

State of Wisconsin
Department of Children and Families
Qualified Residential Treatment Programs
Chapter DCF 61
Emergency Rule

The statement of scope for this rule, SS 056-21, was approved by the governor on June 3, 2021, published in Register 786A2, on June 7, 2021, and approved by Secretary Emilie Amundson on June 18, 2021. This emergency rule was approved by the governor on September 3, 2021.

The Wisconsin Department of Children and Families adopts an order to create ch. DCF 61, relating to qualified residential treatment programs.

Exemption from Finding of Emergency

2021 Wisconsin Act 42, Section 92, provides that notwithstanding s. 227.24 (1) (a) and (3), Stats., the department is not required to provide evidence that promulgating a rule under this subsection 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 subsection.

2021 Wisconsin Act 42, Section 92, also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under this subsection remain in effect until July 1, 2023, or the date on which permanent rules take effect, whichever is sooner.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 48.675 (2), Stats., as created by 2021 Wisconsin Act 42, and s. 227.11 (2) (a), Stats.

Statutes interpreted: Section 48.675, Stats., as created by 2021 Wisconsin Act 42

Related statutes and rules: 2021 Wisconsin Act 42 and chs. DCF 52, 57, and 59

Explanation of Agency Authority

Section 48.675 (1), Stats., as created by 2021 Wisconsin Act 42, provides that the department may certify a residential care center for children and youth, group home, or shelter care facility to operate a qualified residential treatment program if it determines that the program meets the requirements of 42 USC 672 (k) (4) and any other requirements established by the department under this section. Section 48.675 (2), Stats., provides that the department may promulgate rules for the establishment, certification, operation, and monitoring of, and the placement of a child in, a qualified residential treatment program under sub. (1).

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Rule

The Family First Prevention Services Act of 2018 significantly changes the ways in which states may use federal funds for child welfare services, including new restrictions on federal reimbursement of state expenditures for the care and maintenance of children who are placed in congregate care settings.

Effective September 29, 2021, federal payments for the care and maintenance of a child placed in a residential care center for children and youth, group home, or shelter care facility, will only be available for 2 weeks, unless the child is placed in a qualified residential treatment program or other federally-authorized treatment program. The requirements of a qualified residential treatment program are specified in 42 USC 672 (k) (4).

The emergency rule provides the requirements that a congregate care facility must meet to be certified to operate a qualified residential treatment program (QRTP). The requirements in the rule are the same as the requirements in 42 USC 672 (k) (4) with the following minor additions:

- A definition of “trauma-informed treatment model” based on information provided by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.
- A definition of an Indian child’s family for purposes of the requirements on family participation in the child’s treatment program. The rule provides that an Indian child’s family includes the child’s extended family members, others identified in accordance with the laws or customs of the child’s Indian tribe, and, if applicable, the child’s Indian custodian.
- A requirement that a QRTP have policies and procedures on how to implement the federal requirements on family participation in a child’s treatment program.
- A requirement that the discharge planning and family-based aftercare support provided for 6 months after a child’s discharge is in partnership and collaboration with the placing agency, with an invitation for the tribal child welfare agency to participate, if applicable.

The emergency rule provides that the licensee of a congregate care facility may apply for certification to operate a QRTP by submitting an application form and specified information documenting that the facility’s program meets the QRTP requirements. The department will issue or deny a QRTP certification within 60 days after receiving a complete application.

After the initial certification, the department will review a facility’s certification for continuation when the department reviews the facility’s license under s. 48.66 (5), Stats. To apply for continuation of a QRTP certification, the licensee will submit a continuation application form, updated versions of the documentation required for the initial certification application, and any other information requested by the department with the licensee’s application for license continuation.

The department may review a facility's compliance with QRTP certification requirements by visiting and inspecting the facility at any time. The department will have unrestricted access to the QRTP, including the records of any child placed in the QRTP and any other materials and children and other individuals who have information on the facility's compliance with QRTP requirements.

A congregate care facility operating a QRTP must notify the department in writing within one week after any change that may affect the facility's compliance with QRTP requirements.

The department may order a plan of correction or deny, suspend, restrict, refuse to renew, revoke, or otherwise withhold a QRTP certification if the facility's program does not comply with the QRTP requirements, the licensee has violated any provision under ch. 48 or 938, Stats., or the facility is in substantial non-compliance with applicable licensing requirements. Any person aggrieved by the department's decision may request a hearing on the decision under ch. 227, Stats.

Summary of Related Federal Law

Foster care maintenance payments; limitation on federal financial participation

42 USC 672 (k) (1) and (2) provide that *beginning with the 3rd week* for which foster care maintenance payments are made on behalf of a child placed in a child-care institution, *no federal payments* shall be made to the State for amounts expended for foster care maintenance payments on behalf of the child *unless* the child is placed in any of the following:

- A *qualified residential treatment program* as specified in 42 USC 672 (k) (4).
- A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
- For a child who has attained 18 years of age, a supervised setting in which the child is living independently.
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims.

Qualified residential treatment program

42 USC 672 (k) (4) provides that the term "qualified residential treatment program" means a program that meets all of the following conditions:

- Has a *trauma-informed treatment model* that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and, with respect to a child, is able to implement the treatment identified for the child by the assessment of the child.
- Has registered or licensed *nursing* staff and other licensed *clinical* staff who provide care in the scope of their practice as defined by state law, are available 24 hours a day and 7 days a week, and are onsite according to the facility's treatment model. The nursing and behavioral health staff are not required to be employees.

- Facilitates participation of *family* members in the child’s treatment program if it is in the child’s best interests.
- Facilitates outreach to the family members of the child, including siblings; documents how the outreach is made (including contact information); and maintains contact information for any known biological family and fictive kin of the child.
- Documents how family members are integrated into the treatment process for the child, including post-discharge, and how sibling connections are maintained.
- Provides discharge planning and family-based aftercare support for at least 6 months post-discharge.
- Is licensed in accordance with 42 USC 671(a) (10) and is accredited by any of the following:
 - The Commission on Accreditation of Rehabilitation Facilities.
 - The Joint Commission on Accreditation of Healthcare Organizations.
 - The Council on Accreditation.
 - Any other independent, not-for-profit accrediting organization approved by the Department of Health and Human Services.

In informal guidance, the Department of Health and Human Services has approved the Teaching-Family Association and the Educational Assessment Guidelines Leading toward Excellence as additional accrediting organizations.

Assessment to determine appropriateness of placement in a qualified residential treatment program

42 USC 672 (k) (3) provides if the assessment required under 42 USC 675a (c) (1) is not completed within 30 days after the placement of a child in a qualified residential treatment program is made, no federal payment shall be made to the State for any amounts expended for foster care maintenance payments on behalf of the child during the placement.

42 USC 675a (c) (1) (A) requires that within 30 days of the start of each placement in a qualified residential treatment program, a qualified individual shall do all of the following:

- Assess the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool approved by the Department of Health and Human Services.
- Determine whether the needs of the child can be met with *family* members or through placement in a foster family home or, if not, which setting from among the settings specified in 42 USC 672 (k) (2) would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child.
- Develop a list of child-specific short- and long-term mental and behavioral health goals.

Under 42 USC 675a (c) (1) (B), the State is required to assemble a family and permanency team for the child that consists of all appropriate biological family members, relative, and fictive kin of the child, as well as, as appropriate, professionals who are a resource to the family of the child, such as teachers, medical or mental health providers who have treated the child, or clergy. In the case of a child who has attained age 14, the family and permanency team shall include the

members of the permanency planning team for the child that are selected by the child. The qualified individual conducting the assessment shall *work in conjunction* with the family of, and permanency team for, the child *while conducting and making the assessment*.

Extended placements in a qualified residential treatment program

42 USC 675a (c) (4) provides that as long as a child remains placed in a qualified residential treatment program, the State agency shall submit evidence at each status review and each permanency hearing held with respect to the child that does all of the following:

- Supports the determination that a qualified residential treatment program continues to be the most effective and appropriate level of care for the child in the least restrictive environment, and that the placement is consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child.
- Documents the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services.
- Documents the efforts made by the State agency to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

42 USC 675a (c) (5) provides that in the case of any child who is placed in a qualified residential treatment program for *more than 12 consecutive months or 18 nonconsecutive months* (or, in the case of a child who has not attained age 13, for more than 6 consecutive or nonconsecutive months), the State agency shall submit to the Department of Health and Human Services all of the following:

- The most recent versions of the evidence that the State submitted to the court as required under 42 USC 675a (c) (4).
- The signed approval of the head of the State agency for the continued placement of the child in the qualified residential treatment program.

In informal guidance, the Department of Health and Human Services has advised that in states with county-administered child welfare systems, the *director of the local social or human services agency* is responsible for approving the continued placement of a child in a qualified residential treatment program. Informal guidance has also specified that the director may not appoint a designee to sign the approvals.

Summary of Data and Analytical Methodologies

The rule adopts the federal definition of a QRTP and provides the procedures needed for the establishment, certification, and operation of a QRTP.

Comparison to Adjacent States

Illinois: 705 ILCS 405/2-28a (1.6) includes a requirement regarding court review of the placement of a child that includes a reference to “a qualified residential treatment program, as defined by the federal Social Security Act.”

Iowa: The department was unable to locate any mention of a qualified residential treatment program in Iowa statutes or rules.

Michigan: MCLA 722.111, Sec. 1, (w) provides a definition of a “qualified residential treatment program” that is similar to the federal definition in 42 USC 672 (k) (4). The term is used in statutory language on placement and permanency plan hearings and reviews.

Minnesota. M.S.A. 245a.25 specifies the conditions a program must meet to be certified as a QRTP, including the federal QRTP requirements and various conditions of the required trauma-informed treatment model related to the process for identifying and addressing trauma in youth; the provision of services; the physical, social, and emotional environment; staff training requirements; and the program’s policies and procedures. The program must also have at least monthly contact with a youth and the youth’s caregivers during aftercare. A licensee who is denied QRTP certification may request department reconsideration, but a certification denial is not appealable beyond the department.

Effect on Small Businesses

Minimal or no economic impact on small business.

Analysis Used to Determine Effect on Small Businesses

The QRTP standards in the rule do not go beyond what is required under federal law.

Agency Contacts

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SECTION 1. Chapter DCF 61 is created to read:

Chapter DCF 61

QUALIFIED RESIDENTIAL TREATMENT PROGRAMS

DCF 61.01 Purpose. This chapter provides the requirements for the establishment, certification, and operation of a QRTP under s. 48.675, Stats., which provides that the department may certify a congregate care facility to operate a QRTP if it determines that the facility's program meets the requirements of 42 USC 672 (k) (4) and any other requirements established by the department in this chapter.

DCF 61.02 Definitions. In this chapter:

(1) "Child" means an individual under 21 years of age who is placed in a QRTP and is under juvenile court jurisdiction or other court order, is being provided services by a child welfare or juvenile justice agency, or is placed under an agreement.

(2) "Child-placing agency" means an agency licensed under s. 48.66, Stats., and ch. DCF 54.

(3) "Congregate care facility" or "facility" means a group home, shelter care facility, or residential care center for children and youth licensed under s. 48.66, Stats.

(4) "County department" means a county department of social services under s. 46.22, Stats., or a county department of human services under s. 46.23, Stats.

(5) "Department" means the department of children and families.

(6) "Extended family member" has the same meaning as in s. 48.028 (2) (am), Stats.

(7) "Group home" has the meaning given in s. 48.02 (7), Stats.

(8) "Indian child" has the meaning given in s. 48.02 (8g), Stats.

(9) “Indian custodian” has the meaning given in s. 48.02 (8p), Stats.

(10) “Indian tribe” has the meaning given in s. 48.02 (8r), Stats.

(11) “Licensed practical nurse” means an individual licensed by the board of nursing to provide practical nursing as defined in s. 441.001 (3), Stats.

(12) “Licensee” means a person licensed by the department under s. 48.66, Stats., to operate a congregate care facility.

(13) “Like-kin” has the meaning given in s. 48.38 (1) (ap), Stats.

(14) “Permanency plan” has the meaning given in s. 48.38 (1) (b), Stats.

(15) “Placing agency” means a county department, the department, the Wisconsin department of corrections, a tribal child welfare agency, a child-placing agency, or a licensed child welfare agency from another state authorized to place children in a congregate care facility.

(16) “QRTP” means a qualified residential treatment program operated by a congregate care facility that has been certified under s. 48.675, Stats., and this chapter.

(17) “Registered nurse” means an individual licensed by the board of nursing to provide professional nursing as defined in s. 441.001 (4), Stats.

(18) “Relative” has the meaning given in s. 48.02 (15), Stats.

(19) “Residential care center for children and youth” has the meaning given in s. 48.02 (15d), Stats.

(20) “Shelter care facility” has the meaning given in s. 48.02 (17), Stats.

(21) “Standardized assessment” has the meaning given in s. 48.02 (17t), Stats.

(22) “Trauma-informed treatment model” means a comprehensive approach to treatment and care that realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in children, families, staff, and others

involved with the child welfare system; fully integrates knowledge about trauma into policies, procedures, and practices; and seeks to actively resist retraumatization.

DCF 61.03 QRTP requirements. (1) TRAUMA-INFORMED TREATMENT MODEL. A QRTP shall provide services according to a trauma-informed treatment model that is designed to meet the needs, including clinical needs as appropriate, of children with serious emotional and behavioral disorders or disturbances. A QRTP's trauma-informed treatment model shall enable the QRTP to implement the treatment of a child identified for the child by a standardized assessment.

(2) NURSING AND OTHER CLINICAL CARE. A QRTP shall have registered nurse or licensed practical nurse staff and other clinical staff who meet the following conditions:

- (a) Provide care within the scope of their practice as defined by state law.
- (b) Are on-site according to the facility's trauma-informed treatment model under sub. (1).
- (c) Are available 24 hours a day and 7 days a week.

(3) FAMILY PARTICIPATION. (a) In this subsection, the family of an Indian child includes the child's extended family members, others identified in accordance with the laws or customs of the child's Indian tribe, and, if applicable, the child's Indian custodian.

(b) A QRTP shall facilitate family participation in each child's treatment program to the extent appropriate and in accordance with the child's best interest, consistent with the child's permanency plan.

(c) A QRTP shall have policies and procedures on family participation in a child's treatment program that specify how to do all of the following:

1. Facilitate outreach to the child's family members, including siblings, and document how the outreach is done.

2. Maintain contact information for any known relatives and like-kin of the child.
3. Facilitate participation of the child's family members in the child's treatment program.
4. Document how the child's family members are integrated into the child's treatment program, including after the child's discharge from the QRTP.
5. Document how the child's connections with siblings are maintained.

(4) DISCHARGE PLANNING AND FAMILY-BASED AFTERCARE SUPPORT. A QRTP shall provide discharge planning and family-based aftercare support in partnership and collaboration with the placing agency, with an invitation for the tribal child welfare agency to participate if applicable, for at least 6 months after the child's discharge from the QRTP.

(5) ACCREDITATION. A QRTP shall be nationally accredited by any of the following independent, not-for-profit organizations:

- (a) The Commission on Accreditation of Rehabilitation Facilities.
- (b) The Joint Commission.
- (c) The Council on Accreditation.
- (d) Any other independent, not-for-profit accrediting organization approved by the U.S.

department of health and human services.

Note: DHHS has approved the Teaching-Family Association and the Educational Assessment Guidelines Leading toward Excellence as additional accrediting organizations.

DCF 61.04 QRTP certification. (1) APPLICATION. The licensee of a congregate care facility may apply for certification to operate a QRTP by submitting all of the following to the department:

- (a) A completed initial application form prescribed by the department.
- (b) A copy of the trauma-informed treatment model to be used by the QRTP with a

description of how the facility's treatment model meets the conditions in s. DCF 61.03 (1).

(c) A description of the facility's plan to provide nursing and licensed clinical staff services as required in s. DCF 61.03 (2).

(d) A copy of the family participation policies and procedures required under s. DCF 61.03 (3) (c).

(e) A description of the facility's approach to providing discharge planning and family-based aftercare support in partnership and collaboration with the placing agency as required under s. DCF 61.03 (4).

(f) Proof that the facility is accredited as required under s. DCF 61.03 (5).

(g) Any other information requested by the department.

Note: Form DCF-F-5474-E, *Qualified Residential Treatment Program Certification Application*, is available in the forms section of the department's website, <http://dcf.wisconsin.gov>.

(2) DEPARTMENT CERTIFICATION. The department shall determine whether to issue or deny a QRTP certification to a congregate care facility within 60 days after receiving the facility's complete application under sub. (1).

DCF 61.05 QRTP continuation. (1) CERTIFICATION REVIEW COINCIDES WITH LICENSE CONTINUATION REVIEW. The department shall review a facility's QRTP certification at the same time that the department reviews the facility's license under s. 48.66 (5), Stats.

(2) APPLICATION. To apply for continuation of a QRTP certification, the licensee of a facility operating a QRTP shall submit all of the following to the department with the licensee's application for continuation of the facility's license under s. 48.66 (5), Stats.:

(a) A completed certification continuation application form prescribed by the department.

(b) Current versions of the documentation required for the initial certification application under s. DCF 61.04 (1) (b) to (g).

(c) Any other information requested by the department.

Note: Form DCF-F-5475-E, *Qualified Residential Treatment Program Certification Continuation*, is available in the forms section of the department's website, <http://dcf.wisconsin.gov>.

DCF 61.06 Monitoring. (1) The department may review a congregate care facility's compliance with QRTP certification requirements in s. DCF 61.03 by visiting and inspecting the facility at any time. The department shall have unrestricted access to the QRTP, including all of the following:

(a) The records of any child placed in the QRTP and any other materials.

(b) Children and other individuals who have information on the facility's compliance with s. DCF 61.03.

(2) If the department determines that a congregate care facility's program is not in compliance with s. DCF 61.03, the department may take action under s. DCF 61.08, order the licensee to implement and comply with a plan of correction provided by the department, or order the licensee to implement and comply with a plan of correction submitted by the licensee and approved by the department.

DCF 61.07 Notification requirement. A congregate care facility operating a QRTP shall notify the department in writing within one week after any change that may affect the facility's compliance with a QRTP requirement under s. DCF 61.03.

DCF 61.08 Denial, suspension, restriction, nonrenewal, revocation, or withholding of a QRTP certification. (1) The department may deny, suspend, restrict, refuse to renew, revoke, or otherwise withhold a QRTP certification for any of the following reasons:

(a) The facility's program does not comply with the QRTP requirements in s. DCF 61.03.

(b) The licensee has violated any provision under ch. 48 or 938, Stats.

(c) The facility is in substantial noncompliance with applicable licensing requirements under ch. DCF 52, 57, or 59.

(2) If the department denies, suspends, restricts, refuses to renew, revokes, or otherwise withholds a QRTP certification, the department shall notify the licensee in writing of its decision and the reasons for the decision.

(3) A denial, suspension, restriction, refusal to renew, revocation, or withholding of a QRTP certification takes effect immediately upon written notification or 30 days after the date of the notice in accordance with the criteria in s. 48.715 (4m), Stats.

DCF 61.09 Appeal procedures. (1) Any person aggrieved by the department's decision to deny, suspend, restrict, refuse to renew, revoke, or otherwise withhold a QRTP certification may request a hearing on the decision under ch. 227, Stats.

(2) A request for hearing shall be in writing and shall be filed with the department of administration's division of hearings and appeals within 10 days after the date on the notice of the department's denial, suspension, restriction, refusal to renew, or otherwise withhold a QRTP certification.

Note: A request for a hearing may be mailed to Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875 or faxed to (608) 264-9885. A copy of the request should be sent to the applicable field office listed in ch. DCF 52, Appendix D; ch. DCF 57, Appendix A; or ch. DCF 59, Appendix A.

SECTION 2. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.