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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 17-033

#### 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 December 2014.]**

#### 1. Statutory Authority

a. In the rule summary’s section titled “Statutory authority”, the department should consider citing specific provisions from s. 49.155, Stats., that explicitly authorize the department to promulgate certain rules in the proposed order, such as s. 49.155 (1m) (d), (3m) (d) 4., (6), and (7m) (a), Stats. [s. 1.02 (2m) (a), Manual.]

b. In SECTION 8, the department could consider whether to use the phrase “licensed or regulated out-of-state provider” rather than the phrase “or licensed or regulated in Illinois, Minnesota, Iowa, or Michigan” as s. 49.155 (4) (c), Stats., uses the term “out-of-state provider” and does not limit that term to bordering states.

c. The department could consider whether the language in s. DCF 201.039 (6), as proposed in SECTION 25, complies with s. 49.155 (3m) (d) 1., Stats. Specifically, the proposed rule states that an agency “may not authorize payment for child care services by a provider who is a parent of the child, resides with the child, or is legally responsible for the child under s. 49.90, Stats.”, yet the statute prohibits payments to a child care provider “who is the parent of the child or who resides with the child” and does not include persons legally responsible under s. 49.90, Stats.

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

a. To accurately enumerate the rule provisions treated by the proposed order, the department should change the following references in the introductory clause, as well as any corresponding treatment clauses, where applicable:

- (1) Add s. DCF 201.02 (11) to the list of provisions that the rule proposes to repeal, consistent with SECTION 12.
- (2) In the list of provisions that the rule proposes to repeal, change the reference to “s. DCF 201.04 (2g) . . . (d), (e), (f), and (g)” to “s. DCF 201.04 (2g) . . . (d) to (g)”, consistent with the treatment clause in SECTION 31. Alternatively, the department could modify the treatment clause to adhere to the format used in the introductory clause.
- (3) Move the reference to s. DCF 201.02 (6m) from the list of provisions the rule proposes to amend to that which the rule proposes to repeal and recreate, consistent with SECTION 9.
- (4) In the list of provisions that the rule proposes to amend, change the reference to “s. DCF 201.03 (12)” to “s. DCF 201.02 (12),” consistent with SECTION 13.
- (5) Add s. DCF 201.04 (5) (a) 3. to the list of provisions that the rule proposes to amend, consistent with SECTION 34.
- (6) Add s. DCF 201.08 (2) (f) (Note) to the list of provisions that the rule proposes to amend, consistent with SECTION 40.
- (7) In the list of provisions that the rule proposes to repeal and recreate, change the reference to “s. DCF 201.03 (1) and (3)” to “s. DCF 201.03 (1) and (2)”, consistent with SECTION 19.

b. In SECTION 4, the department could consider adding “and Applicability” to the title of s. DCF 201.01, as the recreated text includes both the purpose and applicability of the chapter.

c. For clarity, the department could consider using paragraphs to list the types of entities that constitute a “child care administrative agency” in SECTION 6.

d. In SECTION 6, the department should consider replacing “500,000” with “750,000” rather than the proposed amendment to insert “Milwaukee County”, in order to maintain consistency with general usage throughout ch. 49, Stats., and other DCF administrative rule chapters. [See s. 14.02 (1) (e), *LRB Bill Drafting Manual*.]

e. In SECTION 6, the department could consider removing the quotation marks around the word “unit”, to be consistent with s. 49.155 (1) (ah), Stats.

f. In SECTION 9, the department could consider modifying the proposed definition to clarify that under the subsidy program, the department issues payments either to pay individuals directly or to pay or reimburse child care providers, agencies or tribal governmental bodies, pursuant to s. 49.155 (3m), Stats. The department could also consider whether the proposed order addresses the latter form of payment allowed under statute.

g. In SECTION 25, the department could consider replacing the phrase “his or her” with “the parent’s” in ss. DCF 201.036 (3) (b) and 201.039 (10) (a) 2. a. [s. 1.01 (3), Manual.]

h. In SECTION 25, the subsection title for s. DCF 201.038 (2) should be reformatted to match the solid capital letters used in other subsection titles throughout the rule. [s. 1.05 (2) (c), Manual.]

i. In SECTION 25, the department should consider replacing, in s. DCF 201.038 (4), the term “provider’s price” with the term “child care price”, defined under SECTION 7 of the proposed rule.

j. The department could consider whether s. DCF 201.039 (7) (a) 2. (Note) is necessary, as the Note does not provide an example, illustration, or other explanatory material. In addition, the other uses of defined terms throughout ch. DCF 201 – including the term “special need” as well as others – do not have an accompanying Note identifying the citation to the definition provided under s. DCF 201.02. [s. 1.09 (1), Manual.]

k. The department should consider clarifying when payments are authorized under s. DCF 201.039 (10) (a) 2. in SECTION 25. Specifically, it is unclear whether the conditions in subpars. a. and b. apply to a payment on the first day of a month or only to the date of child placement. It is also unclear whether the phrase “first day of a month” is necessary when the rule authorizes payment “beginning on the later of the first day of a month or the date of child placement”, given that the first day of a month can never occur later in the month than the second event.

l. In SECTION 25, the department could consider whether a child receiving child care services from a child care provider should be expressly stated as a condition precedent to the agency authorizing payment under s. DCF 201.039 (10) (b), to be consistent with the condition under s. DCF 201.039 (10) (a) 1. b.

m. The department could consider whether the language in s. DCF 201.039 (11), as proposed in SECTION 25, applies when a parent has already obtained child care services from a different child care provider. If it does not, the department could consider clarifying that the parent has an obligation to provide notice to the agency of the new child care provider.

n. The department should consider either removing the title “*Parent overpayments.*” in SECTION 34, or adding titles to the remaining paragraphs under s. DCF 201.04 (5). [s. 1.05 (1), Manual.]

o. The department could consider correcting the citation to and quotation of s. 49.155 (5), Stats., in s. DCF 201.08 (2) (f) (Note). While SECTION 40 proposes only one amendment to the Note, the department could include in the proposed rule the following corrections to the Note’s current language:

- (1) Clarify that the Note cites s. 49.155 (5) (b), Stats., and not s. 49.155 (5), Stats., in its entirety.
- (2) Delete the word “is” before the word “attending”, in order to accurately quote s. 49.155 (5) (b), Stats.

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

a. In SECTION 19, the department could consider adding a cross-reference to s. 49.155 (6), Stats., to the recreated language for s. DCF 201.03 (2).

b. In SECTION 25, s. DCF 201.036 (1) refers to a “request for assistance” that a parent must sign as one of the eligibility requirements for the child care subsidy program. Is there a form associated with this request? If so, given the specificity of the requirement, the department could consider adding a Note to the rule that provides information regarding the use of and access to the form. [s. 1.09, Manual.]

c. In SECTION 39, the department should consider the adequacy of the references to “sub. (3) (b)” in s. DCF 201.06 (5) (a) 1. and 2. Specifically, in order to achieve consistency with s. 49.155 (6) (a), (b), and (c), Stats., a reference to “sub. (4)” may be appropriate.

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

a. In the first paragraph of the rule summary’s section titled “Explanation of Agency Authority”, the department should remove the comma in “Section 49.155, (3m) (a), Stats.”

b. In the rule summary’s section titled “Summary of the Proposed Rule”, under the heading “Provider Requirements”, the department should remove the second occurrence of the word “and” in the following citation: “ss. 48.659 and 49.155 (6) (e) and, Stats.”.

c. The department should remove the extra period after “SECTION 2.”.

d. In SECTION 13, the department should remove the extra space in “DCF 201. 02”.

e. The department could consider revising the proposed definition for “slots” in SECTION 17, as the term “places” may suggest geographic location versus enrollment availability. For example, the department could consider deleting the phrase “places for” in the proposed definition.

f. In SECTION 25, the department could consider placing the reference to “a day camp licensed by the department under s. 48.65, Stats., and ch. DCF 252” in its own subdivision, to maintain consistent formatting with the other subdivisions, which each list an individual type of child care that would qualify as a child care provider.

g. In SECTION 25, the department should consider adding the word “day” after “first” for clarity in s. DCF 201.039 (10) (b).

h. In SECTION 39, the department could consider clarifying the language in s. DCF 201.06 (2) (b) 2. and 3. to avoid any gaps in coverage for children that are older than 3 years and 11 months, but not yet 4 years old, and children that are older than 5 years and 11 months, but not yet 6 years old.

i. For clarity, the department could consider adding the adjective “licensed” after “all” in s. DCF 201.06 (3) (a), as proposed in SECTION 39. While the term “licensed” appears in the subsection’s title, a title is not part of the substance of the rule itself. [s. 1.05 (1), Manual.]