



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 06-081

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 January 2005.]

1. Statutory Authority

a. Section 48.981 (8) (d) 1., Stats., requires training not only about child abuse and neglect protective services but also about unborn child abuse protective services. However, the latter is not mentioned in the proposed order. Is this omission intentional?

If so, this suggests that the Department of Health and Family Services (DHFS) will be proposing rules on this subject in the future in accordance with s. 48.981 (8) (d) 1., Stats. Is this correct?

If this was an unintentional omission, reference should be added to training on unborn child abuse protective services throughout ch. HFS 43. (If the proposed order is changed to refer to unborn child abuse protective services, the necessary changes would include changing s. HFS 43.03 (10) to include reference to s. 48.133, Stats., instead of referring only to s. 48.13, Stats.)

b. Section HFS 43.02 indicates that ch. HFS 43 applies to child protective services (CPS) caseworkers and CPS supervisors hired “on or after [Revisor to insert date].” As noted below, the date to be inserted is not clear. However, presuming that the intention is to insert the effective date of the rule (first day of the month following publication), ch. HFS 43 would require training only for persons hired to perform CPS job functions on or after the effective date, not for existing employees.

This approach of excluding existing employees appears to be in conflict with s. 48.981 (8) (d) 1., Stats., which requires training of all CPS caseworkers and supervisors, not just those

hired after a certain date. Moreover, it is noted that when the original version of s. 48.981 (8) (d) 1., Stats. (requiring training and monitoring of that training by DHFS in accordance with administrative rules promulgated by DHFS), became effective on **July 20, 1985**, 1985 Wisconsin Act 29 did not include a provision applying the requirement only to employees hired after the effective date of that act. Conceivably, the rules could credit the experience of current caseworkers and supervisors towards pre-service and foundation training, but how will in-service training requirements be applied to current personnel?

c. Section 48.981 (8) (d) 1., Stats., requires that DHFS monitor compliance, according to administrative rules promulgated by DHFS, with the requirement that CPS caseworkers and supervisors successfully complete DHFS approved training. Chapter HFS 43 requires pre-service training, foundation training, and in-service training at certain intervals. However, s. HFS 43.11 establishes a system for monitoring only the pre-service training. How will compliance be monitored with respect to the required foundation training and in-service training?

2. Form, Style and Placement in Administrative Code

a. In the table of contents for ch. HFS 43, the title of s. HFS 43.07 is not consistent with the title shown in the text of the rule.

b. Section HFS 43.02 refers to applicability of the chapter for persons hired “on or after [revisor to insert date].” It is not clear which date is to be inserted. If it is the effective date of the rule, it should be drafted as “on or after the effective date of this section [revisor inserts date].”

In addition, the provision in s. HFS 43.04 (1) (a) which refers to “on or after [Revisor to insert the effective date]” and the provision in s. HFS 43.07 (1) which refers to “on or after [Revisor insert effective date]” should be revised to comply with this format.

c. The Note following s. HFS 43.03 (7) refers to “Wisconsin Administrative Rule, MPSW 8.” The correct citation is to “ch. MPSW 8.” [See s. 1.07 (2), Manual.]

d. The last sentence of s. HFS 43.04 (2) (b) indicates that: “This information should be incorporated into the plan required by s. HFS 43.10.” The term “should” is inappropriate. Use “shall” to denote a mandatory duty; use “may” to denote an optional privilege. [See s. 1.01 (2), Manual and s. HFS 43.09.]

In addition, this sentence is confusing as the reference to incorporating the information into the plan applies to an accredited education program whereas the plan under s. HFS 43.10 applies to agencies that employ CPS caseworkers and supervisors. How would the education program be involved in submitting an agency’s plan?

It is noted that this sentence is in contrast to the approach in s. HFS 43.05 (2) (b) which requires the accredited education program to submit a plan to DHFS for an exception for foundation training. (The only difference seems to be that s. HFS 43.05 (2) (b) applies to

exceptions for foundation training rather than exceptions to pre-service training as in s. HFS 43.04 (2) (b).)

Thus, this sentence in s. HFS 43.04 (2) (b) should be carefully reviewed for clarity to ensure that it conveys what is intended by DHFS.

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

a. In the “Summary of Proposed Rule”, the “Related statute or rule” refers to “Sections 48.06 (1) and 48.981 (8) (d), Stats.” Since s. 48.981 (8) (d), Stats., is already cited as the statute interpreted and the statute providing statutory authority, it need not be repeated here. Was the cite intended to be s. 48.981 (8) (a), Stats.?

It appears that the “Related statute or rule” should include s. 48.06 (2) (c), Stats. In addition, should reference to s. HFS 54.03 (2) (c) and (3) be included as a related rule?

b. In the second sentence of the first paragraph of the “Analysis and supporting documents to determine effect on small business,” the reference to “Section 48.981 (8) (d) 2., Stats., further requires ...” should be changed to “Section 48.981 (8) (d) 1., Stats., further requires”

c. In s. HFS 43.03 (13), the reference to “s. 46.03 (7g), Stats.,” should be changed to “s. 46.03 (7) (g), Stats.”

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

a. In the first sentence of the third paragraph of the “Plain language analysis,” “affect” should be changed to “effect.”

b. In the third sentence of the third paragraph of the “Analysis and supporting documents to determine affect on small business,” the word “a” should appear before the phrase “county department.” In the second to last sentence of the paragraph, the first occurrence of the word “under” should be deleted.

c. The third sentence of the last paragraph of the “Analysis and supporting documents to determine effect on small business” is incomplete as it reads: “The only cost to the agency for staff time to participate in training.”

d. The Note following s. HFS 43.03 (6) states that: “A ‘child welfare agency’ is also known as a ‘child placing agency’.” This incorrectly suggests that all child welfare agencies are child placing agencies. Child placing agencies are a subset of child welfare agencies as noted in the definitions in current s. HFS 54.01 (4) (d) and (e). If this Note is deemed essential and retained, it should state that: “A ‘child welfare agency’ is also known as a ‘child placing agency’ if it is licensed to place children in foster homes or group homes.”

e. Section HFS 43.03 (7) (b) and (e) both include reference to a college. However, s. HFS 43.03 (7) (d) refers only to courses offered by an accredited university. Was omission of an accredited college intentional in s. HFS 43.07 (7) (d)?

f. Section HFS 43.03 (7) (e) refers to “Self-study courses approved by accredited college or university schools of social work or local or national professional social work organizations.” Unless the intent is that a particular course must be approved by more than one school of social work or organization, it would be more accurate to phrase this as: “A self-study course approved by an accredited college or university school of social work or a local or national professional social work organization.”

g. Section HFS 43.04 (1) (b) refers to a “caseworker” and a “supervisor.” The defined terms “child protective services caseworker” and “child protective services supervisor” should be substituted.

h. In the last sentence of s. HFS 43.04 (1) (b), “provide child protective service” should be changed to “provide child protective services.”

i. Sections HFS 43.04 (2) (a) and 43.05 (2) (a) both refer to “a bachelor’s degree in social work or a master’s level social work degree from a council on social work education accredited program.” It is unclear if the phrase “from a council on social work education accredited program” refers to the bachelor’s degree or only to the master’s level degree.

j. In the first sentence of s. HFS 43.04 (2) (b), the comma following “plan” should be deleted.

k. A period should be inserted following the last sentence of s. HFS 43.04 (2) (b).

l. Section HFS 43.04 (2) (a) refers to a program that “has met the requirements for pre-service training established under this chapter.” Section HFS 43.05 (2) (a) includes the same language with respect to foundation training. In both cases, it is not clear what the phrase “established under this chapter” adds since ch. HFS 43 does not include specific requirements for either beyond what is contemplated in the definitions of “pre-service training” and “foundation training.” Thus, the phrase could be deleted.

m. Section HFS 43.06 requires at least 30 hours of in-service training “in each 2 year period beginning after the caseworker’s effective date of employment” It is not clear if the two-year period runs from the employment date or if it is on a calendar year basis starting with the January 1 next following the date of employment. [See s. 990.01 (49), Stats., which indicates that “year” means a calendar year unless otherwise indicated.]

A similar comment applies to s. HFS 43.08.

n. Section HFS 43.07 (2) refers to “foundation training under s. HFS 43.05 (1) or the equivalent of that training, as determined by the department by policy.” “Foundation training” is defined in s. HFS 43.03 (9) as “the curriculum content approved by the department to provide essential skills and applications training for child protective services caseworkers and supervisors.” Neither s. HFS 43.03 (9) nor 43.05 explains what elements are included in foundation training. Therefore, it does not appear that the phrase “or the equivalent of that training, as determined by the department by policy” adds any meaning because there must be

approval by DHFS in any event and that concept is already included in the definition of foundation training.

Moreover, it is problematic to refer to equivalency as determined by DHFS “by policy” because statements of policy are required to be promulgated by administrative rule under s. 227.10 (1), Stats. Such a policy would require that DHFS promulgate an additional rule. This provision should be carefully reviewed for clarity to ensure that it conveys what is intended by DHFS.

o. In s. HFS 43.10 (4), the language following the word “session” appears to be unnecessary given the language in s. HFS 43.10 (intro.). If so, this language should be deleted.