

1 **AN ACT** *to amend* 49.34 (5m) (b) 1. and 2. and 49.343 (2) (c); and *to create* 49.343
2 (1) (cr), 49.343 (1d) (cg), 49.343 (2) (b) 1m. and 5m., 49.343 (2) (d), 49.343 (4) (c),
3 49.343 (5) and 49.343 (6) and (7) of the statutes; **relating to:** surplus limitations for
4 providers rate-based services for the department of children and families or a county
5 department, child welfare provider rates, and establishing performance-based
6 contracting for providers of out-of-home residential care for children.

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.

Surplus Revenue

Under current law, all children and family support services and child welfare services purchased by the Department of Children and Families (DCF) or a county department must meet certain statutory standards. Under one of these standards, if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the service provider may retain from the surplus generated by that rate-based service up to 5% of the contract amount. A provider that retains a surplus must use it to cover a deficit between revenue and allowable costs incurred in any preceding or future contract period for the same rate-based service that generated the surplus or to address the programmatic needs of clients served by the same rate-based service that generated the surplus. Also under current law, a provider may accumulate funds from more than one contract period except that, if at the end of the contract period the amount accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that service, the provider must, at the request of a purchaser, return to the purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's rate for that service in the next contract period. If a provider has held for 4 consecutive contract periods an accumulated reserve for a service that is equal to or exceeds 10% of the amount of all

current contracts for that service, the provider must apply 50% of that accumulated amount to reducing its unit rate per client for that service in the next contract period.

This draft exempts child welfare agencies, group homes, and RCCs from current law limiting the amount of reserves a provider may retain from the surplus generated by a rate-based service in a contract period to 5% of the contract amount. This draft also permits DCF to grant an exception to a child welfare agency, group home, or RCC, upon request of the child welfare agency, group home, or RCC, to the provisions that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that service.

Rates for Out-of-Home Care

2009 Wisconsin Act 28, the Biennial Budget Act, requires residential care centers (RCCs) for children and youth and group homes to annually submit to DCF the per client rate it proposes to charge for services provided in the next year. Also, a child welfare agency must submit to DCF the proposed per client administrative rate it proposes to charge for foster care services provided in the next year. DCF must review the proposed rate and audit the RCC, group home, or child welfare agency to determine whether the proposed rate is appropriate to the level of services to be 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. Current law sets forth factors DCF must consider in reviewing a proposed rate. If DCF determines that a proposed rate submitted 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 under a rate resolution procedure promulgated by DCF by administrative rule 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.

The draft adds factors DCF must consider in reviewing a proposed rate. First, DCF must consider changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group. Second, DCF must consider whether the agency is accredited by a national accrediting body that has developed child welfare standards.

The draft provides that if after mediation, a group home, RCC, or child welfare agency rate, a rate is not agreed to, DCF must order a rate for the

service after considering the factors set forth under current law for reviewing a proposed rate. Under the draft, an RCC, group home, or child welfare agency may appeal the rate set by the department as a contested case under ch. 227 by filing a request for a hearing with DCF within 30 days after the date of the order.

This draft creates a performance-based contracting system for group homes, RCCs, and child welfare agencies that will be implemented over a 3-year period beginning January 1, 2011. DCF, in consultation with an advisory committee, will identify performance-based contracting measurements by which to evaluate the performance of providers in meeting the goals for children placed in their care, and goals for the out-of-home care system. In the year beginning January 1, 2011, DCF must select a representative sample of providers whose performance will be evaluated on the attainment of the measurements identified by the advisory committee. At the end of 2011, DCF, in consultation with the advisory committee, must adjust the measurements as needed.

Beginning January 1, 2013, all providers must have their performance evaluated on the attainment of the identified measurements. Adjustments in the measurements may be made thereafter on an as-needed basis.

Under the draft, DCF must report to the appropriate legislative standing committees on performance-based contracting by November 1, 2010.

1 **SECTION 1.** 49.34 (5m) (b) 1. and 2. of the statutes are amended to read:

2 49.34 (**5m**) (b) 1. Subject to subds. 2. and 3. and par. (em), if revenue under a contract
3 for the provision of a rate-based service exceeds allowable costs incurred in the contract
4 period, the provider may retain from the surplus generated by that rate-based service up to 5%
5 of the contract amount. A provider that retains a surplus under this subdivision shall use that
6 retained surplus to cover a deficit between revenue and allowable costs incurred in any
7 preceding or future contract period for the same rate-based service that generated the surplus
8 or to address the programmatic needs of clients served by the same rate-based service that
9 generated the surplus. This subdivision does not apply to a child welfare agency that is
10 authorized under s. 48.61 (7) to license foster homes, a group home as defined in s. 48.02 (7),
11 or a residential care center for children and youth as defined in s. 48.02 (15d).

1 2. Subject to subd. 3. and par. (em), a provider may accumulate funds from more than
2 one contract period under this paragraph, except that, if at the end of a contract period the
3 amount accumulated from all contract periods for a rate-based service exceeds 10% of the
4 amount of all current contracts for that rate-based service, the provider shall, at the request
5 of a purchaser, return to that purchaser the purchaser's proportional share of that excess and
6 use any of that excess that is not returned to a purchaser to reduce the provider's unit rate per
7 client for that rate-based service in the next contract period. If a provider has held for 4
8 consecutive contract periods an accumulated reserve for a rate-based service that is equal to
9 or exceeds 10% of the amount of all current contracts for that rate-based service, the provider
10 shall apply 50% of that accumulated amount to reducing its unit rate per client for that
11 rate-based service in the next contract period. The department may grant an exception to this
12 subdivision upon request of a provider that is a child welfare agency that is authorized under
13 s. 48.61 (7) to license foster homes, a group home as defined in s. 48.02 (7), or a residential
14 care center for children and youth as defined in s. 48.02 (15d).

NOTE: Under current law, if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the service provider may retain from the surplus generated by that rate-based service up to 5% of the contract amount. Also under current law, a provider may accumulate funds from more than one contract period except that, if at the end of the contract period the amount accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that service, the provider must, at the request of a purchaser, return to the purchaser the purchaser's proportional share of that excess and use any of that excess that is not returned to a purchaser to reduce the provider's unit rate per client for that service in the next contract period. If a provider has held for 4 consecutive contract periods an accumulated reserve for a service that is equal to or exceeds 10% of the amount of all current contracts for that service, the provider must apply 50% of that accumulated amount to reducing its unit rate per client for that service in the next contract period.

This SECTION exempts child welfare agencies, group homes, and RCCs from current law limiting the amount of reserves a provider may retain from the surplus generated by a rate-based service in a contract period to up to 5% of the contract amount. This SECTION also permits DCF to grant an exception to a child welfare agency, group home, or RCC, upon request of the child welfare agency, group home, or RCC, to the provisions that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that service.

1 **SECTION 2.** 49.343 (1) (cr) of the statutes is created to read:

2 49.343 (1) (cr) “Provider” means a residential care center for children and youth, a group
3 home, or a child welfare agency.

4 **SECTION 3.** 49.343 (1d) (cg) of the statutes is created to read:

5 49.343 (1d) (cg) “Performance-based contracting” means a method of paying a
6 provider for services based on the achievement of specified measurable outcomes.

NOTE: SECTIONS 2 and 3 create definitions for “provider” and
 “performance-based contracting”.

7 **SECTION 4.** 49.343 (2) (b) 1m. and 5m. of the statutes are created to read:

8 49.343 (2) (b) 1m. Changes in the consumer price index for all urban consumers, U.S.
9 city average, for the medical care group, as determined by the U.S. department of labor, for
10 the 12 months ending on June 30 of the year in which the proposed rate is submitted.

11 5m. Whether the agency is accredited by a national accrediting body that has developed
12 child welfare standards.

NOTE: This SECTION adds factors DCF must consider in reviewing a per
 client rate proposed by a group home or an RCC or an administrative
 rate proposed by a child welfare agency. Under the draft, DCF must
 consider changes in the consumer price index for all urban consumers,
 U.S. city average, for the medical care group and whether the provider is
 accredited by a national accrediting body that has developed child
 welfare standards.

1 **SECTION 5.** 49.343 (2) (c) of the statutes, as created by 2009 Wisconsin Act 28, is
2 amended to read:

3 49.343 (2) (c) If the department determines under par. (b) that a proposed rate submitted
4 under par. (a) is appropriate, the department shall approve the proposed rate. If the department
5 does not approve a proposed rate, the department shall negotiate with the residential care
6 center for children and youth, group home, or child welfare agency to determine an agreed to
7 rate. If after negotiations a rate is not agreed to, the department and residential care center for
8 children and youth, group home, or child welfare agency shall engage in mediation under the
9 rate resolution procedure promulgated by rule under sub. (4) to arrive at an agreed to rate. If
10 after mediation a rate is not agreed to, the department shall order a rate for the service after
11 considering the factors under par. (b). A residential care center for children and youth, group
12 home, or child welfare agency may ~~not provide the service for which the rate was proposed~~
13 appeal the rate set by the department as a contested case under ch. 227 by filing with the
14 department a request for a hearing within 30 days after the date of the order.

NOTE: This SECTION provides that DCF must order a per client rate for a group home or an RCC or an administrative rate for a child welfare agency if the provider's proposed rate is not approved by DCF and DCF and the provider do not agree to a rate after negotiations and mediation. Under the draft, a provider may appeal the rate set by DCF as a contested case under ch. 227, stats., by filing a request for a hearing with DCF within 30 days of the order.

15 **SECTION 6.** 49.343 (2) (d) of the statutes is created to read:

16 49.343 (2) (d) Beginning January 1, 2010, the department shall do the following:

17 1. In cooperation with the advisory committee established in sub. (5), identify
18 performance-based contracting measurements, by which to evaluate the performance of
19 providers in meeting both the goals for the children placed in their care, and the goals for the
20 out-of-home care system in this state.

1 2. In cooperation with the advisory committee, adjust, as needed, the
2 performance-based contracting measurements.

NOTE: This SECTION requires DCF, beginning on January 1, 2010, to identify performance-based contracting measures and the goals for the out-of-home care system in Wisconsin and to adjust, as needed, the performance-based measurements in cooperation with the advisory committee created in this draft.

3 **SECTION 7.** 49.343 (4) (c) of the statutes, as created by 2009 Wisconsin Act 28, is created
4 to read:

5 49.343 (4) (c) Procedures for reviewing proposed rates, including procedures for
6 ordering a rate when negotiations and mediation fail to produce an agreed to rate.

NOTE: This SECTION requires DCF to promulgate administrative rules for reviewing proposed per client rates for group homes and RCCs and administrative rates for child welfare agencies, including procedures for ordering a rate when negotiations and mediation fail to produce an agreed to rate.

7 **SECTION 8.** 49.343 (5) of the statutes is created to read:

8 49.343 (5) **ADVISORY COMMITTEE.** The secretary shall create an advisory committee
9 consisting of representatives of purchasers; county departments; the department, in a county
10 having a population of 500,000 or more; tribes; consumers; and a statewide association of
11 private, incorporated family and children's social service agencies representing all provider
12 groups affected by the rate regulation process. The committee shall advise the department on
13 all of the following:

14 (a) The development of administrative rules under sub. (4).

15 (b) The implementation of rate regulation for residential care centers, group homes, and
16 child welfare agencies, as authorized in this section.

1 (c) The identification of performance-based contracting measurements and the
2 development of payment levels that correspond to the achievement of these measurements
3 based on the assessed level of care of the child.

NOTE: This SECTION requires the Secretary of Children and Families to create an advisory committee and specifies the membership of the committee. Under the SECTION, the committee is required to advise DCF on the development of administrative rules relating to rate setting, the implementation of rate setting for RCCs, group homes, and child welfare agencies, and the identification of performance-based measurements and payment levels that correspond to the achievement of these measurements.

4 **SECTION 9.** 49.343 (6) and (7) of the statutes are created to read:

5 49.343 (6) (a) Beginning January 1, 2011, the department shall select a representative
6 sample of providers whose performance shall be evaluated on the attainment of the
7 performance-based contracting measurements developed under sub. (2) (d) 1. The
8 department, in consultation with the advisory committee established under sub. (5), shall
9 adjust, as needed, the performance-based measurements developed under sub. (2) (d) 1., by
10 December 31, 2011.

11 (b) Beginning January 1, 2013, all providers in this state shall be evaluated on the
12 attainment of performance-based contracting measurements developed under sub. (2) (d) 1.
13 The department, in consultation with the advisory committee shall adjust, as needed, the
14 performance-based measurements developed under sub. (2) (d) 1., by December 31, 2013,
15 and in subsequent years as determined necessary by the department.

16 (7) By November 1, 2010, the department shall submit under s. 13.172 (3), a report to
17 the legislative standing committees with jurisdiction over child welfare issues, which outlines
18 a plan for implementation of performance-based contracting and identifying the
19 performance-based contracting measures developed under sub. (5) (c).

NOTE: This SECTION requires DCF to select a representative sample of RCCs, group homes, and child welfare agencies, beginning on January 1, 2011, whose performance must be evaluated on the attainment of performance-based contracting measurements. The SECTION also provides that, beginning January 1, 2013, all RCCs, group homes, and child welfare agencies must be evaluated on the attainment of performance-based contracting measurements.

The SECTION requires DCF, by November 1, 2010, to submit a report to the legislative standing committees with jurisdiction over child welfare issues which outlines a plan for implementation of performance-based contracting and identifying the performance-based contracting measurements developed by DCF in cooperation with the advisory committee.