


To: Area Administrators/ Human Services Area Coordinators  
Bureau Directors  
Child Placing Agency Directors  
Child Welfare Agency Directors  
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  
Indian Child Welfare Directors  
Licensing Chiefs/Section Chiefs  
Tribal Chairpersons/Human Services Facilitators

From: Cyrus Behroozi  
Administrator 

## **BACKGROUND**

2009 Wisconsin Act 79 (Act 79) was signed into law on November 13, 2009 and takes effect on January 1, 2010. Act 79 makes many changes to both Ch. 48 and Ch. 938 based on federal requirements. This memo explains these changes to the law and the new requirements. A separate memo will be issued with questions and answers regarding the application of the provisions. The question and answer document will be updated as new practice issues arise.

## **NEW PROVISIONS OF LAW**

### **Notice to Relatives (Fostering Connections to Success and Increasing Adoptions Act of 2008)**

Under the Fostering Connections Act, within 30 days after a child's removal from the custody of the parent, the State must exercise due diligence to identify and provide notice to all adult relatives of the child regarding that removal and provide information regarding options for becoming a placement option or otherwise participating in the child's life, and access to payments or services for such participation. [Ref. ss. 48.21(5)(e), 48.355(2)(cm), and 48.357(2v)(d), Stats.]

Under Act 79, "relative" for purposes of providing this notice is defined as a:

- grandparent,
- great-grandparent,
- aunt, uncle,
- brother, sister, half-brother, or half-sister of a child,
- whether by blood, marriage, or legal adoption,
- who has attained 18 years of age.

Under Act 79, a notice must also be sent to any other adult (even non-relative) whom the parent of the child suggests. If the parent is present at the initial temporary physical custody hearing or any other hearing at which the child is being removed from the parent's home, the court must ask the parent to identify three (3) adults whom the parent would like the agency to contact. If the parent is not present at the hearing or does not identify three (3) people at that time, the parent may make suggestions to the agency later but the agency has no duty to ensure that the parent make specific suggestions.

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## DOCUMENT SUMMARY

This memo reviews the provisions of 2009 Wisconsin Act 79 and explains the changes to law and new requirements in Act 79.

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An eWiSACWIS template has been developed to assist case workers in providing notice and to generate documentation that the notice was sent. The eWiSACWIS template will be available in February, 2010. Until then, that form is attached to this memo. Use of this form (and later, the template) assures that all information required is included in the notice.

Further study is needed to determine whether conducting a "diligent search" for relatives under the Fostering Connections Act raises the standard in current policy to identify and locate relatives. For further guidance on identifying, locating, and involving relatives, please see DCFS Numbered Memo 2007-01, "Locating and Involving Non-Custodial Parents, Alleged Fathers and Other Relatives."

To authorize the release of the information in the notice to relatives and other adults, the confidentiality provision was also amended to allow the release of that information. [Ref. ss. 48.78(2)(i), 48.981(7)(a)4m., 938.78(2)(i), Stats.]

### **90-Day Independent Living (IL) Transition Plan (Fostering Connections to Success and Increasing Adoptions Act of 2008)**

Act 79 creates s. 48.385, Stats., which requires that during the 90-day period immediately prior to the date on which a child is expected to age out of placement, the child welfare agency must provide the child with assistance and support in developing a transition plan for making the transition to independent living. The transition plan must be personalized at the direction of the child, shall be as detailed as the child directs, and must include specific options for obtaining: housing; health care; education; mentoring and continuing support services; work force support and employment services; and continuing necessary supportive services after leaving out-of-home care.

Act 79 ensures the completion of the IL Transition plan and imposes requirements for specific items to be included in the plan. The planning phase, as outlined in current policy, must begin at age 17-½ and must list the specific goals and activities to be achieved prior to the child leaving out-of-home care. The case worker must review the plan with the youth, and the plan must be approved and signed by the youth, either 90 day's prior to the youth's 18<sup>th</sup> birthday, or 90 days prior to the date that an 18 year-old leaves care.

Case workers must ensure that the IL service plans are documented in eWiSACWIS records consistent with DSP Numbered Memo 2009-08, "New Independent Living Data Collection and Reporting Requirements." Updates to eWiSACWIS to assist counties in meeting the new requirements will be completed in July 2010.

### **Sibling Placement (Fostering Connections to Success and Increasing Adoptions Act of 2008)**

Act 79 codifies the new requirements of the Fostering Connections Act which state that reasonable efforts must be made to place siblings removed from their home in the same placement, unless joint placement would be contrary to the safety or well-being of any of the siblings. In the case of siblings not jointly placed, reasonable efforts must be made for frequent visitation or other ongoing interaction between the siblings, unless such visitation or interactions would be contrary to the safety or well-being of any of the siblings. The reasonable efforts finding must be made by the court at the removal hearing(s) involving any of the siblings. A description of the efforts made to place the sibling group together must be documented in the child's permanency plan. If a decision is made to not place the child and his or her siblings in a joint placement, an explanation of why it would be contrary to the safety or well-being of any of the siblings and a description of the efforts made to provide for frequent visitation or other ongoing interaction between the siblings must also be included in the permanency plan. [Ref. s. 48.38(4)(br)2., Stats.] For guidance on placing siblings together, please see DCFS Numbered Memo 2007-04, "Sibling Placements: Questions and Answers," and DCFS Info Memo 2006-18, "2005 Wisconsin Act 448: Placement of a Child with a Foster Parent, Adoptive Parent or Proposed Adoptive Parent of the Child's Sibling."

### **Requirements Under Safe and Timely Interstate Placement of Foster Children Act of 2006**

Act 79 codifies federal requirements into state law. These requirements were implemented through Departmental policy in DCFS Info Memo 2008 – 02, which explains the requirements under the Safe and

Timely Interstate Placement of Foster Children Act. Act 79 codifies those requirements listed below into state statute:

- If the permanence goal is to place a child for adoption, with a guardian, with a relative, or in some other alternative permanent placement, the permanency plan must include a description of the efforts made to achieve that goal, including, if appropriate, through an out-of-state placement.
- Requires a court order placing a child outside the home to include a finding as to whether reasonable efforts were made to achieve the permanence goal, including, if appropriate, through an out-of-state placement.
- Requires an agency, in making concurrent reasonable efforts to place a child for adoption, with a guardian, with a relative, or in some other alternative permanent placement, to include reasonable efforts to identify an appropriate out-of-state placement.
- Requires the court, at the permanency plan determination hearing, to consider placing the child in a placement outside the state if the court determines that such a placement would be in the child's best interests and would be appropriate to achieving the permanence goal.
- Requires the courts to cooperate with the courts of other states in sharing of information; obtaining, to the extent possible, information and testimony from agencies and parties located in other states without requiring interstate travel; and to permit parents, children, other parties, attorneys, and guardians ad litem in proceedings involving the interstate placement of a child to participate in those proceedings without requiring interstate travel.

**Requirement That Foster Parents and Physical Custodians Receiving Notice of All Substantive Hearings Involving a Foster Child Have a Right to be Heard at Those Hearing (Safe and Timely Interstate Placement of Foster Children Act of 2006)**

As established in ss. 48.27(3)(a), 48.38(5)(b), 43.38(5m)(b), 938.27(3)(a), 938.38(5)(b), and 938.38(5m)(b), Stats., agencies are required to notify foster parents and other physical custodians of the date, time, and place of all hearings and permanency plan reviews related to the child in their care, except hearings on matters for which notice need only be provided to the child and his or her counsel. Act 79 clarifies that any person who receives notice of a hearing or review also has the *right* to be heard by submitting written comments no less than 10 days before the hearing or review or by participating in the hearing or review. The right of a foster parent or other physical custodian to be heard does not guarantee that they will be allowed to make a verbal statement in court. A foster parent or other physical custodian who receives a notice of a hearing or review does not become party to the case solely on the basis of receiving notice and having a right to be heard.

Attached to this memo is an optional form to help foster parents and other physical custodians organize information for consideration by the review panel or court. Foster parents and physical custodians should be made aware that any information provided to the court is distributed to all parties in the case and is not confidential between them and a judge, court commissioner, or review panel. Case workers should incorporate relevant information from foster parents into a child's permanency plan or other documents as appropriate.

**Requirements for Court or Review Panel to Consult With the Child (Child and Family Services Improvement Act of 2006)**

The Child and Family Services Improvement Act of 2006 requires the court or review panel to consult with children in out-of-home care regarding their permanency plans and independent living plans in an age-appropriate manner.

The child's permanency plan must include a statement as to whether the child's age and developmental level are sufficient for the court or review panel to consult with the child at the hearing or review. If the court or panel determines that consultation with the child would be in the child's best interests, the court or panel *must* consult with the child, in an age-appropriate and developmentally appropriate manner, regarding the child's permanency plan, independent living plan, and any other matter the court or panel

finds appropriate. [Ref. ss. 48.38(4)(i), 48.38(4m)(c), 48.38(5)(bm)2., 48.38(5m)(c)2., 938.38(4)(i), 938.38(4m)(c), 938.38(5)(bm)2., 938.38(5m)(c)2., Stats.]

If the child's permanency plan indicates that consultation with the child would *not* be appropriate, and the court or panel does *not* otherwise determine that such consultation would be in the child's best interests, the court or panel may permit the child's case worker, the child's counsel, or the child's guardian ad litem to make a written or oral statement during the hearing or review, or to submit a written statement prior to the hearing or review, expressing the child's wishes, goals, and concerns regarding the permanency plan. If the court or panel permits such a written or oral statement to be made or submitted, the court or panel may nonetheless require the child to be physically present at the hearing or review.

Under the federal law, the child must be allowed the opportunity to attend the hearing or review if he or she chooses, and the child's views regarding his or her permanency plan or independent living plan (if over 15 years of age) must be available to the court or panel.

#### **Clarify That Circuit Court Commissioners May Conduct Permanency Plan Hearings**

Act 79 permits a circuit court commissioner to conduct permanency plan reviews and hearings. [Ref. s. 757.69(1)(g)14., Stats.]

#### **Discounting the Time Spent in Certain Placement Settings from the 15 of 22 Months Termination of Parental Rights (TPR) Petition Calculation (Adoption and Safe Families Act)**

Under the Adoption and Safe Families Act (ASFA), if a child has been placed in out-of-home care for 15 of the most recent 22 months – not including any period during which the child was a runaway from the placement or the first six months of any trial home visit – a TPR petition must be filed or joined in by the agency. Act 79 clarifies that, for purposes of determining whether a child has been placed outside the home for 15 of the most recent 22 months, the calculation should only include periods during which the child was placed in a foster home, treatment foster home, group home, nonsecured residential care center for children and youth, or shelter care facility. Any time spent in a non-Title IV-E facility (facilities not included in the list, such as juvenile correctional facilities and hospitals) should not be counted. [Ref. s. 48.417(1)(a), Stats.]

#### **Requirement That Health Care Providers Notify Child Protective Services (CPS) of an Infant Affected by Substance Abuse (Child Abuse Prevention and Treatment Act)**

Act 79 requires a physician who determines that there is a serious risk that an infant's bodily fluids contain a controlled substance or controlled substance analog to report that information to the CPS agency.

Under Act 79, if a CPS agency receives such a report, it must assess the safety of the infant and must offer or make arrangements for the provision of appropriate services and treatment for the infant and the infant's mother. The CPS agency must also refer the report to the county department of community programs or developmental disabilities services, which must then offer or make arrangements for the provision of those services and treatment. [Ref. ss. 46.238 and 146.0255(2), Stats.] This differs from current policy under the CPS Access and Initial Assessment Standards, which directs that the agency may respond to the referral as a CPS report or a child welfare report, by requiring that the agency at a minimum refer the case for treatment services after an assessment of child safety.

#### **Clarify That CPS Information May be Given to Agencies Licensing Foster or Adoptive Parents**

Act 79 creates an exception to the confidentiality of client records so that an agency may disclose information to a public or private agency in this state or any other state that is assessing a person for purposes of foster or adoptive care licensing.

The Adam Walsh Act requires licensing agencies to check prospective foster and adoptive parents and other adults in their households against child abuse and neglect registries in the licensing state and in other states under specified circumstances. U.S. Citizenship and Immigration Service regulations (8 CFR 204.311) on international adoptions (also known as the Hague Convention rules) require that every international adoption home study include a child abuse and neglect background check of the prospective

parent and other household adults in every state or country in which they have lived since age 18. [Ref. s. 48.981(7)(a)4p., Stats.]

### **Additional Technical Amendments**

- Act 79 clarifies that a court must make the finding that reasonable efforts have been made to achieve the goals of the permanency plan only if the permanency plan has been prepared because, if the dispositional hearing occurs before the 60-day deadline for filing the permanency plan, there may not be a permanency plan and, therefore, no permanence goal.
- Act 79 includes a technical change to s. 48.245(2)(b) to clarify that the word “residential” refers to all types out-of-home care placements, thus clarifying that an informal disposition may not include any form of out-of-home care placements.
- Act 79 creates s. 48.38(4m), regarding Permanency Plan Determination Hearings.

### **FURTHER POLICY IMPLEMENTATION**

Further practice requirements and guidance in these areas are forthcoming, including a “Question and Answer” guide for policy implementation of the new requirements under Act 79.

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

Links: [DCFS Info Memo 2008 – 02](#)  
[DSP Numbered Memo 2009-08](#)

[DCFS Numbered Memo 2007-04](#)  
[DCFS Info Memo 2006-18](#)

Attachments:

[eWiSACWIS Form: Notification of the Removal of a Child from the Custody of His or Her Parent and Placement into Out-of-Home Care, DCF-F-2473-E](#)

[Optional Form: Guide for Foster Parents and Other Physical Custodians to Provide Information at Court Proceedings, CFS-F-2474-E](#)

#memo/dsp/2009 WI Act 79: Federal Changes Act.doc