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CLEARINGHOUSE RULE 99-032

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 September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. HFS 41.03 (10) (a), “; or” should be replaced with a period.
- b. In s. HFS 41.04 (3), the paragraph titles should be placed in italics and should not be underscored, pursuant to s. 1.05 (2) (d), Manual. The entire rule should be reviewed for other occurrences of this problem.
- c. In s. HFS 41.09 (3) (b), the subdivision titles should be placed in single quotation marks, rather than double quotation marks, in accordance with s. 1.05 (2) (e), Manual.

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

- a. In s. HFS 41.04 (8) (b) 3., the statutory reference to the definition of “sexual contact” should be s. 940.225 (5) (b), Stats., and the statutory reference to the definition of “sexual intercourse” should be to s. 940.225 (5) (c), Stats.
- b. In s. HFS 41.04 (8) (b) 4., should s. 940.295, Stats., relating to abuse of patients and residents, also be included? Also, it is suggested that “client” be deleted since the cited statutes do not deal exclusively with clients.

c. In s. HFS 41.04 (12) (b), it is suggested that the phrase “under sub. (9) (a)” be inserted at the end of the provision.

d. In s. HFS 41.04 (15) a more specific reference to the relevant provision or provisions of ch. HFS 12 should be provided. Also, note that “ch.,” “s.” or “ss.” should be inserted prior to the “HFS” depending on whether the entire chapter or a particular section or sections are cited.

e. In s. HFS 41.06 (3) (b) 13., citations should be provided for the “related administrative rules” referenced in this provision.

f. In s. HFS 41.07 (3) (d) 5. b., a more specific reference to the definition of “child with exceptional educational needs” in ch. PI 11 should be provided.

g. In s. HFS 41.09 (3) (b) 2., the reference to “par. (a)” on line 2 should be changed to “subd. 1.”

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

a. In s. HFS 41.03 (10) (b) 4., it is suggested that the word “to” on line 2 be moved to follow the word “and” on line 1.

b. In s. HFS 41.03 (13), reference is made to a child displaying a “severe emotional or behavioral impairment.” That term is not defined in exactly that form. Rather, the term “severe emotional disturbance” is defined in s. HFS 41.03 (24). Is there a reason why the term “severe emotional disturbance” is not used to refer at least to a “severe emotional impairment” in sub. (13)? Also, should “severe behavioral impairment” be defined?

c. In s. HFS 41.04 (2) (b) 4., the comma on line 1 should be deleted.

d. Section HFS 41.04 (2) (c) (intro.) should be rewritten in the active voice and should indicate that the department’s designated representative shall use the certification survey . . . and shall base certification decisions on a reasonable assessment of the program. The entire rule should be reviewed for provisions which need to be rewritten in the active voice to clarify who must take the specified action. [See s. 1.01 (1), Manual.]

e. In s. HFS 41.04 (7), where will the department set forth the fees for certification and renewal of certification? In an administrative rule?

f. In s. HFS 41.04 (8) (b) 2., on line 1, the word “requiring” should be changed to “who requires” and the word “has” should be inserted after the word “certificate.”

g. In s. HFS 41.04 (8) (b) 2. through 5., reference is made to “a staff member” doing certain things, while subs. 6. and 9. refer to “a program staff member.” If there is no difference between “staff member” and “program staff member,” it is suggested that one term be used consistently, to avoid confusion.

h. Should the word “ordinance,” be inserted after “statute,” in s. HFS 41.04 (9) (a)?

i. The language in s. HFS 41.04 (11) (a), relating to provisional certification appears to conflict with language in sub. (10) (d). The language in sub. (10) (d) states that if the department determines that a program has one or more minor deficiencies, it shall give the program a notice of deficiency and *may* grant a provisional certification pursuant to sub. (11). However, sub. (11) (a) provides that if the department determines that minor deficiencies exist, it *shall* issue a notice of deficiency to the program and offer the program a provisional certificate. The two provisions should be reviewed and reconciled, so it is clear whether the offer of a provisional certificate in that circumstance is discretionary or mandatory.

j. In s. HFS 41.04 (12) (a), the word “organization” on line 2 should be changed to “program,” for consistency with other provisions. The same comment applies to the word “organization” in sub. (13).

k. The following comments pertain to s. HFS 41.04 (15):

- (1) The second occurrence of the word “program” on line 2 could be deleted.
- (2) Reference is made on line 3 to “immediate termination” but there is no antecedent provision on immediate terminations. Rather, sub. (9) relates to immediate *suspension* of a certificate in certain circumstances. It appears that a “termination” would not be immediate under sub. (8) (b) (intro.), since there must be written notice to the program of the proposed action to terminate, suspend or refuse to renew a program’s certification and a notice of opportunity for a hearing under sub. (12). Does the department intend to refer to “immediate suspension” in sub. (15)?
- (3) Subsection (15) states that certain persons with direct management responsibility and persons who were knowingly involved with acts which served as a basis for immediate termination must be barred from providing service for a period of five years. This language is applied to acts which result in termination of certification under s. HFS 106.06 or acts involving an individual staff member who has terminated affiliation with a program and removed or destroyed client records. Should acts which result in termination *under this chapter* (that is, ch. HFS 41) also be included?
- (4) How will it be determined whether the bar from providing services applies for a period not to exceed five years *or* (for a period) in accordance with ch. HFS 12? See also the comment under category 4. above, relating to the reference to ch. HFS 12.

l. Should “nonstatutory” be inserted before “requirement” in s. HFS 41.05 (1) (a) (intro.)?

m. In s. HFS 41.05 (1) (a) 1., it is suggested that the word “provider” on line 2 be replaced by the word “program,” for consistency with language in sub. (1) (a) (intro.).

n. In s. HFS 41.06 (1) (c), the terms “child’s primary care provider” and “primary caretaker” are used. Is this the same as the “primary caregiver” or “ongoing primary caretaker,” defined in s. HFS 41.03 (20)? Consistent terminology should be used to avoid confusion.

o. In s. HFS 41.06 (2) (intro.), the word “action” on line 3 should be changed to “offense.” Also, throughout the rule, a phrase such as “all of the following” or “any of the following” should be included in (intro.)’s. In sub. (2) (intro.), “do all of the following” should be inserted before the colon.

p. In s. HFS 41.06 (3) (a), to what does the word “gained” on line 3 refer?

q. The following comments pertain to s. HFS 41.06 (3) (b):

(1) In subd. 8., the second occurrence of “masters” on line 1 should be written “master’s”.

(2) In subd. 9., it is suggested that the phrase “documented as provided in subd. 4.” be replaced by the phrase “as documented by the Wisconsin psychology examining board.”

(3) In subd. 12., the symbol following the word “bachelor” on line 1 should be deleted and replaced by an “s”. The entire rule should be reviewed, as there are a number of other occurrences of this problem.

(4) In subd. 13., “advanced” should replace “advance.”

(5) In subd. 18., to whom does the word “who” on line 2 refer?

r. In s. HFS 41.06 (4) (b) 1., the word “identified” on line 2 could be deleted.

s. In s. HFS 41.06 (7) (d) 4., what is the process for having procedures for staff supervision approved by the department? Also, it is suggested that the comma following the word “department” on line 3 be changed to “and are.” Finally, the word “if” should be inserted before the third occurrence of “the” on line 3.

t. In s. HFS 41.06 (7) (e), must the clinical director provide the individual clinical supervision? Also, is this the same supervision referred to in par. (d) 1. and 2.?

u. In s. HFS 41.06 (7) (f), with which specific types of “peers” must various types of staff receive peer clinical consultation?

v. In s. HFS 41.06 (7) (j) 1. and 2., what must the documentation of supervision or consultation include?

w. In s. HFS 41.06 (8) (c) 1., the hyphen in the word “in-service” should be deleted. Also, in par. (d) 2., must the inservice training required under this subdivision cover the same items as the training required in subd. 1.?

x. In s. HFS 41.07 (1), the sentence which comprises the subsection is so long that its meaning is obscured. The material should be broken up into more than one sentence to improve readability.

y. In s. HFS 41.07 (3) (d) 5. b., the “A” on line 1 should be changed to lower case and a space should be inserted between “a” and “child.”

z. In s. HFS 41.07 (5) (b), the word “childs” should be rewritten “child’s.”

aa. In s. HFS 41.07 (6) (d) 3., it appears that the word “restraints” on line 2 should be replaced by the word “constraints.” Also, the word “childs” on line 2 should be rewritten “child’s.”

ab. Section HFS 41.07 (6) (f) provides that if a child and family tentatively enrolled for services are experiencing an immediate need for assistance, the program may, with the written consent of the child’s parent, guardian or legal custodian and the approval of the clinical director, provide whatever treatment and support is needed to stabilize care for the child, pending completion of assessment and planning. Should a child age 14 or older also be required to give consent to these immediate services? Note that a child age 14 or older must give consent for services under several provisions of sub. (5).

ac. Section HFS 41.07 (6) (i) provides that a family with more than one child *or* with an adult family member with a mental disorder or a severe emotional or behavioral impairment may be enrolled for services. Use of the word “or” means that a family with just an adult family member with such a disorder or impairment could be enrolled. This appears to conflict with sub. (2), which governs eligibility for services and provides that a child and his or her family are eligible for in-home mental health services if the *child* meets certain specified criteria. These two provisions should be reviewed and reconciled.

ad. In s. HFS 41.08 (1) (c) (intro.), the child’s parent or guardian must approve the addition of other team members. Should the parent, guardian *or legal custodian* be required to approve other team members? Will the lead therapist also have a say in this? On line 2, “child” should replace “child’s”. Also, on line 3, the word “childs” should be rewritten “child’s.”

ae. In s. HFS 41.08 (1) (c) 2., what is meant by a *naturally* occurring support person?

af. The following comments pertain to s. HFS 41.08 (4):

- (1) In par. (a) 2., the health care provider must explain to the child and the child’s parent, guardian or legal custodian and primary caregiver, if different, the nature and possible negative and positive effects of any proposed psychotropic medication. In contrast, sub. (4) (h) 1., states that the health care provider has to document that he or she has explained the nature, risks and benefits of the medication to the child’s parent, guardian or legal custodian, and the child if the child is 14 years of age or older. These provisions should be reviewed and reconciled.

- (2) Paragraph (d) provides that at the discretion of the clinical director, the primary caregiver may be trained to administer the child's psychotropic medication in the home. Why is only the primary caregiver mentioned here, rather than the child's parent, guardian or legal custodian and primary caregiver, if different, as in previous provisions?
- (3) In par. (f), does the word "who" on line 2 refer to the health care provider, to the lead therapist or both?
- (4) Paragraph (g) requires that the health care provider *or* the primary caregiver to report any changes in medication to the staff providing in-home mental health services to a family. If the rule does not specify one person as having that responsibility, it is possible that the health care provider will believe that the primary caregiver has provided the requisite information, and vice versa, which could result in the staff not receiving important information about a change in medication.

Also, par. (g) should be written in the active voice and "caregiver" should replace "care giver."

- (5) In par. (h) (intro.), whose signature is required? The health care provider? The person administering the medication?

ag. In s. HFS 41.08 (6) (a), the first sentence provides that a family services plan must be reviewed by the clinical director *or his or her designee*. The last sentence states that services may be provided pending approval but shall be suspended if the *clinical director* does not approve the plan. Is it the department's intent to include the phrase "or his or her designee" following "clinical director" in the last sentence? Also in this provision, the word "plans" on line 4 should be singular.

ah. The placement of and use of terminology in provisions relating to a child's "service notes" are confusing. Section HFS 41.08 (6) (b) refers to service notes included in a family's program record. Section HFS 41.08 (7) (a) contains language on "service notes," which are notes entered into the family's program record indicating the nature and duration of services, the staff person who provided services and observations of progress made toward outcomes identified in the family services plan. It is unclear why the language on service notes appears in this section, since language on service notes is also included in s. HFS 41.10, relating to client service records. It is confusing to have similar language in two places; the department should review the two provisions and determine the best location for the language. If the department wants to retain the reference to service notes in s. HFS 41.08 (6) (b), it could include a citation there to the language on service notes in s. HFS 41.10 (2). The department should determine whether the "program record" referenced in s. HFS 41.08 (6) (b) and (7) (a) is the same as the "service record" referenced in s. HFS 41.10. If so, consistent terminology should be used to avoid confusion.

ai. Section HFS 41.09 (2) requires that the family services plan identify the level of intensity and duration of treatment required by a child and family accepted into the program. Why is this language not placed with the language regarding the family services plan in s. HFS 41.08 (3)?

aj. In s. HFS 41.09 (3) (a), the word “A” on line 2 should be deleted and the defined term “direct family services” should be placed in quotation marks.

ak. In s. HFS 41.11 (2), reference is made to a client’s case manager. Is the case manager the same as the “service facilitator” whose duties are set forth in s. HFS 41.06 (4) (c)? If so, the term “case manager” should not be used, to avoid confusion. If not, “case manager” should be defined and the person’s duties specified.