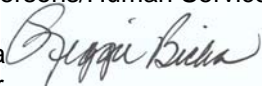


STATE OF WISCONSIN
Department of Health and Family Services
Division of Children and Family Services

DCFS Memo Series 2007-15
December 6, 2007
Re: Exceptions to Foster Home
and Treatment Foster Home Rules

(Replaces DCFS 2000-04)

To: Area Administrators/ Human Services Area Coordinators
Bureau Directors
Child Placing Agencies
County Departments of Community Programs Directors
County Departments of Developmental Disabilities Services Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Licensing Chiefs/Section Chiefs
Tribal Chairpersons/Human Services Facilitators

From: Reggie Bicha 
Administrator

Background

Licensing agencies may grant exceptions to certain requirements in Ch. HFS 56, Adm. Code, Foster Home Care for Children, and Ch. HFS 38, Adm. Code, Treatment Foster Home Care for Children, as long as doing so will not jeopardize the health, safety, or welfare of the children in those homes. Those requirements that licensing agencies may not grant exceptions to are listed in s. HFS 56.02(2)(a) and s. HFS 38.02(2)(a), Adm. Code.

Requests for exceptions to licensing requirements for which licensing agencies may not grant exceptions must be submitted to the Department Exceptions Panel for consideration, as required in s. HFS 56.02(2)(b), Adm. Code. These requirements have been determined to have a greater potential for significant impact on the health, safety, or welfare of children in foster care and treatment foster care.

Exceptions may not be granted for requirements contained in licensing regulations that are required by statute or created by another administrative rule. An example of a statutory requirement is the following:

Section HFS 56.03(37), Adm. Code: "Treatment foster home" means a family-oriented facility operated by a person or persons required to be licensed under s. 48.62(1)(b), Stats., and ch. HFS 38, Adm. Code, in which treatment, care and maintenance are provided for no more than 4 foster children.

An example of a requirement created by another administrative rule includes the following:

Section HFS 56.07(4) (g), Adm. Code: The exits from basements used for sleeping purposes shall comply with s. Comm 21.03(5)(b) and (6m), Adm. Code.

Requesting and Granting Exceptions

An applicant for a foster care or treatment foster care license requesting an exception to a licensing requirement that the licensing agency has the authority to grant must submit a written request to the licensing agency stating the following:

1. The specific requirement for which an exception is being requested.

DOCUMENT SUMMARY

Under current foster and treatment foster care licensing rules, agencies are able to grant and request exceptions to specific licensing requirements. This memo explains the requirements under which exceptions are allowed, how agencies consider and grant exceptions, documentation requirements for exceptions that are approved, and procedures for requesting exceptions from the Department Exceptions Panel.

2. Specific justification for the requested exception.
3. An explanation of the alternative provision planned to meet the intent of the requirement.

Approval of the exception request, if granted, shall remain in effect for only as long as the condition in the home remains, but no longer than two (2) years from the date the exception is granted or the end of the period of licensure, whichever occurs first. Prior to the expiration of the exception, the licensing agency shall determine if there is continued justification for the exception. If the licensing agency determines there continues to be justification for the exception, a new request must be submitted to the DHFS Exceptions Panel prior to the previous exception expiration. The licensing agency may impose conditions to be met within a specified period of time when granting an exception.

Ch. HFS 56, Adm. Code does not mandate how an agency must document its decision regarding an application for an exception to foster home licensing standards; however, it is recommended that the agency document its decision in writing and provide the applicant with a signed and dated copy of its decision.

Documentation

In addition to the applicant or licensee submitting a written request for an exception to a licensing requirement, the licensing agency, pursuant to s. HFS 56.02(2)(b)(3), Adm. Code, must document the following information on the foster home or treatment foster home license when an exception has been granted:

1. The exception.
2. The specific requirement for which an exception was granted.
3. The alternative provision established to meet the intent of the rule requirement.
4. The date upon which the exception expires.

This information can be provided on the front page of the foster home or treatment foster home license under the "Other Provisions" section with additional information listed on the second page of the license under the "Other Limitations" category.

Exceptions Panel

Requests for exceptions to licensing requirements for which licensing agencies may not grant exceptions themselves must be submitted to the Department of Health and Family Services (DHFS) Exceptions Panel for consideration as outlined in s. HFS 56.02(2)(b), Adm. Code. An applicant shall submit a request to his or her licensing agency on the CFS-847 form, "Application to the DHFS Exceptions Panel for Exception to Ch. HFS 56 or Ch. HFS 38." The licensing agency must review the request and, if approved, submit the form and any additional information to the address at the bottom of the form. Please note that the Department Exceptions Panel will not consider an application for an exception if the licensing agency does not approve the request. A link to the CFS-847 form is included at the end of this memo.

All sections of the CFS-847 form must be filled out completely, with additional pages as necessary appended to the form. Since the Exceptions Panel has ten (10) business days from the date the panel receives enough information to make a decision about the application, it will expedite the process if agencies submit comprehensive information about the citation, circumstances, timeframe, and alternative provision for the exception that is being requested.

Waivers

Waivers to licensing requirements differ from exceptions. A waiver means that a foster home does not need to meet the rule or the intent of the rule requirement. An exception allows a foster parent to meet the intent of the rule requirement in another manner. Under Ch. HFS 56, Adm. Code, agencies are allowed to grant waivers only to the requirement to obtain homeowner's or renter's insurance as noted in HFS 56.05(5), Adm. Code. Waivers should be granted only in rare circumstances.

Additional information

According to s. HFS 56.02(2)(b)(7), Adm. Code, the Exceptions Panel shall be comprised of at least 3 members who are knowledgeable about the foster care program, licensing practices, and any special needs of children who may be served by the applicant for an exception.

Based upon suggestions from individuals who have served on the Exceptions Panel, the Division of Children and Family Services has created two additional information forms on which agencies must submit answers to commonly asked questions about two specific exceptions to foster home requirements.

The first additional information request form, CFS-2029, is for situations in which a placing agency is requesting to place a "non-treatment" child in a treatment foster home and not meet the treatment requirements outlined in s. HFS 38.12, Adm. Code, for that child. Some examples include, but are not limited to:

- placement of siblings together,
- minor parent and child placements, whether minor parent or child has "treatment needs"
- placement with relatives who are licensed as treatment foster parents, and
- placement continuity of children when a foster home is transitioning to a treatment foster home agency.

The second additional information request form, CFS-2149, is for situations in which a licensing agency and foster parent are requesting an exception to allow an applicant or licensee to hold more than one license to operate a foster home or treatment foster home and a group foster home. A situation in which a licensing agency and applicant may request this exception is if a foster parent is employed by a group home or is considered the licensee of the group home but the group home and foster home or treatment foster home are not located at the same physical residence. Dual licensure of any of the mentioned types in the same physical location remains prohibited.

As mentioned previously, it will expedite the Exceptions Panel process if the agency submits complete information for panel members to fully understand the nature of and the rationale for the exception.

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MEMO WEB SITE: <http://dcf.wisconsin.gov/memos/>

Attachment: [CFS-847](#), Application to DHFS Exceptions Panel
[CFS-2149](#), Exceptions Panel Second License Application
[CFS-2029](#), Exceptions Panel Placement of a Non-Treatment Child