



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-052

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 2002.]

2. Form, Style and Placement in Administrative Code

a. In s. HFS 45.04 (2) (d), for clarity, the provision should read: “Prior to receiving or continuing a license, complete all application forms and pay all fees and forfeitures due and owing.” Also, is it “fees and forfeitures due and owing” to the department or does this encompass other fees and forfeitures? The provision should be clarified.

b. In s. HFS 45.04 (2) (i) and elsewhere in the rule, “shall” should replace “must.”

c. In s. HFS 45.04 (3) (intro.), “all of the following” should be inserted after “report.”

d. Section HFS 45.04 (6) (a) 4. should be written as one sentence: “Documentation of each child’s immunization history and, except for a school-aged child, the most recent physical examination.”

e. In s. HFS 45.05 (1) (a), the title is not adequate since the provision deals with more than the subject of age. In par. (b), “(CPR)” should be deleted in the first sentence and “cardiopulmonary resuscitation” should be substituted for “CPR” in the second sentence.

f. Since references in ch. HFS 46 to “day care” are being changed to “child care,” ch. HFS 46 (title) should be similarly changed.

g. In s. HFS 46.01 and throughout the remainder of the rule, the proper form for indicating an amendment is “~~day~~ child”, with a space between the stricken word or words and the created word or words.

h. In SECTION 58, since only subds. 3. and 6. are being amended, the treatment clause should read: "SECTION 58. HFS 46.06 (11) (b) 2. b. to d. and 3. a. to d. are renumbered HFS 46.06 (11) (b) 3. to 9., and HFS 46.06 (11) (b) 3. and 6., as renumbered, are amended to read:". Then only the provisions that are being amended should be included in the draft (i.e., subd. 3. and 6.).

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

a. Since the department is repealing and recreating ch. HFS 45, cross-references to provisions in that chapter may need to be changed. For example, s. HFS 52.45 (3) (b) refers to s. HFS 45.07; the correct cite under the new rule is to s. HFS 45.09. The department should correct this.

As another example, s. DWD 58.04 (3) (f) refers to s. HFS 45.04 (1). The department should notify the Department of Workforce Development that this is no longer accurate.

Similarly, other rules of the department refer to "day care centers" under ch. HFS 45 or 46. The department may wish to change those rules to refer to "child care centers."

b. In s. HFS 45.04 (2) (f) and (g), "HFS" should be inserted before the code provisions cited [e.g., s. HFS 45.05 (2) (a)].

c. In the note to s. HFS 45.07 (2) (d), "HFS 45.04 (3) (i)" should replace "HFS 45.04 (3) (h)."

d. In the note to s. HFS 46.05 (1) (j) 4., "HFS 46.11 (1) (f)" should replace "HFS 46.11 (1) (d)."

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

a. In s. HFS 45.02 (1) (a), "that includes" should be substituted for "including." In par. (g), the parenthetical "(TANF)" and "(W2)" should be deleted. In sub. (2), "pertinent provision in this chapter" should be substituted for the final word "rule."

b. In s. HFS 45.03 (7), "of the premises" should be inserted after "within 5 minutes." In sub. (8), "who" should be substituted for "that." Also, should "supervision to" be "supervision of"? In sub. (9), "not less than 4 nor more than 8" should be substituted for "between 4 and 8." In sub. (11) (c), "judgement" should be "judgment." In sub. (21), "Night Care" should be "Night care." In sub. (26), "in the center" should be inserted after "children."

c. In s. HFS 45.04 (2) (i), what does "accessible to the parent" mean? In a good location? This should be clarified. In sub. (3) (c), "the locations on the premises" should be inserted after "affect." Also, in the note to this provision and throughout the notes in the rule, unless it is at the beginning of a sentence, "section" or "sections" should just be "s." or "ss." The entire rule should be reviewed to make this change. In par. (d), what date is being referred to in the phrase "by the specified date"? And specified by whom? In pars. (f), (g), and (i), for

consistency, “incident” should be substituted for “occurrence.” In sub. (6) (a), parentheses should not be used, the phrase can be set off by using commas.

d. In s. HFS 45.05 (2) (a) 5., “Sudden Infant Death Syndrome” should not be capitalized. In par. (b) (intro.), for clarity, the provision should read: “Each time an emergency situation occurs, each emergency back-up provider shall...alone with the children.” In par. (g), “approved” by whom? This needs to be clarified. In par. (h), “alcoholic” should be “alcohol.” In par. (k), “without prior authorization from a parent for release of the child to that person” should be substituted for “not previously authorized by the parent.”

e. In s. HFS 45.06 (2) (c), “any articles” should be substituted for “other articles.” In par. (f), “center” should be substituted for “home.” Also, the phrase “within 10 minutes of a phone call” needs further clarification. In par. (g), “passage through the bars” of what? What is being referred to here? In par. (k), second sentence, “on any surface on the premises” should be inserted after “used.” In sub. (4) (a), should the record be kept of the time and date of the test as well as the results of the test? In sub. (7) (a) 6. c. and (b) 1. and 3., “openable” is not a word. “Capable of being opened” or a variation of that phrase can be substituted. In sub. (11) (b) 3., is there a better term than “appliances”? What is being referred to by use of the term “appliances”? Is it meant to be restricted to the usual understanding of the term “appliances” (refrigerators, stoves, etc.)? In subd. 8., second sentence, “therefore” should be deleted. In sub. (12), par. (a) states that “Swimming pools may not be used by children in care,” but par. (c) states that “A swimming pool...that is not located on center premises may be used by children...” Should par. (a) state “Swimming pools on the premises of the center may not be used by children in care”? This current apparent conflict should be clarified. In par. (c) 4., is it clear what “on a pro-rata basis” means? In subd. 5., “tested” by whom?

f. In s. HFS 45.07 (1) (b) 1., “when not advisable for health reasons” refers only to outdoor playtime. Should it refer to both outdoor and indoor activities? Also, since “outdoor activities” is used in the first part of the sentence, “activities are” should be substituted for “playtime is.” In par. (c), does “Television” include videotapes and DVD’s? In sub. (2) (a), “clearly specified” should be substituted for “clear-cut.”

In sub. (4) (a), should the rule specify that the four hours are four consecutive hours? In par. (c), “(63.8 cm)” should be deleted. In par. (d), is “immediately” the appropriate word for when wet or soiled bags and bedding have to be washed? Is “as soon as possible” or a comparable phrase what is intended here? In sub. (6) (a) 3., “appropriate tests” conducted by whom (e.g., by a physician or local health department)? In par. (b), “a child who appears to be ill” should be substituted for “an apparently ill child.” Paragraph (g) 3. would be clearer if it read: “All providers...when exposed to a child’s blood or bodily fluids containing blood or other types of discharges from the child resulting from injury.” A similar comment applies to subd. 4. In par. (j) 1., “and diapers” should be “or diapers” and “or diapers” should be inserted after the last “clothing.” In par. (k), is it sufficient to say “contact a parent of the injured child” or, as the rule indicates, should “the parents” (meaning both parents, if possible) be contacted? In par. (L)

3., “physician assistant” should replace “physician’s assistant.” In par. (h), what does “regional licensing office” refer to? This should be clarified.

g. In s. HFS 45.08 (7), “is” should be substituted for “shall be.”

h. In s. HFS 45.09 (1) (b) 1., “(SIDS)” should be deleted. The department should consider defining the term, as is done in ch. HFS 46.

i. In s. HFS 45.11 (1), “If” should replace “Where.” In par. (c), last sentence, “that a person is” should be substituted for “of being.” In par. (g), “prior to the date of the application” should be substituted after “2 years” if that is what is intended. In sub. (3) (a), what is “pre-licensing technical assistance”? This should be clarified in the text of the rule. In par. (g), first sentence, “and to no longer hold title” should be substituted for “and therefore no longer holding title.” In the note at the end of sub. (8), “a crime again life” should be “a crime against life.” In sub. (9) (a) 2., which notice is being referred to should be clarified (for example, insert “in subd. 1.” after “notice”). In sub. (10) (a) and (b), “therefore” should be deleted. In par. (a) 2., it appears that “security” should be substituted for “injury” (the title of ch. 940, Stats., is “Crimes Against Life and Bodily Security”). If something else is intended, this provision needs to make clear what crimes are being reference. Also, see s. HFS 46.11 (9) (b) 2. In subd. 4., “has been determined” by whom “to have abused or neglected a child”?

In sub. (11), it is not clear what is meant by “one day shall be added to the prescribed period.” Does this mean that a fax that is received between 5:00 p.m. and midnight on the 11th day satisfies the 10-day requirement? This should be clarified here and in ch. HFS 46.

j. In s. HFS 45.12 (1) (b), “that” should be “the.”

k. In s. HFS 46.03 (11g), “displaying” should be substituted for “persons who display,” and “not doing” should replace “who does not do” and each paragraph should begin with a verb ending in “ing”.

l. In s. HFS 46.05 (2) (c) 4., “though” should be “through.” In subd. 6., “(CPR)” should be deleted and “cardiopulmonary resuscitation” should be substituted for “CPR.”

m. In s. HFS 46.07 (6) (k) 5., “that child” should be “the child.” With reference to sub. (7), relating to pets and animals, the same comments noted above apply (i.e., consistent use of the terms “animals” and “pets”). In sub. (7) (h), “, Stats.” should be inserted after the statutory cite.

n. In s. HFS 46.08 (4) (d), “are” should be substituted for “is” in two places.

o. In s. HFS 46.09 (2) (f), “children who are awake” should be substituted for “awake children.”

p. In s. HFS 46.11 (1) (a), “A facility that” should be substituted for “Where a facility” and “, that facility” should be deleted. In par. (b), for clarity, the provision should read: “Prior to receiving a license, an applicant for a license...due and owing.” In sub. (2) (g), “to no longer

hold” should be substituted for “therefore no longer holding.” In sub. (9) (a) (intro.) and (b), “therefore” should be deleted. In par. (b) 4., “determined” by whom?