



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-030

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

Under s. DCF 201.03 (6) (a), a “local agency” is defined to exclude an agency in a county having a population of “750,000 or more”. However, under s. 49.197 (2) (a) 1., Stats., a “county department” that may participate in the incentive program for local fraud detection means a department of social services or department of human services for a county with a population of “less than 500,000”. [See also s. DCF 201.02 (3), which defines “child care administrative agency” for purposes of ch. DCF 201 and refers to Milwaukee County using a 500,000 population threshold.] It appears that the agency should use a 500,000 threshold, rather than a 750,000 threshold, to be consistent with s. 49.197 (2), Stats., and s. DCF 201.02 (3).

2. Form, Style and Placement in Administrative Code

To more clearly establish the incentive program, the provisions governing the program could be created in a new section within ch. DCF 201. The proposed rule provides the complete process for the incentive program, which is beyond the scope of the general recitation of the agency’s powers under s. DCF 201.03. The section reciting the agency’s powers could instead state: “DCF 201.03 (6) INCENTIVE PROGRAM FOR LOCAL FRAUD DETECTION. The department shall provide an incentive payment as specified under s. DCF 201.____ to a local agency for identifying fraud in the child care subsidy program.”. The incentive program itself could then be given its own section, such as s. DCF 201.055, and pars. (a) to (d) could be revised to subs. (1) to (4), and so on, for the numbering. If renumbered, the introductory clause and the reference in SECTION 2 of the proposed rule should be revised accordingly.

4. Adequacy of References to Related Statutes, Rules and Forms

a. A definition should be created in s. DCF 201.02 for a “child care subsidy program”, to mean the program under s. 49.155, Stats. Thus, a reference to the statute would not need to be inserted in s. DCF 201.03 (6) (b) (intro.) and could be deleted from par. (b) 2. of that subsection.

b. In s. DCF 201.03 (6) (b) 3., “sub. 2.” should be replaced with “subd. 2.”. [s. 1.07 (2), Manual.]

c. In s. DCF 201.03 (6) (b) 4., “subd. 1. to 3.” should be replaced with “subds. 1. to 3.”. [s. 1.07 (2), Manual.]

d. In s. DCF 201.03 (6) (c) 1. b., the reference to “par. (b) 3.” should be revised to “par. (b) 4.”.

e. In s. DCF 201.03 (6) (d) 3., the following references should be added:

(1) The reference to the “state plan” should be more precisely identified. Is there a citation where the plan is given that could be included in the sentence? For example, “the state plan under s. 49.____, Stats.”. Additionally, an Internet address where the plan may be found could be given in a Note following the subdivision.

(2) A reference to “under 42 USC 601 *et seq*” should be inserted after “program”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the rule summary, in the third paragraph, the phrase “On December 30, 2011, the department submitted its plan” should replace “No later than January 1, 2012, the department shall submit its plan”.

b. In s. DCF 201.03 (6) (c) 2., the subdivision could specify whether the maximum amount applies to a specific period of time, such as per year, or whether the maximum is the total incentive payment allowed throughout the life of the incentive program, for fraud by a single child care provider. For example, the phrase “The total incentive payments” could replace “An incentive payment”, or the phrase “in a calendar year” could be inserted after “by a local agency”.

c. In s. DCF 201.03 (6) (d) 3., the word “currently” should be deleted, as that type of temporal word should generally be avoided. [s. 1.01 (9) (b), Manual.] Also, it is unclear who has “approved” the state plan. To be more precise, this subdivision could be rephrased along the following lines: “consistent with the state plan [under s. 49.____, Stats.,] that is approved by _____ [name the federal agency], on or after _____ [date], for use of federal funds under...”.