



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-051

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.]

1. Statutory Authority

In several instances in the analysis of the proposed rule, the department cites ss. 48.983 and 938.983, Stats., as created by 2015 Wisconsin Act 128, as sources for the reasonable and prudent parent standard. Act 128, however, does not modify these statutes, nor do they appear to include any requirement related to the reasonable and prudent parent standard. The department should review its statutory citations and include the correct citations, which, as cited elsewhere in the analysis, appear to be to ss. 48.383 and 938.383, Stats.

2. Form, Style and Placement in Administrative Code

a. In the analysis of the proposed rule, the comparison to other states should include the specific information required by s. 227.14 (2) (a) 4., Stats., rather than a generalization about rules in “many other states.”

b. SECTION 2 of the proposed rule creates s. DCF 52.12 (5) (gm) without a title. Other paragraphs of this subsection contain titles, however. If titles are used for any subsection, paragraph, or subdivision, titles should be utilized in a consistent manner. [s. 1.05 (1), Manual.] As such, a title should also be created for par. (gm).

c. SECTION 7 of the proposed rule amends s. DCF 52.41 (1) (intro.), but does not contain the title. The title should be included in the text treated by the proposed rule as well.

d. In SECTION 9 of the proposed rule, the title created for s. DCF 52.415 (3) (a) should be completely italicized. [s. 1.05 (2) (d), Manual.]

e. SECTION 48 of the proposed rule renumbers s. DCF 52.23 (1) (b). In doing so, it leaves sub. (1) with only one paragraph – par. (a). The proposed rule should renumber par. (a) and amend the title so that sub. (1) does not contain only one paragraph. [s. 1.03 (1), Manual.]

f. Section DCF 57.245 (3) (intro.) ends with the phrase “if the activities meet the conditions in par. (a) and (b).” This introductory phrase should be rewritten to form a complete sentence when read together with each subunit, such as “any of the following” or “all of the following.” [s. 1.03 (3), Manual.]

g. Section DCF 57.245 (4) (a) 3. should be on its own line and separated from subd. 2.

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

a. In various places, the proposed rule references an individual being required to successfully complete training on the application of the reasonable and prudent parent standard prior to making reasonable and prudent parenting decisions. For example, SECTION 2 of the proposed rule requires a residential care center to ensure that an individual successfully completes the training prior to making such decisions. It is unclear to whom the term “individual” is referring. It appears, however, that the individual is a staff person as defined in s. DCF 52.03 (24). The department should review the use of the term “individual” and use more precise terms, including defined terms, throughout the proposed rule.

b. The proposed rule uses the term “normalcy” in various places and in SECTION 19, for example, the rule defines the term “normalcy” for purposes of ch. DCF 56. The proposed rule does not, however, define this term for purposes of ch. DCF 52.

c. The semicolons used in s. DCF 52.415 (3) (a) 4., should be replaced with commas.

d. The Note related to respite care created after s. DCF 52.415 (3) (b) 2. appears to be substantive in nature. This same Note is also repeated in other parts of the proposed rule. The department should review the intent of this provision. If it is substantive in nature, it should be included in the rule text, and if not, the department should consider rephrasing the Note. [s. 1.09 (10), Manual.]

e. In various places of the proposed rule, terms are written in the plural form. For example, the list of decision-making factors created in SECTION 9 of the proposed rule (s. DCF 52.415 (4) (a)) contains terms in the plural form. Terms should be written in the singular form throughout the rule. [s. 1.01 (9) (e), Manual.]

f. In SECTION 32, the list of “areas covered by the standard” found in s. DCF 52.09 (2m) (b) 1. uses the word “and” when it appears to mean “or.” The department should review the use of the word “and” in the entire list in s. DCF 52.09 (2m) (b) 1.

g. The Note related to when a foster parent is not required to consult with a parent or guardian created after s. DCF 56.09 (2m) (c) 3. appears to be substantive in nature. The department should review the intent of this provision. If it is substantive in nature, it should be included in the rule text, and if not, the department should consider rephrasing the Note. [s. 1.09 (10), Manual.]

h. SECTION 35 discusses promoting normalcy when making decisions concerning “the child’s participation in age or developmentally appropriate extracurricular, enrichment, cultural,

and social activities” and then cross-references s. DCF 56.09 (2m). However, s. DCF 56.09 (2m) also includes promoting normalcy when making decisions related to “experiences.” Reference to “experiences” is also not included in other portions of the proposed rule. The department should review the intent of what is required to promote normalcy in decision-making and consider whether to include references to “experiences.”

i. The Note related to different cultural, religious, or tribal values, created after s. 57.245 (4) (a) 7., appears to be substantive in nature. The department should review the intent of this provision and if it is substantive in nature, it should be included in the rule text. If not, the department should consider rephrasing the Note. [s. 1.09 (10), Manual.]