



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-101

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 September 1998.]

1. Statutory Authority

With regard to s. HFS 50.06 (3) (a), as renumbered, it should be noted that eliminating the current rule requirement for an annual review of the need for continuing, temporarily suspending or adjusting adoption assistance cannot pertain to adoption assistance agreements that have been amended, since s. 48.975 (4) (bm), Stats., *requires* that the department annually review any adoption assistance agreement that has been amended.

2. Form, Style and Placement in Administrative Code

a. In s. HFS 50.03 (1), the word “department” is unnecessarily stricken through on line 2 and then re-inserted and underscored on line 3. See s. 1.06 (1), Manual, on striking and underscoring material.

b. It is unclear why s. HFS 50.03 (2) (a) (intro.) is set forth in the rule, since it is not amended. Does the department intend instead to show the repeal of sub. (2) (a) 1., which appears to have been eliminated in the rule?

c. In SECTION 7, two or more subunits of the same rule section are affected by *different* treatments and therefore must be treated separately, in numerical order, in separate SECTIONS of the draft rule, pursuant to s. 1.04 (2) (b), Manual. Following are the correct treatment clauses for the material currently contained in SECTION 7:

- SECTION 7. HFS 50.06 (3) (a) (intro.) is renumbered HFS 50.06 (3) (a) and amended to read:

- SECTION 8. HFS 50.06 (3) (a) 1. is repealed.
- SECTION 9. HFS 50.06 (3) (a) 2 is renumbered HFS 50.06 (3) (b).
- SECTION 10. HFS 50.06 (3) (a) 3. is renumbered HFS 50.06 (3) (c).
- SECTION 11. HFS 50.06 (3) (b) is renumbered HFS 50.06 (3) (d).

The remaining SECTIONS of the rule should be renumbered accordingly, taking into account the renumbering suggested in the following comment.

d. A similar problem occurs in current SECTIONS 9., 10., and 11. The treatment clauses for those SECTIONS should be as follows:

- SECTION 13. HFS 50.08 (1) (title) and (intro.), (a) (intro.), (b) 1. and 2., (d) and (e), (2) (intro.) and (b), (3) (title), (intro.) and (a), (4), and (7) (a) to (f) are amended to read:
- SECTION 14. HFS 50.08 (7) (g) is repealed.
- SECTION 15. HFS 50.08 (8) is amended to read:
- SECTION 16. HFS 50.08 (9) is created to read:

The remaining SECTIONS of the rule should be renumbered accordingly.

e. In s. HFS 50.08 (1) (b) 2., the stricken-through “children” on line 1 should be retained and the underscored “children” should be deleted.

f. In s. HFS 50.08 (7) (e), an “and” should be inserted after the semicolon on line 2.

g. The treatment clause to SECTION 13 (as currently numbered) should be rewritten to read: “HFS 50.09 (1) (intro.) and (2) (title), (intro.), (a) (intro.), 1. and 2. and (b) are amended to read:”.

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

a. The following comments pertain to the rule analysis:

- (1) On line 3, the “or” should be changed to “and.”
- (2) On line 4 (and in s. HFS 50.06 (3) (a) and the attachment to the fiscal estimate), reference is made to the department *biannually* notifying parents of certain responsibilities. This means notification twice a year. Is that the department’s intent, or is *biennial* notification (once every two years) intended? If so, the language should be revised throughout.
- (3) On line 13, reference is made to documentation concerning “other inappropriate pre-natal care.” Since the language relating to prenatal care is deleted in s. HFS 50.01 (4) (j) 4. (in SECTION 3), it should also be deleted from the analysis (and the fiscal estimate).

b. In s. HFS 50.01 (4) (g) and throughout the rule, the term “photo listing” is written as two words, while it is written as one word in the corresponding statute, s. 48.975 (5) (e), Stats. For consistency, it should be one word in the rule as well. Also in this provision, does the term “publication” continue to work, given the elimination of “book” from the definition of “adoption photo listing” to allow for alternative methods of photo listing, such as the Internet? Would “document” be more appropriate?

c. A comma should be inserted after “renumbered” in the treatment clause to SECTION 3.

d. Language is added in s. HFS 50.01 (4) (j) 4. (as renumbered) to state that the documented evidence of drug or alcohol use must be in a medical or hospital record. Is there a reason why the same change is not made in s. HFS 50.01 (4) (j) 2., which pertains to providing documented information that a birth parent has a medical diagnosis or medical history which could have an impact on the child? Also, is it possible that evidence of drug or alcohol use would be documented in a *court or social service agency* record, rather than in a medical or hospital record, and if so, why would that not be acceptable documentation? Finally, what is the rationale for eliminating the language regarding a birth mother not having practiced appropriate prenatal care as possibly leading to a child developing special needs? See also comment a. (3), above, regarding this language.

e. In the treatment clause to SECTION 4, an “and” should be inserted before the “(2).”

f. In s. HFS 50.03 (1) (c), does the inserted phrase “or if required by federal law, a private adoption agency” mean that federal law only requires payment of adoption assistance for children in the guardianship of a private adoption agency in certain circumstances, and not in others? It is noted that the corresponding statute [s. 48.975 (4) (a), Stats.], refers more generally to paying adoption assistance for a child who is in the guardianship of the department or “other agency authorized to place children for adoption” and does not contain the qualifying reference to federal law with respect to private adoption agencies. Therefore, it is unclear why the department is limiting the rule language in this way. Further, it is unclear from the amended rule language who makes the decision that the child cannot return to the home if the child is in a private adoption agency, since the agencies listed as making that decision are the department, a county department, or a tribal agency. Finally, to avoid unnecessary repetition, the “a” and “an American Indian” could be deleted on line 5, as could “in this state” on line 6.

g. The reference in s. HFS 50.03 (1) (d) to “federal legislation” mandating payment of adoption assistance should be changed to “federal statutes, regulations or guidelines,” for consistency with s. 48.975 (5) (a), Stats. Also, it would be helpful if the rule (or at least the analysis or a note) indicated the circumstances under which federal law *does* mandate payments for children brought into the state for adoption under the interstate compact.

h. In s. HFS 50.08 (1) (b) 2., to avoid repetition, the second “information” on line 3 could be changed to “a description of.”

i. In s. HFS 50.08 (1) (d), a comma should be inserted after the “list” on line 1.

j. To be more concise, the second sentence of s. HFS 50.08 (3) (a) could be rewritten to read: “The information included with the photolisting for a child shall concisely describe the child in a positive and uniform manner.”

k. In s. HFS 50.08 (7), the language in pars. (a) and (b) is identical, as amended. It appears that par. (b) should instead be repealed.

l. In s. HFS 50.08 (7) (f), “needed” should be changed to “requested,” so that the agency required to report would be on notice of the additional information the department needed to manage the program.

m. In the treatment clause to SECTION 12 (as currently numbered), the “is” should be changed to “are.”

n. The Note to s. HFS 50.09 should conclude with a period.

o. In s. HFS 50.09 (1), the citation “s. HFS 50.09 (4)” should be replaced by the citation “sub. (4).”