

Clearinghouse Rule 97-036

CERTIFICATE

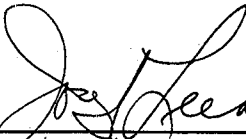
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND FAMILY SERVICES)

I, Joseph Leean, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to operation of the Department's uniform fee system including determination of parental liability for the cost of court-ordered substitute care of a child were duly approved and adopted by this Department on July 10, 1997.

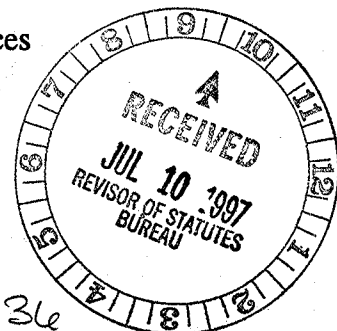
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 10th day of July, 1997.

SEAL:



Joseph Leean, Secretary
Department of Health and Family Services



97-036
9-1-97

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, AMENDING AND CREATING RULES

To repeal HSS 1.02 (4) (d); to amend HSS 1.01 (1) and 1.05 (13) (c) 1. b.; and to create HSS 1.03 (12m), 1.05 (2) (c) and (14) and 1.07, relating to operation of the uniform fee system including determination of parental liability for the cost of court-ordered substitute care of a child.

Analysis Prepared by the Department of Health and Family Services

Section 46.10 (14) (b), Stats., as created by 1993 Wisconsin Act 481, requires that parental support for court-ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Act 481, directed the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court-ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court-ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court-ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

The order also makes two updating changes in ch. HSS 1 that are not related to determination of parental liability for the support of children in court-ordered substitute care. It increases the maximum amount of a delinquent account on which payment may be sought through small claims court action, to make it the same as provided in s. 799.01 (1) (d), Stats., and repeals a provision relating to charges for admission under a statute repealed in 1985 of residents or patients of state institutions to the University of Wisconsin Hospital.

Similar emergency rules were published on January 22, 1997.

The Department's authority to amend and create these rules is found in ss. 46.03 (18), 46.10, 46.247 and 227.11 (2), Stats. The rules interpret ss. 46.03 (18), 46.10 and 46.247, Stats.

SECTION 1. HSS 1.01 (1) is amended to read:

HSS 1.01 (1) AUTHORITY AND PURPOSE. ~~This chapter is~~ Sections HSS 1.01 to 1.06 are promulgated under the authority of ss. 46.03 (18), 46.10 (1) to (14) (a) and 227.11 (2), Stats., to implement ss. 46.03 (18), 46.10 (1) to (14) (a), 48.837 (7), 48.839 (1) and 51.30 (4) (b) 2., Stats. ~~The chapter standardizes~~ Sections HSS 1.01 to 1.06 standardize on a statewide basis the determination of liability and ability to pay, and otherwise ~~regulates~~ regulate billing and collection activities for care and services provided or purchased by the department, a county department of social services or a county department established under s. 46.23, 51.42 or 51.437, Stats.

SECTION 2. HSS 1.02 (4) (d) is repealed.

SECTION 3. HSS 1.03 (12m) is created to read:

HSS 1.03 (12m) **MAXIMUM MONTHLY PAYMENT FOR A CHILD IN A COURT-ORDERED OUT-OF-HOME PLACEMENT.** The maximum monthly payment of parents for court-ordered out-of-home placements of their children under chs. 48 and 938, Stats., shall be determined according to procedures in s. HSS 1.07.

SECTION 4. HSS 1.05 (2) (c) is created to read:

HSS 1.05 (2) (c) When a child is placed in substitute care, as defined in s. HSS 1.07 (2) (i), pursuant to a court order under ch. 48 or 938, Stats., the county agency under s. 46.215, 46.22 or 46.23, Stats., shall enter into an agreement with the county child support agency under s. 59.53 (5), Stats., to maximize federal financial participation in funding substitute care and to conform to federal statutes and regulations relating to parental support or payment for substitute care.

SECTION 5. HSS 1.05 (13) (c) 1.b. is amended to read:

HSS 1.05 (13) (c) 1. b. Small claims court for delinquent balances of ~~\$1,000~~ \$5,000 or less.

SECTION 6. HSS 1.05 (14) is created to read:

HSS 1.05 (14) **ENFORCEMENT OF PARENTAL SUPPORT FOR COURT-ORDERED SUBSTITUTE CARE.** When a child is placed in substitute care, as defined in s. HSS 1.07 (2) (i), pursuant to an order under s. 48.355 or 48.357, Stats., or under s. 938.355 or 938.357, Stats., payment approval authorities shall use the provisions of ss. 46.10 (14) (e) and 49.90, Stats., and chs. 767 and 938, Stats., as applicable, to enforce the collection of parental support payments.

SECTION 7. HSS 1.07 is created to read:

HSS 1.07 PARENTAL SUPPORT FOR COURT-ORDERED SUBSTITUTE CARE. (1) **AUTHORITY, PURPOSE AND SCOPE.** This section is promulgated under the authority of ss. 46.10 (14) (e) 5 and 46.247, Stats., to implement ss. 46.10 (14) (b) to (f) and 46.247, Stats., and provisions in chs. 48 and 938, Stats., relating to parental support for children in court-ordered substitute care. This section standardizes procedures for agencies that make recommendations to the court for parental support liability when a child is placed outside of his or her home pursuant to an order of the court under s. 48.355, 48.357, 938.183 (2), 938.355 or 938.357, Stats. These provisions apply to all agencies which make parental support recommendations to the court, including the Wisconsin department of corrections, a county department of social services under s. 46.215 or 46.22, Stats., a county department of human services under s. 46.23, Stats., or a county child support agency designated under s. 59.53 (5), Stats.

(2) **DEFINITIONS.** The definitions in ss. HSS 1.01 (2) and HSS 80.02 apply to this section. In addition, in this section:

(a) "Agency" means the Wisconsin department of health and family services, the Wisconsin department of corrections or a county agency.

(b) "Child support worksheet" means the child support percentage worksheet included as appendix B to ch. HSS 80.

(c) "County agency" means a county social services department under s. 46.215 or 46.22, Stats., a county human services department under s. 46.23, Stats., or a county child support agency designated under s. 59.53 (5), Stats.

(d) "Deviation factors" means the factors in s. HSS 1.07 (8) to be considered by a county agency or a court in making a finding that the use of the percentage standard is unfair to a child or to either of the child's parents.

(e) "Federal poverty level" means the poverty level as defined and revised annually under 42 USC 9902 (2).

(f) "Financial statement" means a parent's statement of income, assets, debts and living expenses as required under s. 48.30 (6), 48.31 (7), 48.357 (5m), 48.36 (1) (b), 48.363 (1), 938.30 (6), 938.31 (7), 938.357 (5m), 938.36 (1) (b) or 938.363 (1), Stats., or ch. 767, Stats., relating to any deviation factor.

(g) "Former custodial parent" means the parent who had custody of the child at the time physical or legal custody was changed by court order or voluntary placement.

(h) "Full sibling" means a child who has the same father and mother by birth or adoption as the child in care.

(i) "Substitute care" means a court-ordered out-of-home placement of a child under ch. 48 or 938, Stats., in a residential, non-medical facility such as a foster home, treatment foster home, group home, child-caring institution or juvenile correctional facility.

(3) PARENTS ALREADY SUBJECT TO A SUPPORT ORDER FOR THE CHILD. If the parent of a child in substitute care is already required by a court order to pay support for the child, the agency responsible to recommend support shall notify the clerk of the court to redirect the child's share of support to the department of corrections or county agency responsible for the child's legal or physical custody. Each child subject to the prior order is entitled to an equal share of previously ordered support unless otherwise ordered by the court.

(4) PARENTS NOT ALREADY SUBJECT TO A SUPPORT ORDER FOR THE CHILD. (a) If the parent of a child in substitute care is not already required by a court order to pay support for the child, the agency responsible to recommend support shall seek information to determine a support amount. That information shall include all information contained in a financial statement. The agency shall offer assistance to parents to ensure that information provided to the agency is adequate to recommend or determine a support amount which considers the needs of children in care, the parents and other persons whom the parents are required to support.

(b) If the agency responsible to recommend support has sufficient information to determine support from sources other than a parent's financial statement, the agency may proceed to recommend a support amount to the court.

(c) If the agency responsible to recommend support does not have sufficient information to determine support from sources other than a parent's financial statement or if the parent has not provided a financial statement within the past 6 months, the agency shall request the parent to provide a financial statement or shall apply to the court to require that the parent submit the financial statement to the agency within a reasonable period of time as determined by the court.

(d) For court-ordered substitute care, if a parent does not comply with an agency request to provide a financial statement or cooperate with the agency to produce the statement, the agency shall apply to the court to require that the parent submit the financial statement to the agency within 10 days or within a period to be determined by the court.

(5) **INFORMATION FOR PARENTS.** When placement of a child is by order of a court, the agency shall cooperate with the clerk of court to ensure that parents receive support-related information as required in s. 48.357 (5m), Stats.

(6) **APPLICATION OF PERCENTAGE STANDARD.** The agency shall compute a parental support amount for a child in substitute care in accordance with ch. HSS 80, with the modifications and clarifications included in this subsection and subject to the exceptions under sub. (7) (b) and (c). The agency shall do all of the following:

(a) Using section I of the child support worksheet, determine the parent's gross income for child support, as defined in s. HSS 80.02 (13), plus imputed income for child support, as defined in s. HSS 80.02 (15), and calculate the parent's total annual income and the monthly base for computing child support. Adoption assistance under s. 48.975, Stats., shall be counted as public assistance for the parent in the determination of gross income.

(b) Determine the appropriate percentage of the monthly base in section I.C. of the child support worksheet by counting the child in substitute care along with the child's full siblings as a single group of children who constitute one legal support obligation. Full siblings include children who remain in the home and any full siblings who may themselves be in substitute care.

(c) Multiply the parent's monthly base by the appropriate percentage under par. (b) for the number of children determined in par. (b). However, if the parent is a serial family payer, as defined in s. HSS 80.02 (24), determine the parent's adjusted base under section II of the child support worksheet, and multiply the parent's adjusted base by the appropriate percentage under par. (b) for the number of children determined in par. (b).

(d) Divide the result found in par. (c) by the number of children in the group as determined in par. (b) to find the support amount for each child in the group, including the child or children in substitute care.

(7) **AMOUNT OF SUPPORT.** The amount of required parental support for a child in substitute care shall not exceed the lesser of the following:

(a) Percentage standard. The amount computed in sub. (6).

(b) Adoption assistance. If the parent has entered into an agreement under s. 48.975 (4), Stats., to receive adoption assistance for maintenance for the child under s. 48.975, Stats., the amount of monthly adoption assistance for maintenance provided for the child under s. 48.975 (3) (a), Stats. If the agreement does not provide for monthly adoption assistance for maintenance for the child under s. 48.975 (3) (a), Stats., no parental support may be recommended.

Note: For support ordered by a court under s. 46.10 (14) (b) or (c), Stats., s. 46.10 (14) (cm) 2., Stats., provides a standard by which the court may disregard limiting the amount of child support to the amount of adoption assistance when the court finds that the limit is unfair to the child or the parents.

(c) Prevention of family impoverishment. 1. To prevent family impoverishment, the amount of support determined using the schedule in subd. 2 if all of the following conditions are met:

- a. The parent is over age 19, or over age 18 but no longer in secondary school.
- b. The parent is dependent on no one other than a spouse for support including but not limited to housing and meals.
- c. The parent provides full financial information for all family members.

2. The department's division of management and technology shall annually issue a maximum monthly support schedule for court-ordered substitute care which shall be constructed to show amounts of parental support corresponding to family income and family size. When annual gross income as computed according to s. HSS 1.03 (11)(a) to (b) 3. is less than the federal poverty level for a family of the same size, the schedule will indicate a parental support amount of zero. However, an agency may institute a minimum charge rate, not to exceed 3% of annual gross income, for all families in similar circumstances.

Note: At family income amounts greater than the poverty level, the schedule will show a support amount calculated to be 35% of the portion of income which exceeds the poverty level. At a certain level of income, the schedule will yield a higher support amount than that computed using the percentage of income standard and when that happens the percentage of income standard will apply.

(8) POSSIBLE MODIFICATION BY COURT OF AGENCY-COMPUTED SUPPORT AMOUNT. A court may consider and an agency responsible to recommend support shall consider the factors in s. 46.10 (14) (c), Stats., to determine if it is appropriate in a particular case for the court to modify the amount of parental support under sub. (7). Except as provided in par. (b), when an agency recommends modification of the computed support amount to the court the agency shall prepare a budget for the parent showing projected income and expenses including the support amount. The factors in s. 46.10 (14) (c), Stats., are as follows with requirements and clarifications which affect how they are taken into account:

- (a) The needs of the child.

(b) The physical, mental and emotional health needs of the child, including any costs for the child's health insurance provided by a parent. If this is the only modification factor considered relevant to the support amount, extraordinary health insurance costs and other costs relating to the child's needs may be deducted from the amount computed in sub. (7) without the development of a total budget.

(c) The standard of living and circumstances of the parents, including the needs of each parent to support himself or herself at a level equal to or greater than that established under the federal poverty level.

(d) The financial resources of the parents.

(e) The earning capacity of each parent, based on the parent's education, training and work experience and based on the availability of work in or near the parent's community. An agency may make a recommendation to a court that considers earning capacity greater than actual earnings.

(f) The need and capacity of the child for education, including higher education.

(g) The age of the child.

(h) The financial resources and the earning ability of the child. Section HSS 1.05 (12) (e) requires the child to pay for substitute care before parents in accordance with s. HSS 1.03 (2) to (6).

(i) The needs of any person, including dependent children other than the child, whom either parent is legally obligated to support.

(j) The best interests of the child, including, but not limited to, the impact on the child of expenditures by the family for improvement of any conditions in the home that would facilitate the reunification of the child with the child's family, if appropriate, and the importance of a placement that is the least restrictive of the rights of the child and the parents and the most appropriate for meeting the needs of the child and the family.

(k) Any other factors that the court in the particular case determines are relevant. The agency shall inform the court of expenses known to the agency that the parent has incurred related to the child, including legal expenses, expenses related to adoption of the child, civil judgments and past expenses for care and services. An agency may recommend other factors to the court or may consider other factors which affect the case and which are not enumerated in pars. (a) to (j).

(9) NOTICE TO PARENTS. The agency responsible for recommending the amount of parental support shall provide written notice to the liable parent of the amount to be recommended by the agency prior to any determination by the court of support in a ch. 48 or 938, Stats., proceeding. With the notice, the agency shall provide the parent with all of the following:

(a) A copy of the support recommendation to be provided to the court.

(b) A written explanation of how the parent may use the informal dispute resolution procedure required by sub. (10) to request the agency to modify the support recommendation to the court.

(c) A written explanation of how the parent may request that the court modify the amount of child support under s. 46.10 (14) (c), Stats.

(d) A written explanation of how the parent may request a revision under s. 48.363, Stats., in the amount of support ordered under s. 48.355 (2) (b) 4., Stats.


(10) INFORMAL DISPUTE RESOLUTION PROCEDURE. Agencies shall provide an informal dispute resolution procedure by which parents who disagree with the county's support recommendation may ask a person designated by the agency director for a modification of the recommendation. An agency may limit the procedure to situations where parents allege that the agency did not properly apply the provisions of ch. HSS 80 or that the agency did not give due regard to the deviation factors under sub. (8) relating to support. This subsection does not require an agency to establish a new procedure if the agency already has a dispute resolution procedure that meets the requirements of this subsection.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and
Family Services

Dated: July 10, 1997

By:



Joseph Lee
Secretary

SEAL:

