



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-159

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.]

2. Form, Style and Placement in Administrative Code

- a. In the rule summary, insert “chs.” before the reference to DCF 55 and 56 in “related statutes and rules”.
- b. The department could consider re-phrasing the last sentence in s. DCF 58.03 (1) to clarify that a relative under sub. (1) must also apply for a foster home license in order for ch. DCF 58 to apply to him or her. For example, the last sentence could begin as follows: “A relative under this subsection shall also apply for a license . . .”.
- c. In s. DCF 58.04 (4) (a) 1., the department should consider replacing the terms “guardianship papers” and “paternity papers” with the formal titles of the relevant legal documents, such as “letters of guardianship” and “paternity judgment”, or other terms the department considers appropriate.
- d. Throughout the proposed rule, the department should clarify the date from which various look-back periods are calculated. For example, in s. DCF 58.07 (1) (b) 2. a., does the review of the “previous 12 months” mean the previous 12 months from the date of the relative caregiver’s application for kinship care? This same comment applies to the “preceding 5 years” in s. DCF 58.05 (3), and the “previous 2 years” in s. DCF 58.08 (1) (c).
- e. The department could consider changing the title of s. DCF 58.05 (5) to be more formal and descriptive, such as “FURTHER INVESTIGATION”.

f. The department should consider creating introductory language to clarify that s. DCF 58.06 (2) to (5) are criteria for the best interest determination. While the current text of s. DCF 58.06 (1) references the remaining section as the criteria, subs. (2) to (5) are not tied to any introductory text and may be confusing when read in isolation.

g. In s. DCF 58.06 (4) (c) and (e), the department could consider clarifying the scope of buildings, structures, and premises of which a relative caregiver must ensure safety. For example, if the relative caregiver lives in an apartment, is the relative caregiver required to ensure all aspects of the apartment complex are safe?

h. In s. DCF 58.07 (1) (b) 1., the department could consider replacing the first clause with “if par. (a) does not apply”, for brevity.

i. Throughout s. DCF 58.07, when referencing s. 48.13 or 938.13, Stats., consider replacing the word “criteria” with “grounds” or “grounds or conditions” to more appropriately describe the legal significance of the referenced statutes.

j. In s. DCF 58.08 (4) (a) 1., the phrase “do the following if applicable” should either be joined with the first sentence of the subdivision using the conjunction “and” or placed in its own subdivision.

k. In s. DCF 58.08 (4) (a) 1. b. and (Note), consider replacing “crib or bed” with “crib, bassinet, or playpen” to maintain consistency with s. DCF 58.06 (4) (b) 3. b.

l. In s. DCF 58.08 (4) (a) 3. (intro.), replace “any” with “all” to clarify that the check should include all three categories.

m. The department could consider whether s. DCF 58.08 (4) (a) 3. and 4. would be better placed in a different subsection in s. DCF 58.08, rather than in sub. (4) (a) concerning the best interest of the child. While the check is relevant to the child’s best interest, it appears to be a different procedural step by the agency, separate from inquiries regarding the relative caregiver’s abilities and the safety of the home.

n. In s. DCF 58.08 (4) (b) 3. b. (Note), the department could consider more formal language than “focus the conversation”. For example, consider “While a parent may oppose payment of child support, the agency should ascertain whether the parent consents to the living arrangement”.

o. In s. DCF 58.08 (5) (a), the department could consider removing “make a child abuse or neglect” as the cross-reference to s. 48.981 (2), Stats., adequately contextualizes the nature of the report.

p. In s. DCF 58.08 (16) (a) 2., consider removing “or negotiating a payment plan” and instead creating a subd. 3., that states “Negotiating a payment plan”.

q. Consider re-phrasing s. DCF 58.10 (1) (a) 10., to avoid use of the passive voice and match the format of subd. 11.

r. Throughout s. DCF 58.10 (4), consider the phrase “has attained the age of 18 years” instead of referencing the child’s 18th birthday or the child turning 18. Throughout the rule, the department should review the references to “age 18” and employ “18 years of age” uniformly.

s. In s. DCF 58.10 (4) (c) 1. a., consider combining the two sentences into one sentence.

t. In s. DCF 58.11 (2) (a) (intro.), the phrase “if the notice does any of the following:” should be replaced with “of any of the following:” because a notice merely notifies a person of a particular event or action, and does not constitute the actual event or action. The subunits should be changed to reflect proper grammar, such as replacing “denies” with “denial” and amending subd. 3. to state “A determination by a director, after reviewing the conviction record of a prospective adult resident, adult resident, prospective employee, or employee under sub. (1), that kinship care payments will be denied or terminated if the relative caregiver does any of the following:”.

u. To use more formal and concise language in the definitions under s. DCF 58.12 (1), consider the following:

(1) For “emotional harm”, consider removing “so” and re-phrasing to state “emotionally impaired to an extent that substantially affects his or her functioning”.

(2) For “serious nature”, for both grounds, delete the phrase “be substantial enough to affect”.

v. In s. DCF 58.12 (3) (b), it is unclear whether the good cause claim form exists within or separately from the application form under s. DCF 58.04 (1). Under subds. 1. and 3., it appears to exist separately while under subd. 2., it is described as included in the application form.

w. In s. DCF 58.12 (3) (b) 3., add a requirement that the claim be signed and dated by the relative caregiver, in order to have a date by which to apply the timeline under subd. 4. Also, under subd. 4., it may provide clarity to require notice within two days after the date on which the relative caregiver signs the good cause claim under subd. 3., which is similar with the approach taken in sub. (5) (a) (intro.).

x. The definitions of “emotional harm” and “serious nature” are confusing when read together, particularly for a child, as prompted under s. DCF 58.12 (4) (a) 2. Consider modifications.

y. In s. DCF 58.12 (4) (b) 3., consider replacing “discussions have not gone on for more than 3 months” with more formal language. For example, consider: “and a decision has not been made after 3 months of assistance”.

z. In s. DCF 58.12 (5) (e) (intro.) and (11) (c) (intro.), replace “shall have 45 days” with “may, within 45 days,”.

aa. In s. DCF 58.12 (7) (a), use active language in the last sentence to clarify that the kinship care agency must consider the child support agency’s recommendation.

bb. In s. DCF 58.12 (10) (e), (11) (d), and (13) (d) (intro.), consider replacing “45 days provided for in” with “45-day period under”.

cc. In s. DCF 58.12 (13) (a), consider clarifying when a review need not occur. For example, consider inserting “at each eligibility redetermination” at the end of the paragraph.

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

- a. In s. DCF 58.02 (17), the department could consider defining “legal custody” with a cross-reference to s. 767.001 (2), Stats.
- b. For clarity, in s. DCF 58.08 (4) (b) 2., the department could consider cross-referencing to guardianship under ch. 54, Stats., assuming that cross-reference is consistent with the department’s intent.
- c. In s. DCF 58.10 (4) (b) 2., insert a reference to “subd. 1.” after “under”.
- d. In s. DCF 58.12 (5) (e) 4., change the cross-reference to s. DCF 58.11 (2) (a) 1., or simply reference sub. (2), as is done elsewhere in s. DCF 58.12.

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

- a. In the rule summary, delete the extra space between “new” and “application” in the sixth bullet point under “efficient and consistent program administration” in the summary of the proposed rule.
- b. In s. DCF 58.04 (2) (e) 3., replace “cooperates” with “cooperate” to attain subject-verb agreement.
- c. In s. DCF 58.08 (4) (a) 2., consider more formal language than “ask the child” and “how the child feels about living”.
- d. For clarity and use of proper grammar, insert “the date on which” after “Ninety days after” in s. DCF 58.05 (2) (b) 2. The department should make changes throughout the proposed rule in accordance with this comment.
- e. In s. DCF 58.06 (5) (a) 1. to 4., the department could consider eliminating the repetitive use of “the child’s need”.
- f. In s. DCF 58.08 (4) (b) 1., consider the following changes using more concise language using active voice:
 - (1) Replace the phrase “does not have guardianship of the child” with “is not the child’s guardian”.
 - (2) Replace “parent or parents that have legal custody of the child” with “custodial parents”, as defined under s. DCF 58.02 (9).
 - (3) Replace the last sentence with “The agency’s initial effort to contact the custodial parent or parents shall be by mail. The agency may subsequently attempt contact by phone, in person, or by electronic mail”.
- g. For clarity, in s. DCF 58.08 (10) (a) 3., consider inserting “voluntary under” prior to the cross-reference to s. DCF 58.03 (2).
- h. In s. DCF 58.08 (10) (b) 1., consider changing “if the relative caregiver moves to an area of the state where the kinship care agency has a waiting list” to “if the relative caregiver moves to an area of the state served by another kinship care agency that has a waiting list”. This language

matches the language in s. DCF 58.08 (12) (c) 1., and makes clear the rule is addressing two different kinship care agencies.

i. In s. DCF 58.08 (11) (d) 2., consider changing “no later than the first day of the following month after the relative caregiver contacts the kinship care agency” to “no later than the first day of the first month beginning after the month in which the relative caregiver contacted the kinship care agency” for clarity and proper grammar.

j. In s. DCF 58.08 (12) (b) (intro.), consider moving the phrase “within 5 working days after the occurrence” to the end of the paragraph. Also, consider replacing “the occurrence” with “of any of the following events”.

k. In s. DCF 58.08 (15) (b), replace the reference to “subd. 1.” with “par (a)”. Also, for clarity, consider identifying a particular date in the month of January by which the submission is due. Examples include: “to the department annually by January 31” or “or by January 31 of each year”.

l. In s. DCF 58.09 (1) (a), delete “not more than” to provide a date certain to use when comparing which date occurs earlier. This format also matches the approach in sub. (2) (a).

m. In s. DCF 58.09 (3) (b), add a space in the reference to s. DCF 58.06.

n. In s. DCF 58.09 (4), consider converting the last sentence into two sentences. Also, if consistent with the department’s intent, consider including a cross-reference to s. 48.977, Stats., in the last sentence, as guardianships under ch. 54, Stats., may be filed by any person, while guardianships under s. 48.977, Stats., may only be filed by those specified under s. 48.977 (4), Stats.

o. In s. DCF 58.10 (1) (a) 14., replace “into” with “in”.

p. In s. DCF 58.10 (1) (c), replace “becomes” with “became”.

q. In s. DCF 58.10 (3) (d) 2., replace “If” with “Whether”.

r. In s. DCF 58.11 (1) (b) (intro.), replace “is” with “was” after “prospective termination”.

s. In ss. DCF 58.11 (1) (b) 3. and 58.12 (4) (intro.), consider replacing “best interests” with “best interest”, as the singular version is used more frequently throughout the proposed chapter, particularly in s. DCF 58.06.

t. In s. DCF 58.11 (2) (c) 2. (Note), replace both occurrences of “is” with “are”.

u. The period after “DEFINITIONS” in the title of s. DCF 58.12 (1) should not be bold.

v. Consider replacing “shall include advising” with “advise” in s. DCF 58.12 (3) (a) 2.

w. For brevity, consider replacing “department-prescribed application for kinship care and long-term kinship care” with “application form prescribed by the department” in s. DCF 58.12 (3) (b) 1., because the reference to s. DCF 58.04 (1) instructs as to the appropriate type of application form.

x. In s. DCF 58.12 (3) (c), consider replacing “existence of a good cause circumstance” with “good cause”.

y. In s. DCF 58.12 (4) (intro.), replace “if” with “whether”.

z. In s. DCF 58.12 (4) (c), delete “, in fact,”.

aa. In s. DCF 58.12 (11) (d), consider offsetting the phrase “or close of the case of” in commas, similar to sub. (10) (e).

bb. In s. DCF 58.12 (12) (a), consider inserting “of the final determination” after “in writing” to clarify the difference in procedure and role of the child support agency, as compared to sub. (7).

cc. In s. DCF 58.12 (12) (b) 2. b., replace the phrase “shall wait for 45 days from the date of the notification to notify the child support agency” with “delay notice to the child support agency for 45 days from the date on which the kinship care agency gave notice to the relative caregiver”. Consider a similar change to par. (c) 2.

dd. In s. DCF 58.12 (12) (c) 2., delete “a” in the phrase “inform the a relative caregiver”.