

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 00-067

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. The rule relies on s. 59.52 (4) (a) 18., Stats., as its authority. That statutory provision applies to the disposition of county case records and court files. The rule’s analysis and initial regulatory flexibility analysis provides that the rule will apply to privately run Wisconsin Works (W-2) agencies. Since s. 59.52 (4) (a) 18., Stats., does not, on its face, include privately run W-2 agencies, the authority, if any, that the rule relies on to cover privately run W-2 agencies should be specified more clearly in the rule.

b. Section DWD 18.01 (2) provides that the rule does not apply to Milwaukee County if it operates under an ordinance or resolution pursuant to s. 19.21 (5), Stats., providing for the destruction of obsolete records. It is presumed that this exemption stems from s. 19.21 (5) (a), Stats. However, in light of s. 19.21 (5) (b) and (c), Stats., which provides the similar authority to other counties, why does the rule apply to counties other than Milwaukee, i.e., those with populations under 500,000, that operate under a resolution or ordinance pursuant to s. 19.21 (5) (b) and (c), Stats.?

c. Section 59.52 (4) (a) 18., Stats., provides that a county may destroy case records and other record material of all public assistance that are kept as required under ch. 49, Stats., if, in part, no payments have been made for at least three years. Section DWD 18.03 (3) provides that an income maintenance agency must retain copies of certain items for a period of six months or through the next certification period, whichever is less. The department should explain its statutory authority for the rule provision. For example, are the copies of these items not required

under ch. 49, Stats., and, therefore, not required to be held for at least three years after no payments have been made?

## **2. Form, Style and Placement in Administrative Code**

a. Because the term “CARES” is defined in s. DWD 18.02 (1), the phrase “department’s computerized system, CARES” in s. DWD 18.01 (1) and (2) should be simplified to “CARES.”

b. All of the paragraphs in s. DWD 18.03 (1), (3), (4) and (5) should end in periods.

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

a. In s. DWD 18.04 (intro.), the term “s.” should be inserted before “DWD.”

b. In s. DWD 18.04 (2), the rule refers to certain standards established by the Wisconsin Public Records Board. The rule should contain a cross-reference to these standards or a note explaining where they can be located. Also, in the last line of sub. (2), the phrase “Wisconsin public records” should be inserted before the word “board.”

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

a. The definition of “case record” in s. DWD 18.02 (2) refers to “required paper forms.” Required by what? Required by statutes, rules or other agency policy? The rule should be clarified.

b. Section DWD 18.02 (6) defines “electronic format” as information. Is that accurate? Would it be more accurate to say that an “electronic format” is a method of, or plan for, creating, generating, transmitting or storing information in a digital or analog form? The rule should be clarified.

c. In s. DWD 18.02 (9), the comma and the word “but” should be replaced by a period. The word “for” should be capitalized. A comma should be inserted after the word “chapter.” An appropriate statutory or other cross-reference should be provided to the “general relief programs” not included in “public assistance.”

d. It does not appear that s. DWD 18.03 (1) has anything to do with records retention or destruction. Does it? Is there any way to tie it in better with the rest of the rule? Also, what is the scope of each agency’s verification duties? In other words, must the verification be done for each recipient, applicant or group member? The rule should be clarified. Finally, what does it mean to verify something? Is the note required in sub. (2) a method of verifying the documents?

e. In s. DWD 18.03 (2), the phrases “verification item” and “verification items listed in sub. (1)” should be replaced by the phrases “items verified” or “items verified under sub. (1)” depending on the context. The word “shall” should be inserted before the word “document” in the first sentence. The phrase “with a note in the case comments” should be moved from the end

of the sentence and inserted after the word “document.” What is the “date of each entry”? Is that the date the item was seen? The rule should be clarified.

f. In s. DWD 18.03 (3), the phrase “Income maintenance agencies shall retain in the case records” should be inserted before the word “Copies.” The phrase “shall be retained in the case record” should be deleted. Also, how much time is there between “certification periods”? Is it possible that more than six months could elapse between certification periods? If so, should those items be retained in the case records until the next certification period? Does the six-month period only apply if there is no “next” certification period? The rule should be clarified. Also, an appropriate cross-reference or explanatory note should be provided identifying or clarifying the relevant certification periods.

g. In s. DWD 18.03 (4), the term “verification items” is vague. By its use, it does not appear that the term refers to those items referred to in sub. (2) as “verification items.” Would the rule’s intent be met if sub. (4) just referred to the “following items”? Finally, the phrase “closing of all public assistance groups” is vague. Does it mean that the agencies have to keep these items until all cases have closed? Does it mean that the agencies must keep the items relevant to each case until all members of a group have been closed out? What does the phrase mean?

h. In s. DWD 18.03 (5), the word “where” should be replaced by the word “involving” and the word “apply” should be deleted.

i. Is s. DWD 18.04 (5) still a condition of the (intro.)? If so, it appears that the phrase “shall be” should be changed to the phrase “have been.” If not, sub. (5) should be removed to a different provision of the rule.

j. In s. DWD 18.05, in order for an agency to determine whether another method of destruction is “as effective as” burning or shredding, it appears necessary to understand what is meant by the term “destroyed.” Does the term mean simply “rendered unreadable”? Does it mean something more? Perhaps the rule should be clarified. Also, who determines whether another method is “as effective”? Does the department make this determination or does the affected agency? If the department makes the determination, how is it made? Is it made on a case-by-case basis? The rule should be clarified.