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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 15-098

#### 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 December 2014.]**

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

a. In the introductory clause for the proposed rule, the enumeration of provisions treated should be organized in the following order: to repeal; and to repeal and recreate. [s. 1.02 (1) (b), Manual.]

b. The department should consider rearranging the subsections of the proposed rule. Generally, it is recommended that a rule be organized in the following order: purpose statement; definitions; substantive provisions; exceptions, exemptions, or exclusions; and benefits, sanctions, or results of compliance or noncompliance with the rule. [s. 1.02 (3), Manual.] If the department does rearrange the rule, then the department should renumber the rule as necessary.

c. The department should consider adding an initial applicability clause after the text of the rule and before the effective date clause in order to clarify whether the updated information reporting requirements apply to all out-of-home care placements, including those that are pending, or to out-of-home care placements made on or after the effective date of the rule. [s. 1.02 (3m), Manual.]

d. For the sake of clarity and general understanding, the department should consider deleting s. DCF 37.04 (3) (a). The department could instead insert a cross-reference to the exceptions under s. DCF 37.02 near the beginning of s. DCF 37.04.

e. The department should consider defining “delinquent” as it is used in s. DCF 37.03 (2) (c) or could insert a cross-reference to the definition of delinquent in s. 938.02 (3m), Stats.

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

In s. DCF 37.03 (9), the second “ch.” before “938” should be deleted.

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

a. The department should consider including s. DCF 37.04 (3) in the exceptions list under s. DCF 37.02 so that a reader may find all of the exceptions in one place.

b. The department should consider deleting the phrase “and the placing agency has not provided the information to the physical custodian” from s. DCF 37.04 (2) (b). The phrase is not necessary. In a situation where par. (b) applies, the placing agency will have received certain required information after deadlines have passed, so the placing agency will not have been able to provide the information to the physical custodian.

c. In s. DCF 37.04 (3) (b), the department should consider inserting the phrase “a prospective or actual physical custodian with” between “may not provide” and “information” to clarify to whom the referenced information may not be given.

d. The department should consider specifying who has the authority to determine whether the exception under s. DCF 37.02 (1) (b) applies.

e. In s. DCF 37.02 (2), the department should clarify the phrase “The documentation shall include the specific information that was not provided to the physical custodian”. What “documentation” must the agency provide if the information is not available, as is contemplated by the exception under s. DCF 37.02 (1) (a)? The department should consider whether it will require the placing agency to identify what type of information is not being provided to the physical custodian or whether it will require the placing agency to attach the actual information to the child’s case record.

f. In s. DCF 37.02 (2), the department could clarify what sort of written approval must be provided by a supervisor or supervisor’s designee. Must the written approval come in the form of a letter or a report or is a signature sufficient?

g. In s. DCF 37.03 (2), the department should consider specifying what is required for an allegation to have been proven. This may require cross-references to relevant sections of chs. 48 and 938, Stats.

h. If the department intended the definition of “permanency plan” under s. DCF 37.03 (10) to match the definition provided in ch. 48, Stats., the definition should be modified to read as follows:

“Permanency plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

As an alternative, the department could instead insert a cross-reference to s. 48.38 (1) (b), Stats. [s. 1.01 (7) (d), Manual.]

i. The department separately defines “agency” and “placing agency”. Both terms are used throughout proposed ch. DCF 37, but in several places it is unclear whether the department intends to reference both types of agencies or whether “agency” is mistakenly used instead of “placing agency”. For example, see s. DCF 37.04 (2) (a) which references both “agency” and “placing agency”. The department should review the proposed rule chapter and clarify which type of agency is responsible for each required activity. If a “placing agency” is responsible for all required activities, then the definition of “agency” may be superfluous and could be deleted for the sake of clarity.

j. The department should review its list of required information under s. DCF 37.04 (4) for redundancies. For example, pars. (c) and (n) appear to require much of the same information. The same is true of pars. (d) and (m); of pars. (a) and (L); and of pars. (e) and (o).