

To: Area Administrators/ Human Services Area Coordinators
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County Departments of Human Services Directors
County Departments of Social Services Directors
Licensing Chiefs/Section Chiefs
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The Division of Children and Family Services (DCFS) has received many questions and requests for assistance from agencies seeking to implement recent changes in Wisconsin law regarding the placement of siblings in out-of-home care or adoptive placements. These changes were made by 2005 Wisconsin Act 448, which was discussed in DCFS Information Memo 06-18. This memo provides additional guidance in a question and answer format.

1. Do the sibling placement provisions in 2005 Wisconsin Act 448 apply to all adoptions?

The Act 448 provisions that require an agency to consider placement of a child with the adoptive parent or proposed adoptive parent of a sibling, as defined in Wis. Stats. s. 48.38(4)(br) and s. 938.48(4)(br), refer to adoptive placements only under s. 48.833, Stats. These provisions do not apply to relative placements made under s. 48.835 or independent placements made by a court under s. 48.837, Stats. Also, the sibling placement provisions are not applicable to foreign adoptive placements that are not made under s. 48.833. For example, if an adoption order is issued in a foreign country and is recognized under Wisconsin law pursuant to s. 48.97, Stats., the foreign adoption would not be subject to the sibling placement provisions under s. 48.833.

However, note that the sibling placement provisions under s. 48.38(4)(br) and s. 938.38(4)(br), Stats., relating to permanency planning apply to all permanency plans. Any permanency plan required for a child must provide a statement as to:

- The availability of a safe and appropriate placement with a foster parent, adoptive parent, or proposed adoptive parent of a sibling; and
- Why the placement is not safe or appropriate if the child is not so placed.

2. What is the definition of a sibling?

For purposes of certain foster care and adoptive placement considerations and identification of placement options in permanency plans only, sibling is defined under s. 48.38(4)(br) to mean a person who is a brother or sister of a child, whether by blood, marriage, or adoption, including a person who was a brother or sister of a child before the person was adopted or parental rights to the person were terminated.

Note that this definition is not a general definition of sibling applied across the board in all situations. This definition of sibling applies only for the purpose of considering certain foster care or adoptive placements with siblings in certain situations. **As described in Question 1 above, this sibling definition applies only to county department, DHFS, or child welfare**

agency adoptive placements made under s. 48.833, and to placement considerations described in permanency plans under ss. 48.38 and 938.38.

2.a. If a child is adopted prior to a blood sibling being born, are they still siblings for purposes of sibling placement considerations under Act 448?

This provision must be interpreted to mean that a sibling relationship for purposes of placement and permanency planning may exist either before or after a parental rights termination or adoption; that is, even if one of the siblings was not yet born at the time of parental rights termination or adoption of the older child.

In interpreting this provision, some have noted that the provision provides an express example only of a brother or sister who are brother or sister before an adoption or parental rights termination. Based on this, an initial thought may be that a sibling relationship only survives if the siblings were both siblings before an adoption or parental rights termination; that is, both siblings were born before a parental rights termination or adoption. This interpretation is too restrictive. Under rules of statutory construction, an example provided by a statute can be considered expansive rather than restrictive. In other words, the stated example should be considered as only one example and not the only example of a recognized sibling relationship under the provision.

It appears that the example of a sibling relationship surviving the adoption or parental rights termination of a sibling was added to expand upon the ordinary understanding of sibling found in the more general provisions of the Children's Code, specifically s. 48.92, Stats. That general provision provides that an adoption ends the relationship between the adopted child and all other birth relatives.

The legislative intent of this provision was clearly to allow a sibling born after the adoption of an older sibling to be placed with that adopted sibling. Although not included in the official legislative history, it is known that the triggering case for this legislation was an adoptive mother who wanted to adopt a *newborn* "half-sibling" of her adopted child. If the Legislature had wanted to protect only sibling relationships that existed before a parental rights termination or adoption, the Legislature could have and would have simply stated that rather than expressing that intent by an obtuse example.

In addition, it appears likely that the Legislature wanted a blood sibling relationship to be recognized for purposes of adoptive placement because it defines the sibling relationship to include siblings by blood. Of course, the blood connection exists whether or not a sibling was born before or after a sibling was adopted. If the intent is to recognize and give consideration to a blood sibling relationship, it would be illogical to interpret these provisions differently for siblings who were born before an adoption and siblings born after an adoption. Rules of statutory construction do not allow an absurd interpretation of a statute.

Therefore, Act 448 expands the definition of sibling for placement and permanency planning purposes to include children who were siblings as defined in s. 48.38(4)(br) and s. 938.38(4)(br) before or after parental rights termination or adoption of one or both children, even if one child was not born before the parental rights termination or adoption.

Note also that the siblings would include siblings even after a readoption of one or both of the siblings because the definition includes siblings by adoption and siblings who were siblings before an adoption.

2b. If children are either full or half siblings, but were raised by completely different people before being placed in out-of-home care, are they still siblings for purposes of placement considerations under Act 448?

For purposes of Act 448, as implemented in s. 48.38(4)(br), 48.834, and s. 938.38(4)(br), Stats., children with one common parent are siblings even if they were raised by different people. The ordinary meaning of sibling as provided in the American Heritage Dictionary includes individuals who share either one or two parents.

The legislation makes no distinction regarding whether the children were raised together. Also, the plain meaning of the term "sibling" does not indicate that siblings need to be raised together as children. It is not unusual for siblings in the out-of-home care program to be raised in different homes.

Based on the ordinary meaning of the language, the legislative history, and the rules of statutory construction, Act 448 provides for the specified sibling placement consideration regardless of whether there has been an adoption or parental rights termination, whether one or more of the siblings were born before or after a parental rights termination or adoption, whether the siblings share one or two parents, or whether the siblings were raised together in the same home.

3. **How much searching does an agency have to do for a sibling placed in an adoptive home or proposed adoptive home to provide a statement of availability of siblings for placement or to consider the availability of a placement with a sibling?**
 - 3.a. **If the agency has no notice of any other sibling being placed in out-of-home care or adopted (i.e., their records do not reflect it and the parent from whom the child is removed does not identify any siblings), how much research does an agency have to do?**
 - 3.b. **If the agency learns that there was a sibling born 6 years earlier and given up for adoption in another state, how much research does an agency have to do to locate the sibling's adoptive family?**

Act 448 does not mandate any particular level of effort in searching for possible placements with siblings. The permanency planning provisions in ss. 48.38(4)(br) and 938.38(4)(br), Stats., merely require that a statement be made as to the availability of a placement with a sibling. If the Legislature had wanted to prescribe specific search efforts, it could have done so -- as it has done in certain statutes related to searching for birth relatives for adoptees or others whose parents' rights have been terminated. Sections 48.432(4)(b) and 48.433(6)(a), for example, expressly require an agency to undertake a "diligent search" to locate birth parents upon certain requests by adoptees or other eligible requestors.

Also, note that the provisions which require consideration of an adoptive placement with a sibling require consideration only of such a placement identified in the permanency plan or that is otherwise known to the agency making the placement. Thus, it does not appear that Act 448 expressly imposes a duty to search for unknown siblings for purposes of permanency planning or for placement consideration.

However, as a matter of good practice it may be appropriate to make reasonable inquiries regarding possible siblings. It is also possible that a court may construe these provisions to consider siblings to require additional action, and impose some agency responsibility to make reasonable inquiries as allowed by law.

As noted above, if an adoptive parent or proposed adoptive parent of a sibling or a sibling is identified in the permanency plan or is known by the agency, the agency may be required to take reasonable steps necessary to consider the appropriateness of such a placement. Section 48.834(2) requires that:

Before placing for adoption under [s. 48.833](#) a child who has a sibling who has been adopted or has been placed for adoption, the department, county department under [s. 48.57 \(1\) \(e\)](#) or [\(hm\)](#), or child welfare agency making the placement shall consider the availability of a placement for adoption with an adoptive parent or proposed adoptive parent of a sibling, as defined in [s. 48.38\(4\)\(br\)](#), of the child who is identified in the child's permanency plan under [s. 48.38](#) or [938.38](#) or who is otherwise known by the department, county department, or child welfare agency.

However, given that these provisions are remedial in nature (that is, that they are intended to cure a harm), under the rules of statutory construction they should be interpreted broadly to achieve their goal. Therefore, in order to achieve the intent of this law, it seems the agency should take reasonable actions to consider placing a child with a sibling when either the adoptive parent or sibling is identified in the permanency plan or otherwise known to the agency. Reasonable actions will depend on the type of information known and the ability to obtain other necessary information to consider the placement.

4. How should confidentiality concerns that may arise in identifying and considering siblings for placement purposes be handled?

Any confidentiality issues regarding the consideration of placement with a sibling must be handled according to applicable confidentiality laws. Agencies must consult with their legal counsel for advice on the specific circumstances of any situation. Below is general information for consideration related to issues that may arise, but this general information should not be considered legal advice.

4.a. What if the birth mother objects to sharing any information with a sibling's adoptive parents or foster parents?

A birth mother has no right to interfere with an agency's existing legal authority to access records or release information. An agency may have legal authority to share information (for example, a court order) or authority under [s. 48.371, Stats.](#), to share information with foster parent or relative out-of-home care providers. In addition, if an agency has legal custody of a child, it may have authority as a legal custodian to release certain information with a potential foster care or adoptive placement regardless of the birth mother's wishes. An agency's legal counsel should be consulted regarding the authority of an agency to obtain or release information where necessary.

4.b. When an adoptive parent informs the agency that the birth mother of their adopted or foster child is pregnant and indicates that he or she wants that child placed with them and the agency has no prior knowledge of the pregnancy, what is the agency's role, if any?

Act 448 applies to a child who is being placed in foster care or adoption. It does not apply until a child is available for placement. The agency, in the example in question, may have no statutory authority to become involved with the birth mother.

4.c. What if agency staff have reason to believe, based on prior work with the birth mother, that the unborn child or child is at risk of harm?

Section [48.981\(2\)\(d\)](#) provides that: "Any person...who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse" may make a report of unborn child abuse or neglect.

Once the child is born, [s. 48.981\(2\)\(a\)](#) and [\(c\)](#) also provide for making a child abuse or neglect report if a person has a reason to suspect that a child has been abused or

neglected or reason to believe that child is threatened with abuse or neglect and that abuse or neglect will occur.

4.d. Can agency staff search their records to look for siblings in foster care or other out-of-home care? Can they search their CPS records to look for adoptive parents of siblings? Can they search adoption records? Do they need a court order to do either?

If the agency has legal authority to review particular records for a given purpose, it may do so. Generally, an agency may access its records or the records of another agency regarding a child in the care or custody of an agency as provided under s. 48.78 for information regarding placement of another child in its care or custody. Appropriate staff of an agency may have access to child protective services records under s. 48.981, but it is not clear if “appropriate” staff would include staff that needs information to make placement decisions for another child. Similarly, s. 48.93, which limits access to adoption records, does not appear to provide access to adoption records for these purposes.

However, s. 48.03(7g) provides that:

...(A) county department under [s. 46.215](#), [46.22](#) or [46.23](#), the department, or any other organization that has entered into an information sharing and access agreement with the department or any of those county departments and that has been approved for access to the statewide automated child welfare information system by the department may have access to information that is maintained in that system, if necessary to enable the county department, department, or organization to perform its duties under this chapter, [ch. 48](#), [51](#), [55](#), or [938](#), or [42](#) USC 670 to 679b to or to coordinate the delivery of services under this chapter, [ch. 48](#), [51](#), [55](#), or [938](#), or [42](#) USC 670 to 679b.

Still, note that some county agency records, particularly those subject to federal confidentiality laws, may be subject to more restrictive confidentiality provisions. For example, authorized access to certain AODA evaluation and treatment records may be too limited to allow review for purposes of a child’s placement.

Agencies should consult, as necessary, with their legal counsel regarding access to records for purposes of considering placement with a sibling based on the particular circumstances of a situation.

5. Does a person who is the foster parent or adoptive parent of a sibling have any appeal rights if the child is not placed with that family?

Act 448 does not expressly provide for any appeal rights for foster parents. Note that the law is intended to benefit children in need of placement and not foster or potential adoptive parents. Note also that Ch. HFS 51, Adm. Code, regarding applications to DHFS for adoptive placement of special needs children, does not permit appeals of decisions not to place a particular child for adoption. In addition, the State of Wisconsin Division of Hearings and Appeals has held, based on language in Ch. HFS 56, Adm. Code, that a foster care license does not entitle a licensee to any foster child placements. As with any litigation, an agency that is the subject of the litigation must consult with its legal counsel for any appropriate defenses to the litigation.

6. Does Act 448 affect the placement preferences under the Indian Child Welfare Act?

As provided in s. 48.028, the Indian Child Welfare Act (ICWA) supersedes the provisions of Ch. 48. Thus, ICWA placement preferences would control over these provisions. The relevant term

used in the ICWA placement preferences is “extended family member” and that term is defined by ICWA in s. 25 U.S.C. 1903(2). Therefore, the ICWA definition of extended family member for ICWA placement preferences will control over the sibling definition in Act 448 and s. 48.38(4)(br) and s. 938.38(4)(br) for purposes of the placement of Indian children. Note also, however, that the placement considerations and permanency planning requirements under Act 448 and s. 48.38(4)(br), 48.834, and s. 938.38(4)(br) still apply to an Indian child who is covered by those statutes, but in most cases the ICWA placement preferences will dictate the placement unless there is good cause shown to the contrary or other legal authority under ICWA to deviate from the ICWA placement preferences.

7. What do the terms “appropriate” and “consider,” as used in s. 48.38(4)(br) and s. 48.834, Stats., mean; and how do caseworkers weigh the competing claims of relatives and families of siblings?

The Department does not define terms such as “appropriate” or “consider,” which are used throughout Chapter 48 and Chapter 938, because each case requires an analysis based on the specific facts of the case to determine which out-of-home or adoptive placement is in that child’s best interest.

8. What documentation of an agency’s actions or decisions is required?

Any actions taken to locate siblings and the reasons for any decisions to place or not place siblings in the same placement should be documented in the child’s permanency plan for an out-of-home care placement and in the child’s case plan for adoptive placements. Siblings identified in the permanency plan or otherwise known to the agency must be considered and, if not utilized as a placement resource, documentation of the rationale must be provided.

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

2005 Wisconsin Act 448: <http://www.legis.state.wi.us/2005/data/acts/05Act448.pdf>