


To: DCF/DMCPS Administrator
DCF Area Administrators
Child Placing Agency Directors
Child Welfare Agency Directors
County Departments of Community Programs Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Group Home Providers
Tribal Social Service/Indian Child Welfare Directors
Private Child Placing Agencies
Residential Care Center Providers
Shelter Care Providers
Tribal Chairpersons

From: Fredi-Ellen Bove 
Administrator

Re: **This memo supersedes DSP Numbered Memo 2018-10 issued on March 7, 2018.**
2017 Wisconsin Act 59: Changes Affecting Rate-Based Contracting

PURPOSE

This memo provides information on recent changes, under 2017 WI Act 59 (2017-19 Biennial State Budget), affecting contracts with non-profit providers for rate-based services.

BACKGROUND

Changes in state law related to rate-based contracting and retained earnings for non-profit organizations have been the subject of legislative discussion for several years. The provisions included in 2017 WI Act 59 make several changes that affect contracting for rate-based services with non-profit providers.

SUMMARY

This memo provides information on recent changes to the law affecting contracts for rate-based services identified in Wis. Stat. s. 49.34(1). The changes include modified language allowing a non-profit provider to retain from the surplus up to 5% of the revenue received under the contract, repeal of the language related to cumulative reserves, new language establishing time limits on recouping excess reserves, and modified language increasing the threshold for required audit reports.

2017 Wisconsin Act 59, sections 923B through 923G, 9106(3t), and 9108, are the provisions applicable to DCF-funded programs. The changes apply to contracts as of January 1, 2018 (Section 9106(3t)).

Section 923B amended Wis. Stat. s. 49.34(4)(c) to increase the threshold for the requirement to provide the purchaser with a certified financial and compliance audit report from \$25,000 to \$100,000 of care and services purchased.

Section 923C amended Wis. Stat. 49.34(5m)(b)1. to state:

If revenue under a contract for the provision of a rate-based service exceeds allowable costs incurred in the contract period, the contract shall allow the provider to retain from the surplus up to 5 percent of the revenue received under the contract [unless a different rate is established in rule]. The retained surplus is property of the provider.

Affected 2018 contracts should be reviewed for alignment with statutory requirements and adjusted if necessary.

Sections 923D and 923E repealed Wis. Stat. ss. 49.34(5m)(b)2 and 3, related to accumulated excess reserve funds and limitations on using those funds.

Section 923F created a new statutory provision at Wis. Stat. s. 49.34(5m)(b)5. This new provision includes an annual period for determining excess reserves, a requirement for the provider to notify a purchaser of excess reserves that exceed the allowable retention rate, and provides a six month time period for purchasers to request a refund. The six-month period begins when the provider notifies the purchaser of an excess. Notice of any excess is normally provided in the annual audit report. The provision also allows the department to recover funds beyond the six-month period based on audit or financial review findings.

Section 923G created a new statutory provision at Wis. Stat. s. 49.34(5m)5. This new provision includes rule-making authority where the department may establish the five percent retention rate as provided in statute or a different rate, and establish procedures for reviewing contracts for compliance with the provision of the statutory subsection.

Section 9106(3t) contains nonstatutory guidance on transitioning from the ten percent accumulation provisions that were repealed. The provider must notify purchasers of amounts in excess of ten percent based on the total contract amount for rate-based services for the prior year. Purchasers have six months to request return of excess funds. The six-month period begins when the provider notifies the purchaser of an excess. Notice of any excess is normally provided in the annual audit report. The provision also allows the department to recover funds beyond the six-month period based on audit or review findings.

CENTRAL OFFICE CONTACT: Program and Policy Analyst – Advanced
Out-of-Home Care Section
Bureau of Permanence and Out-of-Home Care
(608) 422-6945

MEMO WEB SITE: <https://dcf.wisconsin.gov/cwportal/policy>