



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 20-030

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 caption for the proposed rule, the format for identifying the new chapter should be revised, and a relating clause to identify the subject matter of the proposed rule should be inserted. For example, the caption could appear as follows: “**to create** ch. DOC 347, relating to secured residential care centers for children and youth”. Also, the last sentence in the paragraph that introduces the caption could be removed, as it provides the same information. [s. 1.02 (1) (a) and (Example), Manual.]

b. In the rule summary’s listing of statutory authority, the citation to s. 227.11 (2), Stats., could be removed, as the other cited sections provide more specific authority to promulgate the rule. [s. 1.02 (2m) (a), Manual.]

c. In the rule summary’s description of the factual data and analytical methodologies used in preparing the rule, the description should be revised to provide an overview of the process in developing the proposed rule, and the entry regarding small business should be moved to the next heading. For example, the description should state if a review and comparison was made among the text of other current rules, the statutory directives on the issue, and federal guidance. Any other aspects of the analytical process used in developing the proposed rule should also be briefly identified.

d. In the rule summary’s listing of the place to submit comments, a deadline should be given to submit the comments. [s. 1.02 (2) (a) 13., Manual.]

e. Section DOC 347.10 (3) (b) 3. (intro.) and a. includes duplicative language and could be edited to appear as follows:

3. Each double occupancy room shall have all of the following:

a. Floor area of at least 50 square feet of unencumbered space. The distance between the floor and ceiling may not be less than 8 feet, and the distance between opposite walls may not be less than 6 feet.

f. The subsection language of s. DOC 347.17 does not follow from the introductory language, and could be edited to appear as follows:

DOC 347.17 Staffing. The facility shall develop, implement, and document a staffing plan that identifies and provides for sufficient staff at the facility to provide adequate and continuous supervision of youth including all of the following:

(1) A supervisor or designee physically on-site during every shift at the facility.

(2) Adequate staff to provide for the direct supervision of youth in living units and other areas where youth are present. The use of a video monitoring system shall not be used to replace direct staff supervision.

(3) Staff ratios of a minimum of one staff member supervising 8 youth during waking hours and one staff member supervising 16 youth during sleeping hours, except during exigent circumstances. The facility shall document the exigent circumstances.

(4) Whenever there is a youth in the facility, at least one staff member on duty of the same gender as the youth at the facility.

g. Section DOC 347.26 (4) (g) and (h) refer to a different subsection within the same rule. The format for the citations used in sub. (4) (g) and (h) need only refer to the subsection and paragraph and not to the entire rule. For example, par. (g) should read as follows: "Date and time of notification to youth's parent or legal guardian under **sub. (3) (f)**."

h. Section DOC 347.48 (1) should be edited and reformatted into an introduction and paragraphs as follows:

DOC 347.48 Observation of youth.

(1) A youth may be placed in his or her room only for any of the following purposes:

(a) Sleeping purposes.

(b) Healthcare reasons.

(c) Upon a voluntary request.

(d) To maintain the safety and security of other youth, staff, and the facility during an emergency situation.

(e) Administrative confinement.

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

Section DOC 347.04 defines “strip search” by citing to s. 968.255, Stats. This citation should more precisely cite to s. 968.255 (1) (b), Stats., which is the definition appearing in the statute.

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

a. Chapter DOC 347 should be checked in its entirety for use of the plural “their” when referring to an individual or single youth. When used in the singular, consider revising “their” to “his or her”, or using the article “the”, “a”, or “an”. See, for example, ss. DOC 347.48 (1) and 347.55 (5).

b. Section DOC 347.05 allows the department to grant a variance to any requirement within the chapter, other than those imposed by state statute or federal law and requirements relating to double occupancy rooms. Does the department intend to consider variance applications that do not meet the minimum requirements of the commercial building code (and as required in construction plans pursuant to s. DOC 347.09 (3))? If not, this should also be included as an exception within s. DOC 347.05 (1).

c. Section DOC 347.06 (4) requires a secure residential care center for children and youth to “promptly furnish to the department all requested information”. This statement is extremely vague. Does this mean that, upon request by any department employee, a center must supply all information requested by that employee?

d. Section DOC 347.10 (3) should be reviewed and revised to provide clarity regarding whether dormitories and other facilities may provide baths instead of showers. Paragraph (d) 8. requires each dormitory to provide “showers or bathtubs”, par. (e) 1. requires that “the facility” must provide “showers”, and par. (e) 3. refers to “baths or showers” in requiring individual privacy. If the intention is for all facilities to provide either showers or bathtubs, then par. (e) 1. should be revised to indicate which of the requirements also apply to bathtubs.

e. Section DOC 347.15 requires a facility that allows off-grounds leave to “develop policies and procedures”. Are the policies and procedures for determining which youth will be granted leave? Are they for approving the particular activities that a youth may engage in while off grounds? The department should consider including more explanatory language. At a minimum, the rule should state that a facility must develop policies and procedures “relating to off-grounds leave”.

f. Section DOC 347.25 (7) states that a center must have “sufficient service hours of qualified mental health professionals to timely meet the needs of youth...”. This should be revised to refer to “qualified mental health service hours” or “service hours from qualified mental health professionals”.

g. Section DOC 347.27 (2) should be revised to read: “An oral examination **shall be** performed by a licensed dentist...”.

h. Section DOC 347.32 (1) provides that a center cannot “limit the number of correspondence sent and received by youth”. This subsection should be revised to refer to the “amount” or “volume” of correspondence.

i. Section DOC 347.36 (2) should state that “youth shall have the opportunity to participate in **religious** practices, services, and programming...”.

j. Section DOC 347.46 (1) (b) 3. to 5. lists individuals who must be on a case planning team. Each provision should be revised to include the word “A” before the identified individual. For example: “A clinical staff member”.

k. Section DOC 347.46 (2) (intro.) relates to reassessment and requires professional staff to conduct a reassessment of the case plan at least every three months. Paragraph (a) requires the facility to conduct an “individual case plan review” and revise the plan as needed. Is the individual case plan review required every three months as part of the reassessment? Or, is the individual case plan review something separate from a reassessment of the case plan? If it is a separate review, how often must it be conducted? This should be clarified.

l. Section DOC 347.49 (8) lists individuals who should be notified if a youth is given an administrative confinement placement. Each provision should be revised to include the word “A” or “The” before the identified individual or government in pars. (a), (b), and (e). For example: “A qualified mental health professional” and “The county or tribe of placement”.

m. Section DOC 347.51 (5) states that a youth may be placed in mechanical restraints “to prevent the harm of youth or staff”. This should be amended to read: “to prevent **harm to** youth or staff”.

n. Section DOC 347.51 (7) relates to use of mechanical restraints and requires that a staff person be assigned to monitor “the youth and shall remain in continuous auditory and visual contact with the youth”. The provision presumably applies while a youth is placed in mechanical restraints, but the language does not state this directly. The provision should be amended to clarify. For example: “A staff person shall be assigned to monitor a youth who is placed in mechanical restraints and shall remain in continuous auditory...”.