

1 **AN ACT** *to amend* 49.343 (4) (intro.) of the statutes; **relating to:** representation of
2 providers of residential services to children in developing administrative rules to
3 govern the establishment of rates for those services.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council's Special Committee on Child Welfare Provider Rate Implementation.

Under current law, for services provided beginning on January 1, 2011, the Department of Children and Families (DCF) must establish the per client rate that a residential care center (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), stats., as affected by 2009 Wisconsin Act 28.]

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), stats., as affected by 2009 Wisconsin Act 28.]

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 documented projections of costs.
- 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.

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.]

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.

This draft provides that, in developing the proposed administrative rules governing the rate setting process, the secretary of DCF must appoint a committee to advise it in developing the rules. The committee must contain members of each of the provider groups to be affected by the rate regulation process, including a representative of the statewide organization representing those providers. The committee must also contain purchaser representatives.

SECTION 1. 49.343 (4) (intro.) of the statutes is amended to read:

49.343 (4) RULES. (intro.) The department shall promulgate rules to implement this section. The secretary shall appoint an advisory committee to advise the department in developing the rules. The committee shall contain purchaser representatives, and a representative of each of the provider groups affected by the rate regulation process created in this section, including a representative of the statewide organization representing those providers. Those rules shall include rules providing for all of the following:

COMMENT: Should the advisory committee created in this section also be charged with overseeing implementation of a performance-based contracting system?

(END)