



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 04-067

#### 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. The analysis must contain the place where comments are to be submitted and the deadline for submission as required by 2003 Wisconsin Act 145.

b. In s. HFS 57.07 (1), the introductory paragraph should be numbered par. (a) as it does not introduce the subsequent paragraphs.

c. In s. HFS 57.07 (1) (a), the phrase “shall be responsible for the secure and judicious use” should be replaced by the phrase “shall securely and judiciously use.”

d. In s. HFS 57.135, pars. (a) and (b) should be renumbered subs. (1) and (2).

e. In s. HFS 57.14 (2), the paragraphs should be numbered with letters in parentheses instead of letters followed by a period. This comment also applies to sub. (6).

f. In s. HFS 57.14 (4) (b), the phrase “shall be responsible for oversight” should be replaced by the phrase “shall oversee.”

g. In s. HFS 57.19, sub. (10) should be numbered sub. (9).

h. In s. HFS 57.205, pars. (a) to (c) should be renumbered subs. (1) to (3).

i. In s. HFS 57.25 (1), par. (d) does not follow the text of the introductory paragraph. The introductory paragraph should be renumbered par. (a), pars. (a) to (c) should be renumbered subs. 1. to 3., and par. (d) should be renumbered par. (b).

j. In s. HFS 57.27 (2), the introductory paragraph should be renumbered par. (a) and the remaining paragraphs should be renumbered accordingly. [See also s. HFS 57.40 (2) (c) and (6).]

k. In s. HFS 57.36 (6), par. (a) 1. should be numbered par. (a) (intro.) and subds. 2. to 4. should be numbered subds. 1. to 3.

l. In s. HFS 57.37, sub. (11) must have a title to be consistent with the other subsections.

m. In s. HFS 57.51 (1), the phrase “at the discretion of the department” is unnecessary and should be deleted.

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

a. In s. HFS 57.04 (4), the citation should be s. 48.685 (1) (ag), Stats.

b. In s. HFS 57.04 (6), the citation to s. 948.02 (10m), Stats., should be to s. 938.02 (10m), Stats.

c. In s. HFS 57.07 (3), it appears that the citation should be to s. 46.036 (4) (c), Stats.

d. In s. HFS 57.08 (3), a comma should be inserted after “s. 121.53 (1).”

e. In s. HFS 57.12 (8), the citation to s. HFS 57.37 (12) should be to s. HFS 57.37 (11).

f. In s. HFS 57.12 (9), “HFS” should be inserted before “57.08 (3).”

g. In s. HFS 57.13 (9), the notation “s.” should precede the cross-reference.

h. In s. HFS 57.14 (4) (c), it appears that the citation to s. HFS 57.36 should be to s. HFS 57.36 (6). This comment also applies to sub. (5).

i. In s. HFS 57.14 (6), it appears that “(1)” should be inserted after “HFS 57.18.” Also, “s.” should precede both instances of “HFS.”

j. In s. HFS 57.16 (1) (a) 1. and 2., “(a)” should be inserted after “s. HFS 57.17 (1).”

k. In s. HFS 57.19 (3) (intro.), the comma in “s. 48.64, (1m) Stats.” should be moved to follow “(1m).”

l. In s. HFS 57.19 (4), it is not clear how s. HFS 57.58 (2) affects admission decisions. This provision should be reviewed.

m. In s. HFS 57.19 (8) (b), “s. HFS 57.23” should be replaced with “s. HFS 57.24.”

n. In s. HFS 57.19 (10), “s. HFS 57.57 (3)” should be replaced with “s. HFS 57.56 (2).”

o. In s. HFS 57.27 (3) (c) (intro.), “ss. HFS 57.13 (1) (c). and (5)” should be replaced with “s. HFS 57.13 (1) (c) and (5).”

p. In s. HFS 57.36 (6) (b), the notation “chs.” should be replaced by the notation “ch.”, since the cross-reference is in the disjunctive.

- q. In s. HFS 57.49 (1) (i), the citation to s. HFS 57.53 should be to s. HFS 57.52.
- r. In s. HFS 57.49 (3), a comma should be inserted after “s. 48.715.”
- s. In s. HFS 57.57 (1) (a) 5., it appears that “(a)” should be inserted after “s. HFS 57.56 (1).”
- t. In s. HFS 57.58 (1), “ch. 227 Wis. Stats.” should be replaced with “ch. 227, Stats.”

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

a. There are a few typographical and grammatical errors in the materials preceding the rule. The drafter may wish to review this material for errors. For example, in the second sentence of the explanation of agency authority, the word “to” should precede the word “meet.” In the second to last paragraph on page 3, it appears that the first occurrence of the word “under” should be deleted. In the fourth paragraph on page 4, the word “a” should be inserted before the word “meal.” In the second to last paragraph on page 6, it appears that the word “to” should be inserted before the word “its” and, in the third sentence, it appears that the phrase “after a” should precede the phrase “resident leaves the group.” In the third paragraph on page 7, the word “the” should be eliminated before the phrase “when the department.” In the first full paragraph on page 10, the word “good” should precede the word “physical.” In the first full paragraph on page 12, the word “prohibits” should be replaced by the word “prohibit.” In the second full paragraph on page 12, the first occurrence of the word “to” should be deleted.

b. In the table of contents, the titles for ss. HFS 57.35 to 57.37 and subch. VI do not match the titles in the rule text.

c. In s. HFS 57.04 (7), “has the meaning” should be replaced with “means abuse as” since “abuse” is the word defined in s. 48.02 (1), Stats.

d. In s. HFS 57.04 (15), the definition actually defines “fit and qualified person,” so either the phrase being defined or the definition should be modified. Also, the last part of the definition should be reviewed. As written, a fit and qualified person is a person who does *not* exercise sound judgment. Also in that subsection, “judgement” should be spelled “judgment.” The Note to s. HFS 57.48 (1) also should be reviewed based upon these comments.

e. In s. HFS 57.04 (21), it is not clear whether the house rules are particular to each group home. If so, it appears that replacing “group home” with “group home’s” would clarify the definition.

f. In s. HFS 57.04 (27), it appears that the definition would be clearer if the word “of” were replaced by the phrase “in a.”

g. In s. HFS 57.04 (30), “required to be” in the first part of the definition could be deleted. Also, “or” preceding “the Wisconsin department of corrections” should be deleted.

h. Section HFS 57.04 (36) should conclude with a period.

i. In the Note to s. HFS 57.05 (1) (c), it would be helpful if semicolons were used to separate the descriptions of the types of children served.

j. Section HFS 57.05 (1) (e) may be clearer if written as, "A description of house rules for expected resident conduct."

k. In s. HFS 57.05 (2) (intro.), the second "shall" should be deleted. Also, par. (m) may be clearer if written as follows: "For group homes that serve custodial parents, policies on visitation between a child of a resident and that child's non-custodial parent."

l. In s. HFS 57.07 (1) (b), it is not clear that the total amount required is \$25,000 and not \$25,000 in addition to sufficient funds for the first year.

m. In s. HFS 57.07 (2), it appears that "Uniform Foster Care" should not be capitalized.

n. In s. HFS 57.08 (1) (a), "3<sup>rd</sup>" should be spelled out. This comment also applies to sub. (2).

o. In s. HFS 57.08 (1) (b), a period should be inserted at the end of the sentence.

p. In s. HFS 57.09, the comma after "possession" should be deleted. Also, "could" should be replaced with "may."

q. In s. HFS 57.10 (5), it is not clear whether pets may never be in an area where food is prepared or if pets may not be in such an area at a time when food is being prepared.

r. In s. HFS 57.13 (1) (a), should "that occurred in the group home" be inserted at the end of the sentence?

s. In s. HFS 57.13 (1) (j), "or" should be inserted after "plumbing."

t. In s. HFS 57.13 (3), should "child" be replaced with "resident"?

u. In s. HFS 57.13 (4), "fax" should be replaced with "facsimile."

v. In s. HFS 57.13 (5), it would be helpful to have a cross-reference to explain what a "physical intervention" is.

w. In s. HFS 57.13 (10) (a), it would be more accurate if "begins residing or is expected to reside" were replaced with "becomes a household member or is expected to become a household member."

x. In s. HFS 57.13 (10) (b) 5., "The person has" should be inserted at the beginning of the sentence to be consistent with the other subdivisions.

y. In s. HFS 57.135 (a), it appears that "as well as death" should be replaced with "or resulting in death." Also, "in no way" in the last sentence should be replaced with "does not."

z. In s. HFS 57.14 (2) (intro.), "Except as provided in sub. (4) (a)" does not make sense because sub. (4) (a) does not contain any age requirements. An age requirement should be

inserted in sub. (4) (a) or sub. (2) (intro.) should be rewritten to clarify that the age exception does not apply to program directors.

aa. In s. HFS 57.14 (4) (c), “for” should be inserted before “any off-premises activities.” Also, hyphens should be inserted in “day to day.”

bb. In the Note to s. HFS 57.15 (2) (a), “dhfs.wisconsin.gov.” should not be underscored and “[www](http://www.dhfs.wisconsin.gov).” should be inserted at the beginning.

cc. In s. HFS 57.15 (4), “within 2 years from the date the person” should be deleted and “within the last 2 years” should be inserted at the end of the sentence.

dd. In s. HFS 57.16 (1) (a) 3., “information” should be inserted before “on how to identify.”

ee. In s. HFS 57.16 (1) (b) and (c), presumably the training is to occur after the date of hire. If so, these provisions should clearly so state. Without clarification, the language can be read to require this training before the date of hire. [See also s. HFS 57.37 (4).]

ff. In s. HFS 57.17 (1) (c), “policies on” or “schedules for” should be inserted before “the use of relief help.”

gg. Section HFS 57.17 (2) (f) would be clearer rewritten as follows: “A job description that is signed and dated by the staff member.”

hh. In s. HFS 57.17 (2) (g), the text in the Note should be included in the rule instead of in a note.

ii. In s. HFS 57.17 (2) (i) 2., should “conducts” be replaced with “conducted each”?

jj. In s. HFS 57.18 (3) (d), the sentence should be rewritten to match the style of the other paragraphs.

kk. In s. HFS 57.19 (3) (b), “in the opinion of the agency or the department,” should be replaced with “the agency or the department finds that.”

ll. In s. HFS 57.19 (7), “providing that” should be replaced with “if.” Also, the comma following “s. HFS 57.25 (1)” should be deleted.

mm. In s. HFS 57.19 (10), “of the group home license” should be inserted after “notice of revocation.”

nn. In s. HFS 57.20 (1) (c), are “incidents” the incidents described in s. HFS 57.13 (1)? If so, a cross-reference should be included in the provision.

oo. In s. HFS 57.20 (3), the first part of the sentence would be clearer if written as follows: “Thirty days before a discharge of a resident whose placement is court ordered, for reasons other than a revocation or denial of a license.”

pp. In s. HFS 57.20 (4), “in which” and “the resident” should be deleted.

qq. In s. HFS 57.205 (intro.), “prescribe to” should be replaced with “do” and each paragraph’s text should begin with a verb (i.e., provide, encourage).

rr. In s. HFS 57.23 (1), it may be helpful to describe what the assessment must entail. Also, what is meant by “upon admission”? Must the assessment be done on the day the resident is admitted?

ss. In s. HFS 57.23 (2) (b) (intro.), it appears that “include” should be replaced by “be conducted by.”

tt. In s. HFS 57.23 (2) (b) 2., it appears that “including any changes to” should be inserted after “Any changes in the treatment plan.”

uu. In s. HFS 57.23 (3) (a), “dictate” should be replaced with “dictates.”

vv. In s. HFS 57.23 (3) (b), semicolons should be inserted after “resident” and “legal custodian.” Also, “the” should be inserted before “parent.”

ww. In s. HFS 57.25 (1) (b) and (c), the consent requirements do not seem to be correct for general medical care. For care other than certain mental health care, a parent generally has the right to consent until the child is 18. It appears that par. (b) creates a situation under which a child may refuse routine medical care and, therefore, override his or her parent’s decision. Additionally, for par. (c), it seems unlikely that all guardians and legal custodians have the right to make medical decisions for their adult charges. Also, this provision gives the adult resident no decision-making authority if he or she has a guardian or legal custodian even though 14- to 18-year olds have the right to consent. Also, in par. (d), what if subsequent written consent cannot be obtained? Would it be sufficient to make a good faith effort to obtain written consent?

xx. In s. HFS 57.25 (3) (a) 1., what is meant by “treatments”? In par. (a) 6., “healthcare” should be written as two words. Finally, in par. (b), “in the resident’s record” should be replaced by “under this subsection.”

yy. In s. HFS 57.25 (6) (a), the first instance of “over the counter” should contain hyphens and the last instance should not.

zz. In s. HFS 57.25 (7) (a), the colon after the title should be replaced with a period. Also, a comma should be inserted after “In this subsection.” Finally, “which may include” should be replaced with “and may include.”

aaa. In s. HFS 57.25 (7) (d) 2., a comma should be inserted after the word “older.”

bbb. In s. HFS 57.27 (1) (b), “a resident or” should be inserted after “Verbally abuse.” Also, the comma should be deleted.

ccc. In s. HFS 57.27 (1) (i), “that” in “should know that” should be deleted.

ddd. In s. HFS 57.27 (2) (b), whom must the resident be in view of?

eee. In s. HFS 57.27 (3) (b) 4., what are prone restraints?

fff. In s. HFS 57.27 (3) (c) 8., “name, title and” should be replaced with “name and title of.”

ggg. In s. HFS 57.28 (4), should “purchases” be rewritten as “clothing purchases”?

hhh. In s. HFS 57.35 (2) (a), could a person receive less than eight hours of supervised experience if that is as much as necessary to provide competent care or must the person receive at least eight hours and more if necessary? In par. (b), “oversight for” should be replaced with “oversight of.”

iii. In s. HFS 57.36 (2) (a) and (b), “shall include” should be replaced with “that includes.” Also, in par. (b) 2., the comma following “budgeting” should be replaced with “and”.

jjj. In s. HFS 56.36 (6), “childcare” should be written as two words. Also, in par. (a) 4., “there must be licensure of the childcare program” should be rewritten as “the child care program must be licensed.” Finally, why are these ratios different from the group home ratios? Are the children considered residents or not?

kkk. In s. HFS 57.36 (9), “as required” should be deleted.

lll. In s. HFS 57.37 (1), “as a resident” should be replaced with “as residents.”

mmm. In s. HFS 57.37 (3), it appears that no treatment plan is required for children of residents who reside in the group home. Perhaps this could be made explicit.

nnn. In s. HFS 57.40 (2) (c) 1., “is” should be inserted before “at least 5 square feet in area” and “and” should be inserted before “has a lower sill.”

ooo. In s. HFS 57.40 (2) (d), “that are” should be inserted after “or to grade or.”

ppp. In s. HFS 57.40 (6) (b) 3., “For group homes licensed before the effective date,” should be inserted at the beginning of the sentence.

qqq. In s. HFS 57.41 (12), “can be categorized” should be replaced with “are specified.”

rrr. In s. HFS 57.42 (1) (b) 2., it appears that “Next to” should be inserted at the beginning of the sentence. Also, in par. (b) 3., “A smoke detector” should be replaced with “Smoke detectors.”

sss. In s. HFS 57.43 (title), “Appliances” should not be capitalized.

ttt. In s. HFS 57.45 (1), “wishes to operate” should be replaced with “operates.”

uuu. In s. HFS 57.48 (1m), “1. to 5.” should be deleted.

vvv. In s. HFS 57.49, the commas following “HFS 64” should be deleted.

www. In s. HFS 57.49 (1) (e), presumably, any forfeiture, fee, or assessment must be related to a license the person holds to operate a group home. This should be clarified.

xxx. In the Note to s. HFS 57.49 (1) (j), “same” should be deleted.

yyy. In s. HFS 57.49 (2), a comma should be inserted after the first instance of “corporation.”

zzz. In s. HFS 57.49 (4), “meets the conditions under” should be inserted before “s. 48.715 (5), Stats.”

aaaa. In s. HFS 57.50 (1) (a), “fails to pay” and “failure to comply” should be replaced with “has failed to pay” and “has failed to comply,” respectively. In par. (b), “certifies” should be replaced with “certifying.”

bbbb. In s. HFS 57.50 (3), a comma should be inserted after “sub. (1).”

cccc. In s. HFS 57.55, “for any reason stated under” should be replaced with “as provided in.”

dddd. In s. HFS 57.57 (1) (a), “in any circumstance that” should be replaced with “if.” In par. (b), “Notice of” should be inserted at the beginning of the sentence.

eeee. Section HFS 57.58 (1) should be rewritten as follows: “Except as provided in subs. (3) and (4), a department decision to deny, refuse to renew, or revoke a license or to issue an order or decision affecting the licensee under s. 48.64 or 48.715, Stats., may be reviewed under ch. 227, Stats.”

ffff. In s. HFS 57.58 (2), the comma in the first sentence should be deleted.

gggg. In s. HFS 57.58 (3), “shall be made to pursuant to” should be replaced with “may be appealed under.” Also, it appears that subs. (3) and (4) could be combined. If not, they should be written consistently unless there is a reason not to.

hhhh. In Appendix A, the comma following “Winnebago” should be deleted.

iiii. In Appendix B, there are several instances in which “Cup” is capitalized and should not be. Also, under “SNACK” for ages 3, 4, and 5, “1/2 cup” for milk should be replaced with “1/2 cup.”

jjjj. In Appendix C, in the introductory text, should “as a minimum” be replaced with “at a minimum”? Also, the note at the bottom of the page related to breast milk should be numbered footnote 5 and should be listed after “formula” for each meal for infants age birth to 3 months.