

# State of Wisconsin



2009 Assembly Bill 780

Date of enactment: **May 13, 2010**  
Date of publication\*: **May 26, 2010**

## 2009 WISCONSIN ACT 335

**AN ACT** *to amend* 48.625 (1), 49.34 (5m) (b) 1. and 2., 49.34 (5m) (em), 49.343 (2) (b) (intro.), 49.343 (2) (b) 5., 49.343 (2) (c), 49.343 (3), 49.343 (4) (a) and 49.343 (4) (c); and *to create* 48.625 (1g), 49.343 (1d) (cg), 49.343 (1d) (cr), 49.343 (2) (b) 1m., 49.343 (2) (b) 6., 49.343 (5) and 49.343 (6) of the statutes; **relating to:** elimination of surplus retention limitations for residential care centers for children and youth, group homes, and child welfare agencies that provide rate-based services for the Department of Children and Families or a county department of human services or social services; determination of the rates charged by those providers; establishment of a performance-based contracting system for those providers; requiring the Department of Children and Families to certify the need for a new group home or for an increase in the capacity of an existing group home; extending the time limit for emergency rule procedures; providing an exemption from emergency rule procedures; requiring the exercise of rule-making authority; and making an appropriation.

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

**SECTION 1d.** 48.625 (1) of the statutes is amended to read:

48.625 (1) Any person who receives, with or without transfer of legal custody, 5 to 8 children, not including children who under sub. (1m) are not counted toward that number, to provide care and maintenance for those children shall obtain a license to operate a group home from the department. To obtain a license under this subsection to operate a group home, a person must meet the determination of need requirement under sub. (1g), meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685, and pay the license fee under sub. (2). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

**SECTION 1g.** 48.625 (1g) of the statutes is created to read:

48.625 (1g) No person may apply for a license under sub. (1) to operate a new group home or for an amendment to a license under sub. (1) that would increase the bed capacity of an existing group home until the department has reviewed the need for the additional placement resources that would be made available by the issuance or amendment of the license and has certified in writing that a need exists for the proposed additional placement resources. The department shall promulgate rules to implement this subsection.

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

49.34 (5m) (b) 1. Subject to subs. 2. and 3. and par. (em), if revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the provider may retain from the surplus generated by that rate-based service up to 5% of the

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

contract amount. A provider that retains a surplus under this subdivision shall use that retained surplus 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. This subdivision does not apply to a child welfare agency that is authorized under s. 48.61 (7) to license foster homes, a group home, as defined in s. 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02 (15d).

2. Subject to subd. 3. and par. (em), a provider may accumulate funds from more than one contract period under this paragraph, except that, if at the end of a 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 rate-based service, the provider shall, at the request of a purchaser, return to that 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 rate-based service in the next contract period. If a provider has held for 4 consecutive contract periods an accumulated reserve for a rate-based service that is equal to or exceeds 10% of the amount of all current contracts for that rate-based service, the provider shall apply 50% of that accumulated amount to reducing its unit rate per client for that rate-based service in the next contract period. The department may grant an exception to this subdivision upon request of a provider that is a child welfare agency that is authorized under s. 48.61 (7) to license foster homes, a group home, as defined in s. 48.02 (7), or a residential care center for children and youth, as defined in s. 48.02 (15d).

**SECTION 2.** 49.34 (5m) (em) of the statutes is amended to read:

49.34 (5m) (em) Notwithstanding par. (b) 1. and 2., a county department under s. 46.215, 51.42, or 51.437 providing client services in a county having a population of 500,000 or more or a nonstock, nonprofit corporation providing client services in such a county may not retain a surplus under par. (b) 1. generated by a rate-based service or accumulate funds under par. (b) 2. from more than one contract period for a rate-based service from revenues that are used to meet the maintenance-of-effort requirement under the federal temporary assistance for needy families program under 42 USC 601 to 619.

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

49.343 (1d) (cg) "Performance-based contracting system" means a system of paying a provider for services based on the achievement of specified measurable outcomes.

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

49.343 (1d) (cr) "Provider" means a residential care center for children and youth, a group home, or a child welfare agency.

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

49.343 (2) (b) (intro.) The department shall review a proposed rate submitted under par. (a) and audit the ~~residential care center for children and youth, group home, or child welfare agency provider~~ submitting the proposed rate to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the ~~residential care center for children and youth, group home, or child welfare agency provider~~ to provide those services, and the reasonable and necessary costs of providing those services. In reviewing a proposed rate, the department shall consider all of the following factors:

**SECTION 6.** 49.343 (2) (b) 1m. of the statutes is created to read:

49.343 (2) (b) 1m. Changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, 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.

**SECTION 7.** 49.343 (2) (b) 5. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

49.343 (2) (b) 5. Changes in service delivery proposed by the ~~residential care center for children and youth, group home, or child welfare agency provider~~ and agreed to by the department.

**SECTION 8.** 49.343 (2) (b) 6. of the statutes is created to read:

49.343 (2) (b) 6. Whether the agency is accredited by a national accrediting body that has developed child welfare standards.

**SECTION 9.** 49.343 (2) (c) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

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

request for a hearing within 30 days after the date of the order.

**SECTION 10.** 49.343 (3) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

49.343 (3) **AUDIT.** The department may require an audit of any ~~residential care center for children and youth, group home, or child welfare agency provider~~ for the purpose of collecting federal funds.

**SECTION 11.** 49.343 (4) (a) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

49.343 (4) (a) Standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a ~~residential care center for children and youth, group home, or child welfare agency provider~~ to provide those services, and the reasonable and necessary costs of providing those services.

**SECTION 12.** 49.343 (4) (c) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

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

**SECTION 13.** 49.343 (5) of the statutes is created to read:

49.343 (5) **ADVISORY COMMITTEE.** The secretary shall create an advisory committee under s. 15.04 (1) (c) consisting of representatives of purchasers; county departments; the department, in a county having a population of 500,000 or more; tribes; consumers; and a statewide association of private, incorporated family and children's social service agencies representing all groups of providers that are affected by the rate regulation process. The committee shall advise the department on all of the following:

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

(b) The implementation of rate regulation for providers as authorized under this section.

(c) The identification of the measurements specified in sub. (6) (a) and the development of the payment levels specified in sub. (6) (a).

**SECTION 14.** 49.343 (6) of the statutes is created to read:

49.343 (6) **PERFORMANCE-BASED CONTRACTING SYSTEM.** (a) For purposes of implementing a performance-based contracting system, the department, in cooperation with the advisory committee created under sub. (5), shall do all of the following:

1. Identify measurements by which to evaluate the performance of providers in meeting both the goals for the children placed in their care and the goals for the out-of-home care system in this state and adjust, as needed, those measurements.

2. Develop payment levels that correspond to the achievement of the measurements identified under subd. 1. based on the assessed level of care of a child.

(b) By November 1, 2010, the department shall submit a report that outlines a plan for implementing a performance-based contracting system to the standing committee of each house of the legislature that is concerned with child welfare issues. The report shall describe the measurements identified under par. (a) 1. and the payment levels developed under par. (a) 2.

(c) Beginning on January 1, 2011, the department shall select a representative sample of providers and evaluate the performance of those providers in attaining the measurements identified under par. (a) 1. Based on that evaluation, the department, in consultation with the advisory committee created under sub. (5), shall adjust, as needed, those measurements by December 31, 2011.

(d) Beginning on January 1, 2013, the department shall evaluate the performance of all providers in this state in attaining the measurements identified under par. (a) 1. Based on that evaluation, the department, in consultation with the advisory committee created under sub. (5), shall adjust, as needed, those measurements by December 31, 2013, and in subsequent years as determined necessary by the department.

**SECTION 14m. Nonstatutory provisions.**

(1) **DETERMINATION OF NEED FOR ADDITIONAL GROUP HOME PLACEMENT RESOURCES; RULES.**

(a) *Permanent rules.* The department of children and families shall submit in proposed form the rules required under section 48.625 (1g) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 3rd month beginning after the effective date of this paragraph.

(b) *Emergency rules.* The department of children and families may promulgate the rules required under section 48.625 (1g) of the statutes, as created by this act, as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this paragraph remain in effect until the date on which the rules submitted under paragraph (a) take effect. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

(1m) **PERFORMANCE-BASED CONTRACTING SYSTEM.** The authorized FTE positions for the department of children and families are increased by 0.63 FED positions, to be funded from the appropriation under section 20.437 (1) (n) of the statutes, for the performance of services associated with the implementation of the performance-based contracting system under section 49.343 (6) of the statutes, as created by this act.

**2009 Wisconsin Act 335**

**2009 Assembly Bill 780**

(2) REQUIRED GENERAL FUND BALANCE. Section 20.003 (4) of the statutes does not apply to the action of the legislature in enacting this act.

**SECTION 14r. Fiscal changes.**

(1) PERFORMANCE-BASED CONTRACTING SYSTEM. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of children and families under section 20.437 (1) (a) of the statutes, as

affected by the acts of 2009, the dollar amount is increased by \$200,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect to increase the authorized FTE positions for the department by 2.37 GPR positions for the performance of services associated with the implementation of the performance-based contracting system under section 49.343 (6) of the statutes, as created by this act.

---