



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 12-045

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

In s. 48.977, Stats., a guardianship continues until the child attains 18 years of age or the court terminates the guardianship, whichever occurs earlier. What is the statutory authority to continue subsidized guardianship payments for a guardian of a person who has attained age 18 under s. DCF 55.10 (4)?

2. Form, Style and Placement in Administrative Code

In s. DCF 55.09 (3) (b) 4., the last subdivision paragraph is unnumbered.

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

a. In s. DCF 55.02 (9) (intro.), “s. DCF 55.02 (7)” should be replaced with “sub. (7)”. Alternatively, it appears that “for the purpose of s. DCF 55.02 (7)” could be deleted. In par. (a), it appears that “Section” should be in the plural, and “, Stats., and s.” after “48.205 (1)” should be deleted. Finally, should the “or” before “48.365” be replaced with “and”? These comments also apply to par. (b).

b. In s. DCF 55.02 (10), the definition should cite ss. 48.38 and 938.38, Stats., relating to permanency plans.

c. In s. DCF 55.02 (11) (a), it appears that “subsection” should be replaced with “paragraph”.

d. In the note to s. DCF 55.07 (2) (b), the citation to s. 48.62 (4), Stats., should be deleted because that provision provides that the supplemental payments are made based upon administrative rules promulgated by the department.

e. In s. DCF 55.10 (5) (intro.), it appears that “sub. (2)” should be replaced with “this section”.

f. In s. DCF 55.11 (1) (a) 3. a., “s. DCF 55.08 (4) (f) or 55.08 (5) (f) 1. c. and (g)” should be replaced with “s. DCF 55.08 (4) (f) or (5) (f) 1. c. or (g)”. Alternatively, it appears that a citation to s. DCF 55.08 would suffice.

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

a. In the analysis, the second instance of “Comparison to Rules in Adjacent States” should be deleted.

b. Throughout the proposed rule, it appears that some notes may contain substantive requirements. Substantive requirements should be included in the text of the rule and not in notes. [s. 1.09 (1), Manual.] For example, the note following s. DCF 55.02 (8) appears to be substantive. In addition, the department should review the forms and websites referenced in the notes to ensure that they are correct references.

c. In s. DCF 55.02 (5), “a division attached to the department of administration” should be replaced with “the division of hearings and appeals in the department of administration”.

d. In s. DCF 55.02 (6), “means” should be inserted before “a person”.

e. In s. DCF 55.03 (1) (a) 1. b., “The child has been removed from the home pursuant to” should be inserted at the beginning of the sentence. Alternatively, the introductory paragraph could include the language regarding the child having been removed to apply to both subdivision paragraphs.

f. The note following s. DCF 55.03 (1) (b) 1. is not necessary given the definition of “like-kin” in s. DCF 55.02 (7).

g. In s. DCF 55.04 (1) (intro.), “With” should be replaced with “To”. In addition, it would be clearer if the first part of the sentence, up to the comma, was moved to follow “shall explain”.

h. In s. DCF 55.04 (2), it appears that a phrase such as “acknowledging the options have been explained to him or her” should be inserted at the end of the first sentence. Additionally, as the second sentence is drafted, it appears the agency must only retain the form if the relative or like-kin foster parent decides to pursue subsidized guardianship. Is this the intent?

i. In s. DCF 55.05 (1) (f), it appears that “placement” should be replaced with “the placement with the guardian”.

j. In s. DCF 55.06 (2) (f) 1., it appears that a phrase such as “Wisconsin’s medical assistance program under” should be inserted after “child is eligible under”.

k. In s. DCF 55.06 (2) (g), would “assistance” be a better word choice than “intervention”?

l. In s. DCF 55.08 (1) (intro.), “occurred to” could be replaced with “occurred in” or “occurred regarding”. Also in that subsection, it appears that the note to par. (b) is unnecessary.

m. In s. DCF 55.08 (3), the introductory paragraph provides that “the guardian shall do all of the following”. In the subsequent paragraphs, the phrase “the guardian shall” is repeated unnecessarily. This comment also applies to sub. (4).

n. In s. DCF 55.08 (4) (h) 2., the introductory subdivision and the subdivision paragraphs could be combined to read: “Subsequent amendments are effective the first day of the first month following the date the agency receives the amendment signed by the guardian and the agency or the date that a previous amendment expired, whichever is later.” This comment also applies to s. DCF 55.08 (5) (i).

o. In s. DCF 55.08 (5) (b) 2., it appears that “the agency shall return” would be clearer as “the agency shall pay the guardian”. In addition, “when the amendment expires” could be replaced with “on the first day of the first month after the amendment expires”.

p. In s. DCF 55.08 (6), does an agreement to an amendment need to be signed by the guardian and the agency?

q. In s. DCF 55.09 (1), the title should be “APPLICABILITY”.

r. In s. DCF 55.09 (3), the verb tenses in the lists of characteristics are not used consistently. In par. (a) 2., verbs such as demanding, displaying, and exhibiting are used. However, subsequent lists use the present tense, such as respond, display, and skip.

In par. (a) 3. c., “set up others for rejection” may be too vague. In subd. 3. f., the comma following “over-excitedness” should be deleted.

In par. (a) 4. a., “personalities” should be singular.

In par. (b) 2. b., “which is” should be inserted before “affecting class achievement”. In subd. 3. b., “a month” should be replaced with “per month”. This comment also applies to subd. 4. a.

In par. (c) 2. b., it appears that “for children” in the second sentence should be deleted. In subd. 3. a., “bathing as diapering” does not make sense. Please review that sentence. In subd. 3. e., it appears that the information in the note should be included in the text of the rule. Also, in the note, “a day” should be replaced with “per day”.

s. In s. DCF 55.10 (1) (a), it may be clearer to provide that the child has a new guardian or that there has been a change in who the child’s guardian is instead of that there has been a change in the child’s guardian.

t. In s. DCF 55.10 (2) (a), the annual review date should be not less than 12 months after the subsidized guardianship payments began.

u. In s. DCF 55.10 (4) (a), could a guardian continue to receive subsidized guardianship payments for an 18-year old who is not enrolled in an educational program but who meets one of the other conditions for which a guardian may receive payments for a 19- or 20-year old? In subd. 2. c., “Social Security” and “Supplemental Security Income” should not be capitalized. In the note to that subdivision paragraph, “SSI” should be spelled out.

v. In s. DCF 55.10 (5) (b), it appears that “based on the review” should be replaced with a phrase such as “except as provided”.

w. In s. DCF 55.11 (2) (e), “but may be revoked or modified as altered conditions may require” is confusing. Although this is the language in s. 48.623 (5) (b) 1. (intro.), Stats., is it possible to clarify who may revoke or modify the decision?

x. In s. DCF 55.12 (1) (intro.), “On” at the beginning of the sentence should be replaced with “Upon”, and “upon” should be inserted before “the termination of a guardianship”.

y. In s. DCF 55.13 (3) (c), the note to that paragraph should be labeled as a note.