving state and federal funds to provide contractual services must comply with the *Allowable Cost Policy Manual* when establishing their rates. This manual sets forth the principles for determining the allowable costs of programs receiving funds from DCF and other departments. The purpose of these principles is to determine costs, and they do not dictate the extent to which DCF will reimburse these costs. They are designed to ensure that DCF’s programs bear their fair share of costs, except where restricted or prohibited by law or contract. There is no intent for grant recipients to make a profit or other increment above allowable costs, except where specifically authorized by Wisconsin Statutes. The *Allowable Cost Policy Manual* may be found online at: <http://dhs.wisconsin.gov/Grants/Administration/AllowableCost/ACPM.htm#Section%20I%20--%20DHSS%20General%20Principles%20for%20Allowability>.

RCC and Group Home Rates

For 2009, RCC rates range from \$204.07 per day to \$885.29 per day, with a median rate of \$285.00 and a mean rate of \$323.63. Group home rates for 2009 range from \$106.73 per day to \$335.01 per day, with a median rate of \$196.00 and a mean rate of \$197.68.

Table 3 shows RCC rates from 1998 to 2009. Table 3 also indicates the percentage of rate increases from year-to-year.

TABLE 3

RCC Rate Increases

Summary Cost Data

Year	Statistics			
	Min	Max	Median	Mean
1998	\$ 71.93	\$ 296.48	\$ 170.62	\$ 173.88
1999	\$ 75.53	\$ 298.03	\$ 178.19	\$ 181.26
2000	\$ 76.29	\$ 306.98	\$ 195.00	\$ 197.80
2001	\$ 78.58	\$ 357.00	\$ 213.89	\$ 208.68
2002	\$ 81.72	\$ 374.00	\$ 228.00	\$ 221.05
2003	\$ 81.72	\$ 391.00	\$ 238.00	\$ 226.91
2004	\$ 84.17	\$ 391.00	\$ 245.00	\$ 236.72
2005	\$ 85.85	\$ 391.00	\$ 255.00	\$ 243.21
2006	\$ 88.43	\$ 594.12	\$ 263.00	\$ 264.91
2007	\$ 91.08	\$ 826.44	\$ 269.00	\$ 289.84
2008	\$ 195.00	\$ 855.36	\$ 274.00	\$ 312.54
2009	\$ 204.07	\$ 885.29	\$ 285.00	\$ 323.63

Percentage Increases

Year	Raw Increases			
	Min	Max	Median	Mean
1999	5.00%	0.52%	4.44%	4.25%
2000	1.01%	3.01%	9.43%	9.12%
2001	3.00%	16.29%	9.69%	5.50%
2002	4.00%	4.76%	6.60%	5.93%
2003	0.00%	4.55%	4.39%	2.65%
2004	3.00%	0.00%	2.94%	4.32%
2005	2.00%	0.00%	4.08%	2.74%
2006	3.01%	51.95%	3.14%	8.92%
2007	3.00%	39.10%	2.28%	9.41%
2008	114.10%	3.50%	1.86%	7.83%
2009	4.65%	3.50%	4.01%	3.55%

Source: Wisconsin Department of Children and Families
Division of Safety and Permanency/Bureau of Program Integrity/Research Unit
September 2009

Table 4 shows this same data for group home rates.

TABLE 4

Group Home Rate Increases

<i>Summary Cost Data</i>				
Statistics				
Year	Min	Max	Median	Mean
1998	\$ 24.98	\$ 211.00	\$ 112.61	\$ 103.84
1999	\$ 72.00	\$ 223.66	\$ 111.78	\$ 123.32
2000	\$ 70.58	\$ 232.59	\$ 116.60	\$ 125.05
2001	\$ 60.00	\$ 295.89	\$ 126.75	\$ 135.72
2002	\$ 81.00	\$ 335.21	\$ 131.47	\$ 139.93
2003	\$ 67.62	\$ 335.21	\$ 139.00	\$ 139.85
2004	\$ 57.67	\$ 335.21	\$ 147.05	\$ 148.76
2005	\$ 57.66	\$ 836.05	\$ 155.17	\$ 157.91
2006	\$ 89.98	\$ 300.00	\$ 165.08	\$ 163.39
2007	\$ 91.73	\$ 320.00	\$ 175.00	\$ 179.57
2008	\$ 106.73	\$ 335.01	\$ 185.00	\$ 188.02
2009	\$ 106.73	\$ 335.01	\$ 196.00	\$ 197.68

<i>Percentage Increases</i>				
Raw Increases				
Year	Min	Max	Median	Mean
1999	188.23%	6.00%	-0.74%	18.76%
2000	-1.97%	3.99%	4.31%	1.40%
2001	-14.99%	27.22%	8.70%	8.54%
2002	35.00%	13.29%	3.73%	3.10%
2003	-16.52%	0.00%	5.72%	-0.06%
2004	-14.71%	0.00%	5.79%	6.37%
2005	0.02%	149.41%	5.52%	6.15%
2006	56.05%	-64.12%	6.39%	3.47%
2007	1.94%	6.67%	6.01%	9.90%
2008	16.35%	4.69%	5.71%	4.71%
2009	0.00%	0.00%	5.95%	5.14%

Source: Wisconsin Department of Children and Families
Division of Safety and Permanency/Bureau of Program Integrity/Research Unit
September 2009

Foster Care Rates

For foster care, the statutory rates (found in s. 48.62, Stats.) paid to foster parents for the calendar year beginning on January 1, 2009, are as follows:

- \$349 for a child under 5 years of age.
- \$381 for a child 5 to 11 years of age.
- \$433 for a child 12 to 14 years of age.
- \$452 for a child 15 years of age or over.

Beginning on January 1, 2010, the rates structure will change to reflect the new graduated foster care licensing system. As of that date, the rates will be as follows:

- \$215 for care and maintenance provided by a relative of a child of any age and, for care and maintenance provided by a nonrelative.
- \$349 for a child under 5 years of age.
- \$381 for a child 5 to 11 years of age.
- \$433 for a child 12 to 14 years of age; and \$452 for a child 15 years of age or over.

In addition to these grants for basic maintenance, the DCF may make supplemental payments for foster care to a foster home that is receiving an age-related rate under this subsection that are commensurate with the level of care that the foster home is licensed to provide and the needs of the child who is placed in the foster home according to the rules promulgated by DCF. DCF may also provide exceptional payments to enable a child to remain in foster care and to avoid a more restrictive placement or for replacement of a child's basic wardrobe that has been lost or destroyed through other than normal wear, as well as a one-time clothing allowance. The monthly payment for care of a foster child may not exceed \$2,000.

History of Child Welfare Provider Rate Setting

Legislative Audit Bureau Audit 93-14, dated May 1993, analyzed child caring institution (CCIs) (the predecessor of the RCC) costs. The audit noted that CCIs had set their own rates since 1981. Prior to 1981, the Department of Health and Social Services (the predecessor agency to the current Department of Health Services) engaged in rate setting in various forms, in response to concerns about the rate of increase that was being seen in these rates. However, in the 1981-82 Biennial Budget Act, the rate setting requirement was eliminated and replaced with the requirement seen in current law that required the department to be notified of the rate set by each facility. According to an Legislative Fiscal Bureau paper (prepared as part of the 2009-10 budget process), "This outcome had been requested by the Department, which argued that the rate-setting process had not been effective in controlling rates and that it caused staff from child caring institutions and from the Department to spend too much time on negotiations." (LFB Paper #215, *Child Welfare Provider Rate Regulation*; page 7, dated May 27, 2009.)

NEW CHILD WELFARE PROVIDER RATE SYSTEM

Rates for Services Provided Beginning January 1, 2010, and Ending December 31, 2010

Under Act 28, for services provided beginning January 1, 2010, and ending December 31, 2010, an RCC and a group home must charge the same per client rate for its services as it charged for services provided on December 31, 2009. In addition, a child welfare agency must charge the same per client administrative rate for the administrative portion of the treatment foster care services as it charged for the administrative portion of those services on December 31, 2009. [SECTION 9108 (2) (a), 2009 Wisconsin Act 28.]

Rates for Services Provided Beginning on January 2, 2011

For services provided beginning on January 1, 2011, DCF must establish the per client rate that an RCC or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its foster care services. [s. 49.343 (1g), as affected by 2009 Wisconsin Act 28.]¹

Under Act 28, by October 1, 2010, and annually by every October 1 after that, an RCC or a group home must submit to DCF the per client rate that it proposes to charge for services provided in the next year and a child welfare agency must submit to DCF the proposed per client administrative rate that it proposes to charge for foster care services provided in the next year. DCF must provide forms and instructions for the submission of proposed rates, and these forms must be used for proposed rate submissions. [s. 48.343 (2) (a), as affected by 2009 Wisconsin Act 28.]²

DCF must review a proposed rate and audit the RCC, group home, or child welfare agency submitting the proposed rate to determine whether the proposed rate is appropriate to the level of services being provided; the qualifications of the RCC, group home, or child welfare agency to provide those services; and the reasonable and necessary costs of providing those services. In reviewing a proposed rate, DCF must consider all of the following factors:

- Changes to the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. Department of Labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted.
- Changes in the allowable costs of the RCC, group home, or child welfare agency based on current actual cost data or documents projections of costs.

¹ Act 28 repeals and recreates s. 49.343 (1g), Stats. This version of s. 48.343 (1g) takes effect on January 2, 2011 and first applies to a contract for the provision of services that is in effect on December 31, 2010, and that contains provisions that are inconsistent with s. 48.343 (1g) on the day on which the contract expires or is extended, modified, or renewed, whichever occurs first.

² The provisions cited in this section as affected by 2009 Wisconsin Act 28, other than s. 48.343 (1g), take effect on the date stated in the notice provided by the Secretary of DCF and published in the Wisconsin Administrative Register that the Secretary is ready to implement rules creating levels for foster care providers.

- Changes in program utilization that affect the per client rate or per client administrative rate.
- Changes in DCF's expectations relating to service delivery.
- Changes in service delivery proposed by the RCC, group home, or child welfare agency and agreed to by DCF.
- The loss of any source of revenue that has been used to pay expenses, resulting in a lower per client rate or per client administrative rate for services.
- Changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage.
- Competitive factors.
- The availability of funding to pay for the services to be provided under the proposed rate.
- Any other factor relevant to the setting of a rate that DCF may determine by administrative rule.

[s. 49.343 (2) (b), Stats., as affected by 2009 Wisconsin Act 28.]

If DCF determines that a proposed rate is appropriate, DCF must approve the proposed rate. If DCF does not approve the proposed rate, DCF must negotiate with the RCC, group home, or child welfare agency to determine an agreed-to rate. If after negotiations a rate is not agreed to, DCF and the RCC, group home, or child welfare agency must engage in mediation to arrive at an agreed-to rate. If after mediation a rate is not agreed-to, the RCC, group home, or child welfare agency may not provide the service for which the rate was proposed. [s. 49.343 (2) (c), Stats., as affected by 2009 Wisconsin Act 28.]

Administrative Rules

Act 28 requires DCF to promulgate rules to implement the system to determine rates for RCC, group homes, and child welfare agencies. Those rules must include rules providing for all of the following:

- Standards for determining whether a proposed rate is appropriate to the level of services to be provided; the qualifications of an RCC, group home, or child welfare agency to provide those services; and the reasonable and necessary costs of providing those services.
- Factors for DCF to consider in reviewing a proposed rate.
- Procedures for reviewing proposed rates, including rate resolution procedures for mediating an agreed-to rate when negotiations fail to produce an agreed-to rate.

DCF is required to submit the proposed rules to the Legislative Council staff no later than February 1, 2010. [s. 48.343 (4), Stats., and SECTION 9108 (2) (b), 2009 Wisconsin Act 28.]