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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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**Scott Grosz**  
Clearinghouse Director

**Anne Sappenfield**  
Legislative Council Director

**Margit Kelley**  
Clearinghouse Assistant Director

## CLEARINGHOUSE RULE 21-100

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

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

a. The department should amend the introductory clause to conform to the treatment clauses for each SECTION of the proposed rule, including any changes made in response to these comments. Examples of changes to the introductory clause include the following:

- (1) In the list of sections to amend:
  - (a) Replace the reference to s. DCF 250.04 (8) (b) with reference to s. DCF 250.04 (8) (b) (intro.).
  - (b) Delete the reference to s. DCF 250.05 (2) (e) 2. a. and b., as the treatment clause for SECTION 17 refers only to s. DCF 250.05 (2) (e) 2.
  - (c) Modify the reference to s. DCF 250.07 (6) (k) (Note) to reference (Note 1), consistent with the treatment clause for SECTION 32.
  - (d) Replace the reference to s. DCF 251.04 (1) (g) with reference to sub. (3) (g).
  - (e) Replace the reference to s. DCF 251.04 (8) (b) with reference to (8) (b) (intro.), consistent with the treatment clause for SECTION 54.
  - (f) Delete the reference to s. DCF 251.05 (3) (e) 5. a. and b., as the treatment clause for SECTION 63 refers only to s. DCF 251.05 (3) (e) 5.
  - (g) Add references to ss. DCF 251.05 (3) (j) 2. (Note) and 251.11 (10).
- (2) In the list of sections to repeal and recreate, replace the reference to s. DCF 250.01 (6) (a) 1. and (Note) with reference to s. DCF 250.04 (6) (a) 1. and (Note).
- (3) In the list of sections to create:
  - (a) Replace the reference to s. DCF 250.04 (4) (c) 3. with reference to s. DCF 250.04 (4) (c) 2. e.

(b) Remove the parentheses following the reference to s. DCF 250.07 (6) (h) 4m.

b. When providing a comparison to adjacent states in the proposed rule's analysis, the department could consider providing examples of other comparisons, as feasible, given that the proposed rule addresses several issues beyond radon testing and continuing education requirements.

c. A heading for "Text of Rule" should be inserted before SECTION 1 of the proposed rule, similar to the title for the "Analysis Prepared by the Department of Children and Families".

d. In SECTION 1 of the proposed rule, the treatment clause should refer to s. DCF 250.03 (1r), not just sub. (1r). [s. 1.04 (6), Manual.]

e. In SECTION 18 of the proposed rule, the department may consider including introductory text for s. DCF 250.05 (3) (gm), as the provisions in sub. (3) (gm) 1. to 3. all relate to program aides. For example, sub. (3) (gm) (intro.) could state: "A program aide shall do all of the following:" and then modify the subunits accordingly.

f. In light of the treatment of SECTIONS 26 and 27, the current s. DCF 250.06 (4) (a) (Note) should be renumbered to s. DCF 250.06 (4) (am) (Note). The listing of affected provisions in the introductory clause for the proposed rule should also be updated to reflect this change.

g. In s. DCF 250.07 (6) (a) 4. that is recreated in SECTION 30 of the proposed rule, subdpar. c. and d. should reflect that those requirements apply to a child who appears to be ill. Alternatively, the department could reduce the number of subunits by rephrasing and merging the sentences that currently appear as subdpar. c. and d. within subdpar. b. For example, at the end of subdpar. b., the text could read: "If that child is one year of age or older, the child shall be provided...If that child is under one year of age, the child shall be placed in...".

h. The treatment clause for SECTION 32 of the proposed rule should reflect the correct citation for the Note affected, that being s. DCF 250.07 (6) (k) 1. (Note 1). Also, in the Note, the word "department" should be capitalized to reflect the current code.

i. To reduce length and use of subunits, the department could consider merging the two subunits in SECTION 37 into one paragraph. For example, sub. (2) (ar) could read: "A person may not be issued a license to operate more than 2 family care centers, unless the license for each center was issued prior to the effective date of this subdivision... [LRB inserts date].".

j. The following SECTIONS could be merged into single SECTIONS of the proposed rule: SECTIONS 45 and 46; SECTIONS 47 and 48; and SECTIONS 92 and 93. [s. 1.03 (2) (c) 2., Manual.]

k. In s. DCF 251.07 (2) (a) 1., amended in SECTION 84 of the proposed rule, the final period should be shown without underscoring.

l. In s. DCF 252.42 (1) (a) 2., amended in SECTION 105 of the proposed rule, the stricken material should be shown contiguously, followed by the underscored material.

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

a. In the proposed rule's analysis, the citation for the rule's statutory authority should read "Section 48.67 (intro.), Stats."

b. In s. DCF 251.094 (5) (c) (intro.), replace the reference to “s. DCF 251.05 (3) (g) 2. and 3.” with “s. DCF 251.05 (3) (g) 2. or 3.” to reflect the alternatives provided by those subdivisions.

c. In s. DCF 251.095 (5m) (a) 7. and 8., consider clarifying whether the remaining portions of the cross-referenced rules remain applicable, in light of drafting approach used in subd. 3.

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

a. In the proposed rule’s analysis, remove the hyphen when referencing school buildings in the fourth paragraph of the summary of the proposed rule.

b. In SECTION 5 of the proposed rule, the now first sentence in s. DCF 250.04 (2) (g) should begin with a verb so that the subunit maintains grammatical consistency with sub. (2) (intro.) and the other subunits. For example, the department could consider re-phrasing the first sentence to state: “Maintain liability insurance on the child care business if cats or dogs are allowed in areas accessible to children during the hours of operation.”. If amending that sentence, the department could also consider replacing “hours of operation” with “licensed hours” to employ a defined term and maintain consistency with other changes in the proposed rule.

c. SECTIONS 7, 49, and 101 of the proposed rule create obligations for each type of licensee to report to the department unexpected closures lasting more than two weeks, within 24 hours after the closure. The department could consider addressing situations in which a licensee does not know within 24 hours of an unexpected closure that the closure will last more than two weeks.

d. In SECTIONS 9, 41, and 104, the department could consider deleting the adjective “inappropriate” describing “guidance”, to eliminate any argument that use of guidance prohibited under the cross-referenced provisions was appropriate.

e. In SECTIONS 11, 53, and 102 of the proposed rule, the department should add “the child’s” before medical conditions, to provide clarity and match the drafting style of the other subunits.

f. In SECTION 11 of the proposed rule, the department could consider replacing “child care provider” with “provider” to shorten the text and use the defined term, and also replace “child care staff” with the appropriate terms or titles. In the corresponding provisions in SECTIONS 53 and 102, the department should replace “child care provider” and “child care staff” with the appropriate terms based on the relevant code chapter.

g. In the Notes amended in SECTIONS 12 and 19 of the proposed rule, the department could clarify that a licensee may use its own form, as included in several other Notes addressed in the proposed rule. Alternatively, the department could omit references to the authorized use of a licensee’s own form in the other Notes.

h. With respect to the current code language referenced in SECTION 15 regarding the Registry’s certificate, the department could specify the relationship between the two alternative deadlines – specifically, whether the certificate must indicate a person is qualified by the later, or earlier, of the two deadlines provided.

i. In SECTIONS 25 and 76 of the proposed rule, the department could consider replacing “caring” with “providing care” to use the defined term of “care”.

j. The department could consider use of active voice in the provision created by SECTION 31, such as: “Children shall be clothed in appropriate clothing when outdoors. The center shall maintain a selection of warm outer garments for a child’s use, if a child’s parent does not provide appropriate clothing.”.

k. By deleting the phrase “in a group child care center” from the definition of “child care worker” in SECTION 41 of the proposed rule, it appears that the rules no longer contain provisions that, by definition, tie the role of child care teacher and assistant child care teacher to work in group child care centers. The department could consider maintaining that phrase and instead defining “child care worker” as “in a group child care center, a child care teacher or assistant child care teacher, or, in a school-age program, a school-age program leader or a school-age group leader”.

l. The definition of “program aide” in SECTION 46 should be reconciled with that position’s description in SECTION 64, as the former provides that a program aide works under the supervision of a center director or child care teacher, while the latter provides that the program aide must work under the direction and supervision of only a child care teacher.

m. The definitions for “school administrator” and “school-age director” created in SECTION 46 suggest a more limited function for those roles, as compared to the scope of those positions’ roles created in SECTION 89 of the proposed rule, while some of the other definitions created in SECTION 46 align more closely with the description in SECTION 89. The department should consider using a consistent approach for clarity.

n. The definition of “school-age program aide” in SECTION 46 should be reconciled with that position’s description in SECTION 89, as the former provides that a school-age program aide works under the supervision of a school-age director or school-age program leader, while the latter provides that the school-age program aide must work under the direction and supervision of only a school-age program leader.

o. When amending s. DCF 251.05 (2) (a) 4. d. in SECTION 59 of the proposed rule, the department should consider also inserting “child care” in the referenced titles, to employ the defined terms of “assistant child care teacher” and “child care teacher”.

p. In s. DCF 251.05 (3) (gr) 3. b., created in SECTION 64, the word “only” should be deleted to employ the defined term “school-age program”. Alternatively, if the department intends for subd. b. to apply to centers that serve only school-age children, consider including this provision in s. DCF 251.094 or 251.095, where appropriate.

q. In SECTION 67, replace “or” with “and”, to ensure that each type of professional is required to participate in 15 hours of annual continuing education, if consistent with the department’s intent.

r. In s. DCF 251.06 (6) (b) 2., consider specifying that the annual tests for nitrate levels must be performed by a laboratory certified under ch. ATCP 77, similar to SECTION 28’s treatment of s. DCF 250.06 (6) (b) 2.

s. In s. DCF 251.06 (6) (b) 3. (Note), insert “office” after “Department of Natural Resources” similar to s. DCF 252.43 (4) (b) 2. (Note).

t. In s. DCF 251.094 (2) (c), replace “school administrator” with “school-age administrator” to employ the defined term.

u. In s. DCF 251.094 (2) (d) 1. (intro.), replace the comma with a colon.

v. In s. DCF 251.094 (2) (d) 2., a person employed as a school-age administrator prior to the rule’s effective date is exempt from certain preservice training requirements. However, the proposed rule appears to create the defined term, and role of, a “school-age administrator”. The department should consider whether a reference to a different title under current law is appropriate or whether other clarity is needed. The same comment applies to s. DCF 251.094 (3) (d) relating to school-age directors.

w. In s. DCF 251.094 (4) (c) (intro.), insert a hyphen between “school” and “age”.

x. Insert a comma at the end of s. DCF 251.094 (6) (c) 1.

y. In s. DCF 251.095 (4m) (intro.), consider clarifying that the provisions do not apply to school-age programs to which the section applies, as specified in sub (1m).

z. In s. DCF 252.43 (4) (b) 2. (Note), capitalize “department of natural resources”.