

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 94-204

### 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 October 1994.]**

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

- a. Section HSS 38.03 (26) incorporates a standard by reference. See s. 2.08, Manual, for a description of agency requirements when this is done.
- b. In s. HSS 38.04 (5) (d), “these” should replace “such.”
- c. In s. HSS 38.05 (intro.), “following” should be inserted after “The” and a colon should replace the period at the end.
- d. In s. HSS 38.07 (2), “may” should replace “shall have the authority to.”

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

- a. In the last paragraph of the department’s analysis to this rule, it would be helpful to include a citation to the particular subsection of s. 48.62, Stats., that is being interpreted.
- b. In s. HSS 38.04 (5) (c), it is suggested that a citation to the rule that provides for appeals of license denials be added at the end.
- c. In s. HSS 38.09 (2), the reference to rule chs. SFC 1 to 7 and 20 should be changed to refer just to ch. SFC 3, which contains the social worker certification provisions.
- d. Section HSS 38.10 (1) (e) (intro.) requires a providing agency to notify the superintendent of schools in the school district when a child who is two years or older is placed in a

treatment foster home located in that school district. The provision cites s. 48.64 (1r), Stats., as the authority for this requirement. That provision was created in 1993 Wisconsin Act 395. It provides that when an agency (defined as the department, a county department or a licensed child welfare agency authorized to place children in foster homes or treatment foster homes) places a school-aged child in foster home or a group home, the agency must notify the clerk of the school district in which the foster home or group home is located that a school-aged child has been placed in a foster home or group home in the school district. The provision makes no mention of reporting placements in treatment foster homes, nor does it mention children as young as age two, but rather refers to school-age children.

1993 Wisconsin Act 446, which made a number of changes in s. 48.64, Stats., and which took effect a week after Act 395, did not amend s. 48.64 (1r), Stats., to add a reference to a child in a treatment foster home, as it did in several other subsections of s. 48.64, Stats. It appears that this is a drafting oversight for which the department may wish to seek a correction through legislation. Also, what is the rationale for the rule requirement pertaining to a child who is age two or older, while the statutory provision pertains only to school-age children?

It should be noted that the same statutory drafting problem occurs in s. 48.62 (3), Stats., cited in s. HSS 38.10 (2) (i). As with s. 48.64 (1r), Stats., s. 48.62 (3), Stats., was created in Act 395 and neither that Act, nor the subsequent amendment of that provision in Act 446, includes any reference to treatment foster homes.

e. Section HSS 38.10 (3) (j) contains a reference to ch. HSS 37 which is a proposed rule (Clearinghouse Rule 93-230) currently in the legislative standing committees for review. The department should make sure that that rule chapter is promulgated before or at the same time as this rule or else this rule will contain a citation to a nonexistent provision. The department should note, in its analysis, that a citation to a rule not yet promulgated is made in this rule. Finally, the citation should be changed to refer to the specific provision of ch. HSS 37 that contains the requirement being discussed in this rule.

f. In s. HSS 38.10 (5) (b) 16, the statutory citation on the last line should read “s. 48.64 (4) (a), Stats.” (emphasis added).

g. In s. HSS 38.11 (3), it would be helpful if citations to the “applicable state and federal standards” for level or ramped entrances were provided.

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

a. A phrase such as “or any requirement that is statutory” should be added at the end of s. HSS 38.02 (2).

b. In s. HSS 38.02 (2) (b), what is the licensing agency required to do when it receives a request for an exception to a requirement of ch. HSS 38? Is it required to respond in writing? Within a particular period of time? Is it required to give an explanation if it denies the request for an exception?

c. How does the “aftercare plan” in s. HSS 38.03 (1) differ from the “permanency plan” in s. HSS 38.03 (21)?

d. Section HSS 38.03 (6) defines “case management” as “the functions which include:” and then goes on to list a number of activities that are components of case management. There is no indication as to who is responsible for carrying out those case management functions. Is there is a “case manager” designated in every case? Since that term appears in subsequent provisions, a definition of “case manager” should be included in s. HSS 38.03. Also, the various duties of the case manager should be set forth in a single location so it is clear what that person’s responsibilities are.

The first case management function listed is supervision of a child’s treatment and permanency plans. Since, under s. HSS 38.10 (3) (b), the providing agency social worker is the treatment team coordinator, would that social worker be considered to be the person charged with responsibility for supervision of a child’s treatment and permanency plans? If so, would that social worker be referred to as the child’s “case manager”? It should be made clear who is responsible for the various case management functions set forth in sub. (6). Also, are all the listed functions supposed to be provided to every child in treatment foster care?

e. In s. HSS 38.03 (6) (h), a hyphen should be inserted in the phrase “24 hour.”

f. In s. HSS 38.03 (9), should the “clinical consultant” be a person with at least a master’s degree in social work, psychology or child development? The way the language is currently drafted, the term could be interpreted as being limited to persons who have just a master’s degree, rather than a more advanced degree.

g. In s. HSS 38.03 (16), how is a “foster child” different from a “child in care” in sub. (8)?

h. In s. HSS 38.03 (17), it is suggested that the word “child’s” be inserted after the word “the” on line 3.

i. To condense the definition of “treatment foster care” in s. HSS 38.03 (28), it is suggested that it be redrafted to read as follows:

“Treatment foster care” means a foster family-based and community-based approach to treatment for children with physical, mental, medical, alcohol or other drug abuse, cognitive, intellectual, behavioral, development or similar problems, which is designed to change the behaviors or ameliorate the conditions which, in whole or in part, resulted in the child’s separation from his or her family. The approach utilizes specially selected and specifically trained treatment foster parents who, as members of a treatment team, have shared responsibility for implementing the treatment plan as the primary change agents in the treatment process.

j. Section HSS 38.03 (29) refers to a treatment foster home required to be licensed under “s. 48.62, ch. HSS 56 and this chapter.” However, in s. HSS 38.03 (18), the definition of “licensee” refers to a person being licensed under “s. 48.62, Stats., and this chapter,” but not to ch. HSS 56. These two provisions should be reviewed and consistent references to appropriate licensing authority should be used. Also, the word “Stats.” should be inserted after the statutory citation on line 2.

k. In s. HSS 38.04 (1), reference is made to a form provided by the licensing agency. Is that a form developed by the licensing agency or is it developed by the department and provided to licensing agencies?

l. Section HSS 38.04 (8) (a) states that while a treatment foster home may provide care and maintenance for up to four children, the licensing agency may license the home for fewer than four children. It is suggested that this language be reworded to avoid the implication in the first clause that a treatment foster home may care for as many as four children, despite being licensed for fewer than four children.

m. In s. HSS 38.04 (8) (b), it is suggested that the phrase “already placed” be inserted after the word “children” on line 3. Also, “If” should replace “In the event that” here and in s. HSS 38.10 (5) (b) 7.

n. In s. HSS 38.06 (7) (a), the word “their” should be changed to “his or her.”

o. In s. HSS 38.07 (4), should the word “fund” on line 3 be changed to “find”?

p. In s. HSS 38.07 (1), the final line should read “respite care include an overnight stay.”

q. In s. HSS 38.08 (2) (b), it appears that the phrase “a child” on line 2 should read “the child’s.”

r. In s. HSS 38.09 (1) (a), a period should be inserted at the end of the sentence.

s. In s. HSS 38.10 (2) (a), it is suggested that the word “homes” on line 1 be changed to “parents.”

t. Section HSS 38.10 (3) contains information relating to providing agency social workers. Since sub. (1) of that provision also relates to providing agencies, it is suggested that the language in sub. (3) be moved to follow the language in sub. (1), to consolidate information about providing agencies. If that change is made, sub. (2) relating to licensing agencies, would become sub. (3).

u. Section HSS 38.10 (5) should be renumbered s. HSS 38.10 (4), as there is currently no sub. (4) in the rule.

v. In s. HSS 38.10 (5) (a) 1, how many representatives from the providing and purchasing agencies must participate in the treatment team? Is one from each agency sufficient? Also, in that subdivision, the last “and” should be changed to “or.”

w. Section HSS 38.10 (5) (b) sets forth a number of items for which the treatment team for a child in care must be responsible. Subdivision 2 provides that the team must develop a goal-oriented treatment plan for the child and his or her family within 30 days after the child’s placement in the treatment foster home. Later, subd. 17 provides that the team must develop a written treatment plan which reviews and establishes precise goals for all aspects of the child’s life and then sets forth six aspects of the child’s life that must be addressed. Further, s. HSS

38.12 (3) sets forth additional requirements relating to the treatment plan. It is suggested that these three provisions relating to the treatment plan, as well as any others, be consolidated so that all requirements relating to that plan appear in one location in the rule.

x. In s. HSS 38.10 (5) (b) 9, for consistency with previous subdivisions, it is suggested that the word “parent” on line 2 be changed to “family.”

y. In s. HSS 38.10 (5) (b) 18, it is suggested that the word “assurance” on line 1 be changed to “assuring” and the comma on line 2 be replaced by the word “and”, for greater readability.

z. In s. HSS 38.11 (2) (b), what is meant by “the main rooms” of the home? These rooms should be specified.

aa. In s. HSS 38.11 (4) (a), for consistency with previous provisions, it is suggested that the word “complete” on line 5 be changed to “full.”

ab. Section HSS 38.11 (5) (b) (intro.) states that no foster child seven years of age or older may regularly sleep in a finished basement bedroom or in a bedroom above the second floor of a single-family dwelling unless certain specified conditions are met. This language implies that children younger than age seven may sleep in those settings. Since this is surely not the intended meaning of this provision, it should be rewritten to clarify that only a foster child age seven years or older may sleep in one of those areas if all of the stated conditions are met.

ac. In s. HSS 38.12 (3) (b), to whom must the treatment plan be distributed? Is it just to members of the treatment team or do other individuals also receive the plan?

ad. Section HSS 38.12 (3) (c) states that additional team meetings shall be convened at the discretion of the providing or purchasing agency and that any team member may request either agency to convene a team meeting. Since the providing agency social worker is designated as the team coordinator, pursuant to s. HSS 38.10 (3) (b), should that person be specifically mentioned as one who is permitted to convene the treatment team?

ae. In s. HSS 38.14 (1), what is meant by the statement that “(i)ntial and ongoing training for treatment foster parents shall be provided or arranged for by the licensing agency and shall be provided”? The second “shall be provided” is repetitive and could be deleted. If there is an additional requirement intended, it should be clearly stated. Also, do all adults in the treatment foster care home have to take the training or would there be situations in which one spouse of a married couple living together would be considered the treatment foster parent while the other spouse would not? It is suggested that the training provisions in s. HSS 38.14 be clarified to indicate exactly who is required to obtain initial and ongoing training.

Also, the sentence and several others in the rule need to be rewritten in the active voice. [See s. 1.01 (1), Manual.] For example, this sentence should begin with: The licensing agency shall provide or...” Also, see s. HSS 38.14 (1), (2) (a) and (3) (c).

af. In s. HSS 38.14 (2) (d), the phrase “those treatment foster parents” on line 3 should be changed to read “that treatment foster parent.”

ag. Section HSS 38.14 (2) (e) (intro.) states that the following topics “shall be considered for inclusion” in the initial training. Does that mean that not all of the topics that follow must be included in the initial training? If they must be included, the phrase should read “shall be included.” The same comment applies to the language in s. HSS 38.14 (3) (b) (intro.).

ah. In s. HSS 38.14 (3) (a), it is suggested that the phrase “after initial training” on line 2 be moved to the beginning of the sentence. If that is done, the comma following the word “hours” on line 2 should be deleted.

ai. In s. HSS 38.14 (3) (b) 4, what is the “Choice-making” supposed to relate to? Choices about what?

aj. In s. HSS 38.14 (4) (a), what is meant by “Side-by-side” consultation? Does it mean individual consultation?

ak. In s. HSS 38.15, what is meant by the statement that treatment foster parents and specified staff “shall have the opportunity to develop written evaluations”? Does it mean that they are required to develop such evaluations? It appears that this is the case, since the provision goes on to state that the evaluations shall be the basis for discussions designed to improve the quality of the treatment foster care program. It is suggested that the phrase be reworded.