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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-071

#### 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 January 2005.]**

#### **1. Statutory Authority**

The rule does not appear to comply with the requirement set forth in ss. 49.155 (1d) (a), and 253.15 (4), Stats., that any person certified to provide child care under s. 48.651, Stats., must receive training relating to impacted babies. All of the newly created provisions in the rule pertaining to shaken baby syndrome should also apply to impacted babies.

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

a. The definition in s. DWD 55.02 (7) is substantive in nature and therefore should be placed in the text of the rule. [See s. 1.01 (7) (b), Manual.] In addition, all of the items listed for consideration in determining whether a person is “fit and qualified” appear to relate only to whether a person is “fit”, not “qualified.”

b. The rule should set forth a definition of “impacted baby”, as set forth in s. 253.15 (1) (d), Stats.

c. The entire rule should be reviewed to ensure that defined terms used to identify the different types of child care providers and operators are used consistently and that undefined terms are not used. For example, s. DWD 55.04 (2) (a) uses the terms “in-home operator”, which is not defined; s. DWD 55.08 (title) uses the term “in-home child care”, which is not defined; s. DWD 55.08 (1) (a) 3. and (b) 2. a. use the term “family child care operator”, which is not defined; s. DWD 55.08 (1) (c) and (e) use the term “certified family child care operator”

which is not defined; and s. DWD 55.08 (b) (intro.) uses the term “certified family program” which is not defined.

d. The entire rule should be reviewed to ensure there are no unintended consequences to the many instances in which the rule substitutes “operator” for “provider” in already-existing provisions of the rule. For example, in s. DWD 55.08 (1) (a) 3., the substitution has the effect of eliminating the requirement that all child care providers provide proof that they are free of tuberculosis.

e. In s. DWD 55.04 (3) (f), the term “certification agency” is used. It appears that this term refers to the same entity as the term “county or tribal agency.” Since “county or tribal agency” is a defined term, it should be used instead of “certification agency.”

f. The material set forth in the first sentence of the Note following s. DWD 55.08 (1) (b) 1. and in the first two paragraphs of the Note following s. DWD 55.08 (1) (b) 2. a. is substantive in nature and should be placed in the text of the rule. [See s. 1.09 (1), Manual.]

g. In s. DWD 55.08 (2) (b), the phrase “all of” should be inserted after the word “including.” [See also s. DWD 55.08 (4) (k) (intro.). Section DWD 55.08 (8m) (a) (intro.) should be rewritten to read: “All of the following safe indoor and outdoor play equipment shall be provided:”.]

h. The newly created material in the Note following s. DWD 55.08 (9) (a) should not be underscored.

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

a. Section DWD 55.08 (1) (d) should contain a cross reference to the rule provisions that set forth the standards and procedures for approval of substitutes, employees, and volunteers of a provider by the certifying agency.

b. Should s. DWD 55.09 (1m) (b) specify that school-age programs need to comply with only the provisions of the chapter that apply to school-age programs, rather than the entire chapter?

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

a. The following comments apply to the rule preface:

(1) In the second sentence of the second bullet point on page 3, the phrase “are in compliance” is awkward. Is the intent of the sentence to state, in part, that the applicant has complied with the applicable standards in s. DWD 55.08 or 55.09?

(2) In the first bullet point Qualifications of child care operators and providers, it appears that the word “test” should be deleted.

- (3) In the second bullet point Qualifications of child care operators and providers, it appears that the word “least” should be inserted before the number “2.”
  - (4) In the last sentence Qualifications of child care operators and providers, it appears that the word “of” should be replaced by the word “or.”
  - (5) In the description of Child health care, it appears that the phrase “any of these diseases” should be inserted after the phrase “has or had.”
  - (6) In the third bullet point of Supervision, it appears that the word “with” should be inserted after the word “comply.”
  - (7) In the fourth bullet point of School-age child care programs, it appears that the word “the” should be inserted before the word “licensing.”
  - (8) In the description of Illinois law, it appears that the second occurrence of the word “care” should be replaced by the word “cared.”
  - (9) In the description of Michigan law, in the second sentence, it appears that the word “care” should be replaced by the word “cares.”
- b. In s. DWD 55.02 (9g), the word “the” should be replaced by the word “a.”
  - c. In s. DWD 55.02 (20), the article that precedes the word “operator’s” should be the word “an.”
  - d. In s. DWD 55.04 (3) (e) “are in compliance” should be changed to “have been met.”
  - e. Section DWD 55.04 (3) (e) should provide more specificity as to the responsibility placed upon the county or tribal agency to determine that an applicant is “fit and qualified.” For example, what sources of information must an agency consult to determine whether an applicant is fit and qualified? For example, how should an agency determine whether an applicant has abused alcohol or drugs or exercised “unsound judgment”?
  - f. The current rule requires an agency to provide written reasons for denial of child care certification. The rulemaking order eliminates this requirement. Is this change intentional? If so, the analysis to the rule should explain the rationale for this change. If written reasons for denial are not provided, how can a rejected applicant appeal the denial of his or her application?
  - g. In s. DWD 55.04 (3) (f), what is the purpose of allowing the certification agency to backdate a certificate of approval to the date that the agency received the application? Will this provision in effect allow an operator to receive payment for care provided before the agency actually reviewed and approved the application? If so, this should be explicitly stated in the analysis to the rule and a rationale for this policy should be provided.

h. Section DWD 55.04 (7) (b) 2. e., should specify the identity of the “certain” individuals to whom the rule refers.

i. Section DWD 55.04 (7) (b) 3. d., in part, requires a certified child care operator to submit references at initial certification. Since a child care operator cannot be certified prior to an initial certification, it appears that the word “certified” should be deleted.

j. Sections DWD 55.08 (1) (b) 1. and 55.09 (2) (a) 2. should specify how department approval of training may be obtained, and how it may be determined whether training has been approved by the department. Also, how will a county or tribal agency determine whether a person has obtained the required training?

k. For purposes of the requirement set forth in s. DWD 55.08 (1) (b) 2. d., how is it to be determined that a substitute has worked more than 240 hours? Must the operator keep records of the use of substitutes?

l. In s. DWD 55.08 (1) (c) 1., the phrase “to a child in care” should be inserted after “injury.”

m. The requirement in s. DWD 55.08 (1) (c) 7., that an operator report any “changes in individuals living in the household” is ambiguous. The rule should make clear that it refers to the instance when a person moves in or out of the household, not to a circumstance in which a resident of the household undergoes some type of personal change.

n. Should s. DWD 55.08 (2) (a) 4. c. specify that the window may not be more than a certain height above ground level?

o. In s. DWD 55.08 (2) (a) 5. b., should “to the outside of the building at street or ground level” be inserted after “travel”? Also, why is the term “nominal” used in relation to the required window opening size? Should it be changed to “minimal”?

p. In s. DWD 55.08 (2) (b) 2., it appears that the phrase “if the home is not air conditioned” should be deleted. It is irrelevant whether the home has air conditioning unless the rule is changed to require the air conditioning to be turned on if the temperature in the home exceeds 80 degrees Fahrenheit.

q. In s. DWD 55.08 (2) (f) why is the word “appropriately” added to this provision?

r. Section DWD 55.08 (2) (p) should specify whether the prohibition on the use of lead paint applies to paint that has already been applied or only to the application of new paint. In other words, must the premises be tested for the existence of lead paint in areas accessible to children?

s. Should s. DWD 55.08 (4) (k) and (12) (j) specify that the requirement apply only if the provider is aware that a child has or had a communicable disease? Also, in s. DWD 55.08 (4) (k) should “provider” be changed to “operator”?

t. What is the “daily plan” referred to in s. DWD 55.08 (8) (c)? Could the rule be more explicit about the number of hours that a television may be used by a provider per day?

u. In s. DWD 55.08 (12) (intro.), the introduction should conclude with the phrase “doing all of the following.”

v. Why does the rule, in s. DWD 55.09 (7) (c), repeal the requirement that a school-age program maintain first aid supplies?

w. Why does s. DWD 55.09 (8) (c) repeal the requirement that water from a non-public supply in a school-age program be tested for nitrate and lead levels?