



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 18-088

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 the rule summary’s listing of statutory authority, and in the explanation of agency authority, the citation to s. 49.155 (5), Stats., should more precisely cite to par. (a) of that subsection.

2. Form, Style and Placement in Administrative Code

- a. The introductory clause in the rule caption requires the following changes:
 - (1) Under the provisions amended by the proposed rule, remove s. DCF 102.10 (4), as SECTION 7 repeals, rather than amends, that subsection.
 - (2) Under the provisions amended by the proposed rule, remove s. DCF 201.08 (3) (a) 4., because SECTION 48 does not affect that subdivision.
 - (3) Under the provisions repealed and recreated by the proposed rule, remove s. DCF 201.08 (2) (Note), as SECTION 47 repeals s. DCF 201.08 (2) in its entirety, which inherently includes the notes under sub. (2) (d) and (f). Relatedly, remove the reference to “(Notes)” in the treatment clause for SECTION 47.
 - (4) Under the provisions created by the proposed rule, remove s. DCF 201.02 (15g), as the proposed rule does not create that subsection.
- b. At the close of the introductory clause in the rule caption, add the phrase “and affecting small business”. [s. 1.02 (1) (c), Manual; s. 227.15 (1m), Stats.]

c. In the rule summary's explanation of agency authority, the citations to s. 49.155 (6g) (a) 5., Stats., and 45 C.F.R. Part 98 should be removed. Those sources are not cited in the rule summary's listing of statutory authority and do not confer rulemaking authority. Instead, those provisions are part of the general requirements that are interpreted by the department's rule.

d. Section DCF 201.02 (1d), (1g), and (1r) should be numbered as subs. (1e), (1m), and (1s), as used in the alphabetic numbering composite for three insertions. [s. 1.03 (5) (b) (Note), Manual.]

e. Section DCF 201.02 (17g) should be numbered as sub. (17e), as used in the alphabetic numbering composite for three insertions. Subsection (17m) already exists in the current rule, and the proposed rule also creates sub. (17s). [s. 1.03 (5) (b) (Note), Manual.]

f. In SECTION 24 of the proposed rule, the treatment clause should include reference to the amendment of s. DCF 201.036 (4) (title), as already reflected in the introductory clause in the rule caption.

g. In s. DCF 201.036 (5) (b), the department could consider dividing the paragraph into subunits and creating introductory language, such as "all of the following apply:".

h. In s. DCF 201.037 (1), consider removing the titles for pars. (a) and (b), numbering par. (b) 1. as par. (b), and numbering the remaining subdivisions in par. (b) as pars. (c) to (k).

i. In s. DCF 201.037 (1) (a), the phrase "date that the" should be removed, as it is redundant with "the date of" in sub. (1) (intro.). Each subunit following an introduction should form a complete sentence when read with the introduction. [s. 1.03 (3), Manual.]

j. In s. DCF 201.08 (3) (a) 6. and 7., the grammatical format should be revised to match the format of sub. (3) (a) 1. to 5. Each subunit following an introduction should form a complete sentence when read with the introduction. [s. 1.03 (3), Manual.]

k. The department should consider including an initial applicability clause to provide guidance as to how the new rule applies to current participants in the child care subsidy program. [s. 1.02 (3m), Manual.]

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

a. In s. DCF 102.10 (5), consider removing the reference to ch. 227, Stats., as the term "fair hearing" does not appear in that chapter. Also, the department could consider referencing only s. DCF 201.065, as references to ch. 227, Stats., and ch. HA 3 already exist under s. DCF 201.065 (2) (c) 1.

b. In s. DCF 201.02 (21), for clarity, the department could consider modifying the proposed new definition for "temporary break" to simply cross-reference the definition under s. 49.155 (1) (cm), Stats., as the definitions are nearly identical. [s. 1.01 (7) (d), Manual.]

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

a. In the summary of the rule, the department should consider explaining how each of the described provisions differs from current rule. This is done under a couple of the provisions, but could be stated for others. For example, the summary states the proposed rule provides a 12-month

authorization, but it is not specified how this changes the current rule, which already provides for annual renewal.

b. In the second-to-last paragraph of the rule summary's section titled "Co-payment amounts", the word "allow" before the word "repeal" should be removed.

c. In s. DCF 102.02 (11) and (12), consider restructuring each definition. It is awkward and confusing to have an alternative meaning within one sentence that requires interpretation of the purpose for which the term is used and does so by referencing a definition in different terminology. As an alternative to restructuring the definitions, consider adding the new terms within the applicable substantive provisions. For example, if cooperation as a condition of eligibility is intended, then s. DCF 102.03 (1) (a) (intro.) could be revised to state that, "Unless the W-2 agency or a child care administrative agency as defined in s. DCF 201.02 (3) determines that".

d. In s. DCF 201.02 (1g), the definition should be revised to identify how a person would know who is included in the assistance group. For example, consider adding a reference to eligibility as determined under s. DCF 201.036 (2).

e. In s. DCF 201.036 (2), insert the word "child" before "care administrative agency".

f. In s. DCF 201.036 (2m) (a) 2., insert the word "the" after "placed in".

g. In s. DCF 201.036 (2m) (a) 4., the department could consider clarifying the person or entity to whom the ownership of the asset must be unclear for the condition to apply, such as the parent applying for the child care subsidy or the child care administrative agency receiving the application.

h. In s. DCF 201.036 (2m) (b) 1., consider revising the definition of "agricultural land" to use similar language to that which exists for property tax purposes under s. 70.32 (2) (c) 1g., Stats. For example, the department could instruct that: "'agricultural land' includes buildings and improvements and the land necessary for their location and convenience, that is devoted primarily to agricultural use."

i. In s. DCF 201.036 (2m) (b) 2., the department should consider adding "a member of" prior to "the assistance group". The proposed text could be read to require exclusion of the value of agricultural land only when owned by the assistance group as a whole.

j. In s. DCF 201.036 (5) (e), consider clarifying whether the condition applies to all or any members of the assistance group. Circumstances could exist in which one member of an assistance group moves out of state but others do not. This same comment applies to s. DCF 201.037 (1) (b) 10.

k. In s. DCF 201.037 (1) (b) 6., consider replacing "gives the parent a discounted price" with more formal language, such as "charges a parent a reduced price" or other language that reflects the department's intent.

l. In s. DCF 201.039 (1), the department could consider the following changes:

- (1) Revising the title of par. (a) 2. from "12 months" to "Duration" or another title that better summarizes the text, as not all authorizations may continue for 12 months, pursuant to the exceptions set forth in the proposed rule.

- (2) Modifying the text in par. (b) 3. to match the sentence structure of the other subdivisions in that paragraph. For example, consider revising the sentence to “The date on which a parent’s school term will end” and adding a cross-reference to the corresponding approved activities under s. 49.155 (1m) (a), Stats. Relatedly, in subs. 1. and 2., consider using the phrase “the date on which” rather than “the date that”.
- (3) Modifying the text in par. (d) to expressly grant authority to issue a revised authorization, similar to the authority to issue an authorization under pars. (b) (intro.) and (c) (intro.).

m. In s. DCF 201.039 (2g) (a) 2. and (b) 1., both instances of the phrase “under s. 49.155 (1m) (a) (intro.), Stats.” should be removed for consistent usage of the phrase “approved activity” that is defined in the proposed rule.

n. In s. DCF 201.039 (11) (a) 1. (intro.), the department could consider referencing a parent’s eligibility under s. DCF 201.036, in addition to s. 49.155 (1m), Stats., to be consistent with the inserted text in sub. (4) (a).

o. The department could consider amending s. DCF 201.039 (11) (a) 1. a., which is currently unaffected by the proposed rule, to address the situation created by the changes in SECTION 42, in which the 30-day period is triggered by the parent’s eligibility redetermination date, rather than a parent submitting a request for assistance.

p. In s. DCF 201.04 (2) (ar), the department could consider whether to address reductions in quality rating other than a reduction from a three-star rating to a two-star rating.

q. In s. DCF 201.08 (4) (a), consider changing the proposed title from “More hours” to “Increased hours”. Also, the comma at the end of that paragraph should be replaced with a period.