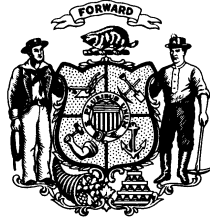


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CLEARINGHOUSE RULE 95-198

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Section HSS 182.03 (8), (9) and (10) all contain definitions of terms that differ to some extent from the corresponding definitions of those terms in s. 254.11, Stats., which contains the definitions relevant to all of subch. II of ch. 254, Stats. That subchapter includes the statutory provisions governing the lead poisoning and lead exposure prevention grants [s. 254.151, Stats.] which are the subject of this rule. For example, s. HSS 182.03 (8) defines the terms “lead exposure” or “exposure to lead” to mean any amount of lead in the blood of any person. However, s. 254.11 (9), Stats., defines “lead poisoning or lead exposure” to mean a level of lead in the blood of 10 or more micrograms per 100 milliliters of blood. Is there a rationale for using a more expansive definition in the rule than that found in the statute?

Also, s. HSS 182.03 (9) defines “lead exposure hazard” to mean any substance, service or object that contains lead and that, due to its condition, location or nature, may contribute to lead poisoning or to dangerous levels of lead exposure. Section 254.11 (8g), Stats., defines the term “lead hazard” to mean any substance, surface or object that contains lead and that, due to its condition, location or nature, may contribute to the lead poisoning or lead exposure of a child under six years of age. First, it appears that the word “service” in the rule definition should be changed to “surface,” for consistency with the statutory definition. Second, is there a reason why the rule definition does not refer to children under six years of age, while the statutory definition does?

Finally, s. HSS 182.03 (10) defines “lead poisoning” to mean, in reference to children under age six, a level of lead in the blood of 10 or more micrograms per 100 milliliters of blood.

As noted previously, s. 254.11 (9), Stats., defines “lead poisoning or lead exposure” to mean a level of lead in the blood of 10 or more micrograms per 100 milliliters of blood, but makes no reference to children under the age of six, as the rule definition does.

All of these rule definitions should be reviewed to ensure that they do not conflict with the statutory definitions and that they accurately reflect the actual usage of the terms in the body of the rule.

- b. In s. HSS 182.07, “may not” should replace “shall not.” [See s. 1.01 (2), Manual.]

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

a. Section HSS 182.04 (1) to (6) set forth the purposes for which lead poisoning or lead exposure prevention grants may be used. Subsection (6) provides that grants may be used “to develop and implement outreach and education programs for health care providers to inform them of the need for lead poisoning or lead exposure screening and of the requirements under s. 254.13, Stats., relating to lead poisoning or exposure to lead” (emphasis added). That statute requires physicians and other health care professionals to report to either the Department of Health and Social Services (DHSS) or the local health officer when a diagnosis of lead poisoning or lead exposure is made. The statutory provision which contains the corresponding language about this use of grant funds, s. 254.151 (6), as renumbered and amended by 1995 Wisconsin Act 27, refers to “the requirements of this subchapter relating to lead poisoning or lead exposure” (emphasis added). Should the reference to s. 254.13 in the rule be broadened to conform to the statutory language, in order to capture any requirements other than those in s. 254.13 on health care providers relating to lead poisoning or lead exposure?

b. Section HSS 182.05 (2) (b) permits the department to solicit applications for continuation grants from currently funded projects “in a form determined by the department to be appropriate for the projects.” Why does the rule not specify the manner in which applications will be solicited for continuation grants, as it does for initial grants? Does the department intend to develop a form or other application for use by agencies applying for continuation grants? Note that reference is made in several places in sub. (3) of this provision to “continuation grant application instructions.” Also, in sub. (4), reference is made to “continuation grant application materials” (emphasis added). If there are to be instructions or materials, it appears that more information about them should be provided in sub. (2) (b), the first provision in which continuation grants are discussed. Also, they should be referred to in a consistent manner to avoid confusion.

c. Section HSS 182.05 (6) (b) sets forth the criteria to be used by review committees to review applications for initial or continuation grants. The criterion set forth in subd. 6. is “the degree to which the proposal addresses basic components of the grant program under subd. 4.” Subdivision 4. lists a number of lead poisoning prevention program activities as another criterion by which to review applications for grants. Is this the provision to which the department intends to refer?

d. Section HSS 182.07 sets forth a number of nonpermitted uses of “(f)unds made available through grants under s. 254.151 (1), Stats., and this chapter.” Section 254.151 (1), Stats., as

renumbered and amended by 1995 Wisconsin Act 27, contains one of six permitted uses of grant funds: to fund educational programs about the dangers of lead poisoning or lead exposure. Is this the only subsection of s. 254.151, Stats., to which the restrictions in s. HSS 182.07 are intended to apply or are the restrictions intended to apply to grants funded for the purposes set forth in subs. (2) to (6) as well? If so, the reference should be to s. 254.151, Stats.

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

a. Section HSS 182.05 (1) (b) permits a consortium of local health departments to apply for grant funds. Is the meaning of “consortium” obvious to the reader? Does it mean two or more local health departments? If so, perhaps that phrase should be substituted for “consortia.” Also, in s. HSS 182.05 (1) (c), a nonprofit agency working in collaboration with a local health department may apply for grant funds. Could a nonprofit agency working in collaboration with a consortium of local health departments also apply? If so, “one or more local health departments” should replace “a local health department.”

b. In s. HSS 182.05 (5), in addition to authorizing the department to reject any application for failing to meet the specifications in the request for proposals (RFP), is the department also authorized to reject any application failing to meet the specifications set forth in the continuation grant application documents?

c. Section HSS 182.05 (6) (b) 4. g. sets forth, as an activity that may be considered in reviewing a grant application, collaborative efforts with other agencies to identify, evaluate or control lead exposure hazards and evidence of those efforts. What is meant by “evidence”? If the application delineates the collaborative efforts which the applicant agency has undertaken, is that not adequate “evidence” of those efforts? Is something more contemplated?

d. In s. HSS 182.05 (6) (b) 6., the word “addresses” is misspelled.

e. Section HSS 182.06 (1) (a) states that the department shall make awards based on the recommendations resulting from the review under s. HSS 182.05 (6) and taking into account other factors such as geographic distribution of current lead poisoning prevention grants, existing providers or availability of services in the proposed project service area and the availability of other, more appropriate funding sources for a proposed project. It appears that those items delineated in sub. (1) (a) would appropriately be added to the list of criteria to be considered in reviewing grant applications in s. HSS 182.05 (6). That would consolidate all relevant criteria in a single location. Also, in sub. (1) (a), the word “and” should be inserted after the semicolon on line 5.

f. Section HSS 182.06 (1) (b) states that the department may reject any application and may reject all applications. Is this statement necessary? It appears unnecessary, given the language in s. HSS 182.05 (5), which states that the department may reject any application for failing to meet the specifications in the RFP.

g. In s. HSS 182.06 (1) (c), it appears that “a commitment” should be replaced by the phrase “an agreement under sub. (4).”

h. Section HSS 182.06 (3) permits an applicant to appeal rejection of an application based on an alleged failure of the department to, among other things, adhere to procedures speci-

fied in the RFP. Should language be added to also include failure to adhere to procedures specified in whatever documents are used for continuation grant applications?

i. Section HSS 182.06 (4) requires signing by “both parties” of an agreement drawn up by the department. If more than one county agency is involved in an application or a county agency and a nonprofit agency are both involved, do both agencies have to sign the agreement?

j. In s. HSS 182.06 (5) (b), the word “their” on line 3 should be changed to “its.”

k. Section HSS 182.08 requires recipients of grants to maintain records of the projects supported by the grants as well as to submit reports to the department. What is meant by “records”? It would be helpful to specify the kinds of documents that grant recipients are to be required to maintain. Also, in that provision, the word “recipients” on line 4 should be rewritten to read “recipient’s.”