

Clearinghouse Rule 99-161

CERTIFICATE

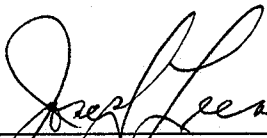
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND FAMILY SERVICES)

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 the adoption assistance program for families that adopt children with special needs were duly approved and adopted by this Department on June 12, 2000.

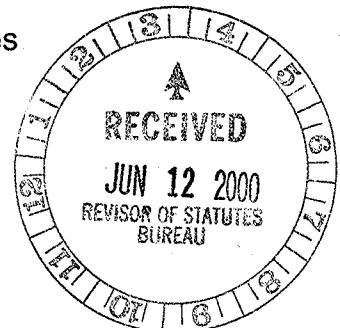
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

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 12th day of June, 2000.

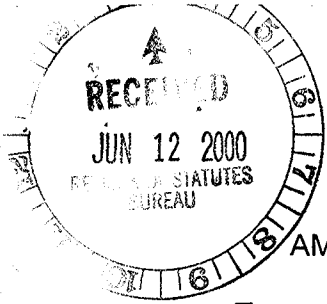
SEAL:



Joseph Leean, Secretary
Department of Health and Family Services



99-161
8/1/00



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

To amend HFS 50.01 (2), 50.03 (1) (b) 3. and 4., 50.04 (1) and (4), 50.05 (1) (b), (2) (a) and (3), 50.06 (1) (d), 50.065 (2) (intro.) and (a) 2. and 50.08 (3) (c); to repeal and recreate HFS 50.01 (4), 50.03 (2), 50.065 (2) (a) and 50.09 (1) (intro.); and to create HFS 50.03 (1) (b) 5., 50.044 and 50.045, 50.05 (1) (c) and 50.065 (2) (c) and (d), relating to the adoption assistance program for families that adopt children with special needs.

Analysis Prepared by the Department of Health and Family Services

This rulemaking order amends ch. HFS 50, the Department's rules for facilitating the adoption of children with special needs, to implement changes to the adoption assistance program statute, s. 48.975, Stats., made by 1997 Wisconsin Act 308. Those changes include permitting the amendment of an adoption assistance agreement for up to one year to increase the amount of adoption assistance for maintenance when there is a "substantial change in circumstances;" and requiring the Department to annually review the circumstances of the child when the original agreement has been amended because of a substantial change in circumstances, with the object of amending the agreement again to either continue the increase or to decrease the amount of adoption assistance if the substantial change in circumstances no longer exists. The monthly adoption assistance payment cannot be less than the amount in the original agreement, unless agreed to by all parties.

Section 48.975 (5), Stats., as amended by Act 308, directs the Department to promulgate rules that, among other things, define extenuating circumstances, a child with special needs and substantial change in circumstances.

Once the rule changes were developed, they were published by emergency order on November 16, 1999 to take effect on that date so that adoption assistance or the higher adoption assistance payments to which adoptive parents are entitled because of "extenuating circumstances" or a "substantial change in circumstances" under the statutory changes that were effective on January 1, 1999, could be made available to them as soon as possible. This is the proposed permanent order to amend ch. HFS 50 that will replace the time-limited emergency order that amended ch. HFS 50.

The Department's authority to amend, repeal and recreate and create these rules is found in ss. 48.975 (5) and 227.11 (2) (a), Stats. The rules interpret s. 48.975, Stats.

SECTION 1. HFS 50.01 (2) is amended to read:

HFS 50.01 (2) PURPOSE OF RULES. This chapter establishes criteria to be used by the department in determining when adoption assistance, as authorized by s. 48.975, Stats., may be provided, specifies limitations on the granting of adoption assistance, sets procedures for application applying for adoption assistance and for amending the adoption assistance agreement and establishes an adoption information exchange, as required by s. 48.55, Stats., to be operated by the department directly or through a contract with an individual or private agency to assist in finding the best adoptive homes available for the placement of children with special needs.

SECTION 2. HFS 50.01 (4) is repealed and recreated to read:

HFS 50.01 (4) DEFINITIONS. In this chapter:

(a) "Administrative review" means a review of the plan of services for a child conducted by a panel of persons selected by the adoption agency, at least one of whom is not responsible for the case management or for the supervision or delivery of services to either the child who is subject to the review or the child's parents.

(b) "Adoption" means a method provided by law to establish the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between the child and the child's birth parents.

(c) "Adoption agency" or "agency" means a Wisconsin county department authorized under s. 48.57 (1) (e) or (hm), Stats., to place children for adoption, the department, a licensed child welfare agency authorized under ss. 48.60 and 48.61 (5), Stats., to accept guardianship and to place children under its guardianship for adoption or an American Indian tribal agency in this state.

(d) "Adoption assistance" means assistance provided under agreement by the department to the parents of an adopted child or the prospective adoptive parents of a child placed for adoption, when the family has signed and the department has approved an agreement that is designed to assist in the cost of care of the child after adoption or after the child has been placed for adoption.

(e) "Adoption assistance for medical care" means the program under Title XIX of the Social Security Act as codified in 42 USC 1396, ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108.

(f) "Adoption information exchange" or "exchange" means a department program created to facilitate the adoption of special needs children by disseminating information about the children to adoption agencies and prospective adoptive families.

(g) "Adoption photo listing book" means a publication that lists individual special needs children and includes photographs and descriptions of them.

(h) "Adoptive family" means a husband and wife jointly or an unmarried adult.

(i) "Child" means a person under 18 years of age.

(j) "Child at high risk" means a child in the guardianship of an adoption agency who does not have a known special need under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. but who is at high risk of developing a moderate or intensive level of special needs under s. HFS 50.03 (1) (b) 3. based on one or more of the following:

1. After diligent effort the agency has not been able to locate sufficient social and medical background information on the child or the child's birth family necessary to establish the existence of medical or genetic risk factors.

2. There is documented information that either or both birth parents have a medical diagnosis or medical history which could result in a condition for the child described in s. HFS 50.03 (1) (b) 3. at a later time.

3. The child has experienced 4 or more placements with extended family or foster homes that could affect the normal attachment process.

4. The child experienced neglect in the first 3 years of life or sustained physical injury or physical disease that could have a long-term effect on physical, emotional or intellectual development.

5. There is documented evidence that the birth mother used harmful drugs or alcohol or otherwise did not practice appropriate prenatal care which could later result in the child developing special needs as described in s. HFS 50.03 (1) (b) 3.

(k) "Department" means the Wisconsin department of health and family services.

(L) "Division" means the department's division of children and family services.

(m) "Guardian" has the meaning given in s. 48.02 (8), Stats.

(n) "Legal risk" means a status of a child in which the severance of the legal rights of the child's birth parents through a termination of parental rights proceeding under the laws of the state or tribal court have not been completed or the court's decision is being legally contested.

(o) "Legally free" means the status of a child when the legal rights of the child's birth parents have been severed through death of a parent or a termination of parental rights proceeding according to the laws of the state or the tribal court, and the court has transferred guardianship and custody of the child to a placement agency pending adoptive placement.

(p) "Medical adoption assistance card" means a card issued for the purpose of identifying a person as a recipient of adoption assistance for medical care.

(q) "Monthly adoption assistance payment" means a monthly payment amount described in an adoption assistance agreement to help with the expense of raising the child made by the department to the parents or prospective parents of an adopted child with special needs and also means the \$0 payment to the adoptive parents or prospective adoptive parents receiving adoption assistance in the form of medical assistance and to the adoptive parents or prospective parents of a child at high risk.

(r) "Registration" means the listing of information about special needs children or the listing of information about approved prospective adoptive families with the adoption information exchange for the purpose of locating a prospective adoptive family.

(s) "Special needs child" means a legally free child for whom it is difficult to find an adoptive home and who meets the eligibility criteria for adoption assistance under s. HFS 50.03.

(t) "Substantial change in circumstances" means that a documented change related to the risk that qualified the child as a child of high risk under par. (j) has occurred to the child in one or more areas of special needs, including physical, behavioral or emotional special needs, that would result in a change in the supplemental rate as determined by the uniform foster care rate schedule

under s. HSS 56.09.

(u) "Sustaining care" means the placement of a child under s. 48.428, Stats.

SECTION 3. HFS 50.03 (1) (b) 3. and 4. are amended to read:

HFS 50.03 (1) (b) 3. The child exhibits special need characteristics judged to be moderate or intensive under the schedule of difficulty-of-care levels specified in s. HSS 56.09 (3); ~~or~~

4. The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources ~~;~~ or

SECTION 4. HFS 50.03 (1) (b) 5. is created to read:

HFS 50.03 (1) (b) 5. The child is a child at high risk of developing a moderate or intensive level of special needs under subd. 3.

SECTION 5. HFS 50.03 (2) is repealed and recreated to read:

HFS 50.03 (2) REASONABLE PLACEMENT EFFORTS TO ASSURE ADOPTION PLACEMENT. (a) Reasonable efforts shall be made to assure a timely placement of the child with the best available family without adoption assistance. The agency shall make efforts to consider a number of families in order to locate the most suitable family for the child, including a review of all approved families associated with the agency, and consideration given, as required by s. 48.833, Stats., to the availability of an adoptive placement with a relative of the child, and those efforts shall be documented in the child's record. If 2 or more appropriate families are not approved and available within the agency, the agency shall make a timely effort to locate additional families by doing any of the following:

1. Contacting other adoption agencies.
2. Registering the child with the adoption information exchange.
3. Working through the adoption information exchange to register the child with a national adoption exchange.

(b) Once the agency has determined that placement with a specific family would be the most suitable for the child, the agency shall make a full disclosure to the family of the child's background, to the extent known, as well as any existing or potential problem related to the child known to the adoption unit of the agency.

(c) If the child has a special need under sub. (1) (b) and if the circumstances of either this subsection or sub. (3) exist, the agency shall inform the family of the adoption assistance program and ask the proposed adoptive parents whether they are willing to adopt without adoption assistance. If the family is not willing to adopt without adoption assistance, the requirement that a reasonable, but unsuccessful, effort to place the child without adoption assistance is met.

SECTION 6. HFS 50.04 (1) and (4) are amended to read:

HFS 50.04 (1) TIMING. Except in extenuating circumstances as provided in s. HFS 50.065 (2), An an initial application for adoption assistance shall be completed and approved before an no later than the time the adoptive placement of the child occurs, except in. The prospective adoptive parents may file an application for adoption assistance under the circumstances noted in s. HFS 50.03 (3) (b) or in sub. (4) and adoptive parents may request an amendment to an existing agreement under the circumstances noted in s. HFS 50.044 or 50.045.

(4) ADOPTION ASSISTANCE AGREEMENT. The adoption assistance agreement shall be completed and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. If at any time prior to the adoption the prospective adoptive parent or parents believe there has been a substantial change in circumstances, the prospective adoptive parent or parents may file an application for an amended agreement. The agency, subject to department review, shall assess the current special needs of the child and, as appropriate, the department shall offer to amend the agreement. The amended agreement shall be agreed to and signed by the prospective adoptive parent or parents, the adoption worker and a representative of the department designated for this purpose. Copies of the signed agreement shall be given to the adoptive parent or parents and placed in the child's adoption record. For purposes of amending an agreement following adoption, the agreement in effect at the time of adoption is considered the original agreement.

SECTION 7. HFS 50.044 is created to read:

HFS 50.044 Request to amend the adoption assistance agreement for a child at high risk of developing special needs. (1) REQUEST FOR REVIEW. At least 12 months after the date of adoption, the adoptive parents who signed an adoption assistance agreement for a child at high risk may request that the agreement be amended because they now believe a substantial change in circumstances has occurred. If the request results in an amended agreement, any subsequent request for an amended agreement shall be made under s. HFS 50.045. If the request does not result in an amended agreement, the adoptive parents may request that the agreement be amended no earlier than 12 months after the date of the receipt of the last request by the department.

(2) FAMILY RESPONSIBILITY. To request that an agreement be amended, the adoptive family shall do all of the following:

(a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

(b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.

(c) If requested by the department, provide additional information about the child's current functioning.

(d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

Note: A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from the Department by writing to: Bureau of Program and Policies, Division of Children and Family Services, P. O. Box 8916, Madison WI 53708-8916.

(3) DEPARTMENT RESPONSIBILITY. If a request to amend an agreement is received, the department shall do all of the following:

(a) From a review of the information submitted by the family under sub. (2), determine whether a substantial change in circumstances exists to meet the eligibility requirements of s. HFS 50.03 (1) (b) 3. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(b) Contact the appropriate human service agency or agencies in the jurisdiction where the adoptive parents have resided since the placement of the child to request information concerning any substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes a moderate or an intensive level in one or more categories of the supplemental payments schedule, and there has not been a substantiated report of abuse or neglect of the child or any other child by the adoptive or proposed adoptive parents, offer to adjust the amount of adoption assistance for maintenance for up to one year based upon the uniform foster care rate in effect under s. HSS 56.09 (2) and (3) at the time the request for adoption assistance amendment form is received in the department. Payment shall include the basic rate, plus any supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the uniform foster care rate. No exceptional payment may be established.

(d) If the adoptive or proposed adoptive parent agrees with the proposed amount of adoption assistance maintenance payment, offer to amend the original agreement in writing for up to one year to specify the new monthly adoption assistance maintenance payment amount.

(e) Review under s. HFS 50.045 (3) (e) the circumstances of a child with a previously amended adoption assistance agreement under this section by contacting the adoptive parent or

parents prior to the expiration of the amended agreement. The department shall notify the adoptive parents, in writing, at least 120 days before the expiration of the amended adoption assistance agreement and provide the adoptive parents the expiration date, a request for an adoption assistance amendment form and instructions for completing the form.

SECTION 8. HFS 50.045 is created to read:

HFS 50.045 Request to amend the adoption assistance agreement following adoption. (1) **REQUEST FOR REVIEW.** Twelve months or more following adoption of a child with special needs under s. HFS 50.03 (1) (b) 1., 2., 3. or 4., at least 12 months since the receipt of a previous request under this section by the department, at least 12 months following an amended agreement under s. HFS 50.044, or within 120 days prior to the expiration of an amended agreement, adoptive parents with a current adoption assistance agreement and with a maintenance payment in the amount of \$0 or greater may file a request with the department for amendment of the agreement because they believe a substantial change in circumstances has occurred since the agreement was signed. If an amendment is in effect as a result of approval of an adoption assistance amendment request, the amendment will be in effect until the expiration date specified. The purpose of the amended agreement would be to change the amount of the monthly adoption assistance maintenance payment. An adoption assistance agreement may be amended more than once under the provisions of this section.

(2) **FAMILY RESPONSIBILITY.** To request that an agreement be amended, the adoptive family shall do all of the following:

(a) Complete and return the request for adoption assistance amendment form available from the department to record the family's observations of the child's physical, behavioral and emotional needs.

(b) Provide documentation by appropriate professionals of the child's current special needs to the department at the time of filing the request for adoption assistance amendment form to verify any substantial change in circumstances. That documentation may be a statement by the professional indicating that he or she concurs with the nature and level of special needs identified on the request for adoption assistance form. The report or statement of an appropriate professional shall be dated within 6 months prior to the date of the request for an adoption assistance amendment.

(c) If requested by the department, provide additional information about the child's current functioning.

(d) If requested by the department, have the child evaluated by a specialist of the department's choice and at the department's expense to provide information necessary in making the determination.

(e) Sign and return an amended agreement offered by the department to authorize a payment amount other than the amount in the original agreement.

Note: A copy of the Request for Adoption Assistance Amendment form, CFS 2092, may be obtained from the Department by writing to: Bureau of Program and Policies, Division of Children

and Family Services, P. O. Box 8916, Madison WI 53708-8916.

(3) DEPARTMENT RESPONSIBILITY. If a request to amend an agreement is received, the department shall do all of the following:

(a) From the information submitted by the family under sub. (2), determine whether a substantial change in circumstances exists. If additional information is needed to make the determination, the department shall notify the family of the need for the information and request that the information be submitted within 90 days from the date of the letter requesting the information and that failure to provide the requested information within 90 days may result in the request being denied by the department. The department may obtain technical assistance from a specialist or may require the family to have the child evaluated by a specialist of the department's choice and at the department's expense so that the department will have the information it needs to make the determination.

(b) Contact the appropriate human services agency or agencies in the jurisdiction where the adoptive parents have resided since the placement of the child to request information concerning any substantiated report of abuse or neglect of the child by the adoptive parents.

(c) If having determined that there has been a substantial change in circumstances documented by uniform rate determination which establishes an increase in special needs to the moderate or intensive level in one or more categories of the supplemental payments schedule, or a new category of special needs at the minimum, moderate or intensive level, and there is no substantiated report of abuse or neglect of the child by the adoptive parents, offer to amend the amount of adoption assistance for maintenance for up to one year. The department may not increase the amount in the agreement above the amount allowed under 42 USC 673 or any other federal law. The new rate shall include the basic rate in the existing agreement and any exceptional rate in the existing agreement and an adjusted supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the uniform foster care rate. If the original or amended agreement has not established a basic rate, the new rate shall include the basic rate effective on the date the request was received in the department and an adjusted supplemental payment calculated under s. HSS 56.09 (2) and (3) indicated in the uniform foster care rate. If the level of points in a supplemental rate category is at the highest number of points in an intensive level of need category, no increase in payment may be offered in that category. No adjustment may be made to an existing exceptional rate and no exceptional rate may be established.

(d) If the adoptive parent agrees with the proposed amount of the payment, offer to amend the agreement in writing to specify the new monthly adoption assistance amount.

(e) Review an amended adoption assistance agreement, as follows:

1. Prior to the expiration of the amended agreement and annually thereafter for the duration of the adoption assistance agreement the department shall contact the adoptive parent or parents to request information concerning the circumstances of the child. The department shall notify the adoptive parents, in writing, at least 120 days before the expiration of the amended adoption assistance agreement and provide the adoptive parents the expiration date, a request for an adoption assistance amendment form and instructions for completing the form.

2. The department may require the adoptive parent or parents to provide documentation of the current circumstances of the child. The department shall review the information to determine whether the reasons for the change in circumstances continue to exist or not and shall notify the family whether the amount of adoption assistance will be continued, reduced, or returned to the amount in the original agreement or previous amended agreement.

SECTION 9. HFS 50.05 (1) (b) is amended to read:

HFS 50.05 (1) (b) The amount of adoption assistance shall be the total monthly adoption assistance payment as indicated on the adoption assistance agreement ~~under s. HFS 50.06~~ or as revised by an amendment to the adoption assistance agreement signed by both the adoptive parent or parents and the department. The initial rate for a child at high risk is \$0 in the original adoption assistance agreement if no special needs category under s. HFS 50.03 (1) (b) 1., 2., 3. or 4. applies to the child. The rate may increase or decrease as described in an amendment to the original agreement and law.

SECTION 10. HFS 50.05 (1) (c) is created to read:

HFS 50.05 (1) (c) The effective date for a rate increase for an amended agreement shall be the first day of the month the department received the request to amend the adoption assistance agreement, except that no increase shall be made prior to 12 months from a prior rate increase. The effective date for a rate decrease for an amended agreement shall be the first day of the month following the month that the amended agreement expires. The effective date for discontinuing adoption assistance for any reason shall be the last day of the month that eligibility for benefits ends.

SECTION 11. HFS 50.05 (2) (a) and (3) are amended to read:

HFS 50.05 (2) (a) Adoption assistance for medical care shall be granted to all cases with an approved for monthly adoption assistance payments agreement.

(3) NON-RECURRING ADOPTION EXPENSES. When a child is adopted with an approved adoption assistance agreement, the department shall reimburse adoptive parents for non-recurring adoption expenses up to a \$2000 maximum. In this subsection, "non-recurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of state or federal laws.

SECTION 12. HFS 50.06 (1) (d) is amended to read:

HFS 50.06 (1) (d) Circumstances under which the adoption assistance may be increased, decreased, terminated, or temporarily suspended or reduced; and

SECTION 13. HFS 50.065 (2) (intro.) is amended to read:

HFS 50.065 (2) AFTER ADOPTION IS FINAL. (intro.) An adoptive parent, after an adoption has been declared final by a court, may appeal ~~either~~ any of the following under ch. 227, Stats., to the department of administration's division of hearings and appeals:

SECTION 14. HFS 50.065 (2) (a) is repealed and recreated to read:

HFS 50.065 (2) (a) A department decision after the adoption became final not to approve an application for adoption assistance under s. HFS 50.03 or a department decision before the adoption became final relating to the amount of adoption assistance under s. HFS 50.05, provided that:

SECTION 15. HFS 50.065 (2) (a) 2. (intro.) is amended to read:

HFS 50.065 (2) (a) (intro.) One of the following extenuating circumstances occurred:

SECTION 16. HFS 50.065 (2) (c) and (d) are created to read:

HFS 50.065 (2) (c) A department decision on a request under s. HFS 50.044 to amend an adoption assistance agreement regarding a child at high risk. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

(d) A department decision on a request under s. HFS 50.045 to amend an adoption assistance agreement. A request for a hearing received more than 60 days following the date of the department's written decision shall be denied.

SECTION 17. HFS 50.08 (3) (c) is amended to read:

HFS 50.08 (3) (c) Be updated at least ~~monthly~~ quarterly to revise, add to, or delete from the listing of available special needs children; and

SECTION 18. HFS 50.09 (1) (intro.) is repealed and recreated to read:

HFS 50.09 (1) (intro.) Photo listing of children may occur at any time before or after the termination of parental rights. If within 60 days of the date of the termination of parental rights an adoption agency is not able to meet the requirements for reasonable efforts described in s. HFS 50.03(2), the agency shall register the child on the exchange if the child is not currently listed and shall include the following information about the child:

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

Wisconsin Department of Health and
Family Services

Dated: 6-12-00

By: 

Joe Legan
Secretary

SEAL:

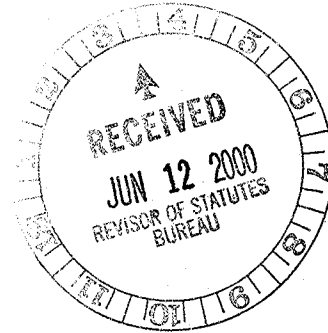


State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leraan, Secretary

June 12, 2000

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703

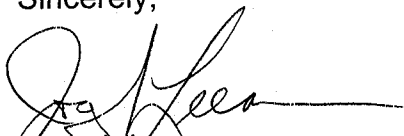


Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. HFS 50, administrative rules relating to the adoption assistance program for families that adopt children with special needs.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

Sincerely,


Joseph Leraan
Secretary

Enclosure