

Report From Agency
Department of Children and Families
Rule Report for Final Draft Form of Proposed Rules
Child Support Guidelines Quadrennial Review
Clearinghouse Rule 23-011
Chapter DCF 150

Basis and Purpose of the Proposed Rules

Federal regulations require that states review their child support guidelines every 4 years to determine whether the use of the guidelines results in appropriate child support order amounts. The proposed rules are based on the recommendations of the Child Support Guidelines Advisory Committee that the department formed to conduct this review. The rules bring the state into compliance with the provisions of a 2016 federal rule on imputation of income, clarify the appropriate use of equivalent care for parents with shared-placement, and reduce the need for multiple court actions to determine and modify the child support obligations of a serial-family parent.

Public Hearing

On May 22, 2023, the department held a public hearing and no comments were received.

Responses to Legislative Council Rules Clearinghouse

The department accepted all Rules Clearinghouse recommendations, except the second comment in comment 5. c. The following comments affected substantive provisions in the rule:

Comment 5. c.: In s. DCF 150.03 (3) and (3m), as treated by the proposed rule, can the agency clarify the relationship between the two provisions? For example, several factors under sub. (3) appear relevant to the exercise of discretion in choosing to impute between 10 and 35 hours of work under sub. (3m), though the proposed rule has no direct link between those factors and sub. (3m). It is also unclear which, or how many, earning capacity factors under sub. (3) must be “unknown” such that the court may transition to calculation of imputed income under sub. (3m).

Department response: The department revised sub. (3m) to allow use when “no or little information is known” on the parent’s ability to earn and to provide that “the court may use any factors in sub. (3), if known, to determine the number of hours to impute.” The department prefers to leave the determination of which or how many earning capacity factors in sub. (3) must be unknown before income may be imputed under sub. (3m) to the discretion of the court.

Comment 5. d.: It may be helpful for the agency to clarify the relationship between proposed s. DCF 150.03 (3) and s. DCF 150.03 (1) and (4) of the current administrative code. While the cited federal law underpins the consideration of a parent’s assets as a factor for imputing income based on earning capacity, under proposed s. DCF 150.03 (3) (n), it is unclear how inclusion of assets under sub. (3) interacts with the separate, existing calculation of actual, gross income derived from assets under s. DCF 150.03 (1), or income to be imputed based on unproductive assets under s. DCF 150.03 (4).

Department response: The department removed “assets” from the list of factors that the court may consider in determining a parent’s earning capacity.

Changes to the Analysis or to Fiscal Estimate

The department revised the analysis in response to Rules Clearinghouse comments and to reflect modifications to the rule text made in response to Rules Clearinghouse comments. No changes were made to the fiscal estimate.

Final Regulatory Flexibility Analysis

The proposed rules do not have an effect on small businesses as defined in s. 227.114 (1), Stats., so no final regulatory flexibility analysis is required.

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