

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 99-141**

### **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. It appears that s. HFS 33.05 should be renumbered to s. HFS 33.04 and that the first occurrence of s. HFS 33.06, relating to waivers, should be renumbered to s. HFS 33.05. Internal cross-references in ch. HFS 33 should be renumbered accordingly.

b. Section HFS 33.07 actually provides a definition of the term “adult mental health day treatment services.” Consequently, the subsection should read:

HFS 33.07 (1) MENTAL HEALTH DAY TREATMENT SERVICES. In this section, “adult mental health day treatment services” means services provided . . . .

c. In s. HFS 33.11 (3), the phrase “have the option of using” should be replaced by the phrase “may use.” Section HFS 33.03 (6) and (13) refer to materials prepared by the American Psychiatric Association and the Commission on Professional and Hospital Activities. In incorporating these materials, has the department complied with s. 227.21, Stats.?

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

a. In s. HFS 33.05 (3) (b) 2., the reference to sub. (11) should be replaced with a reference to sub. (12). This comment also applies to sub. (8) (b) (intro.).

b. In s. HFS 33.05 (6), the reference to sub. (3) (c) should be replaced with a reference to sub. (3) (d).

c. In s. HFS 33.05 (8) (b) 4., s. 943.20, Stats., should also be referenced because ss. 940.285 and 940.29, Stats., do not include misappropriation of property.

d. In s. HFS 33.05 (12) (b), the reference to sub. (9) (b) 11. should be replaced with a reference to sub. (9).

e. In s. HFS 33.07 (2) (b), it appears that the reference to s. 51.42 (7) (b) 1., Stats., is incorrect.

f. In s. HFS 33.07 (4) (b), is the reference to s. HFS 33.06 (3) (b) 11. correct?

g. In s. HFS 33.09 (7) (b) 2. b., the phrase “these contacts” should be replaced by the phrase “contacts under subd. 2. a.” [See, also, sub. (7) (b) 5. b.]

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

a. In s. HFS 33.05 (1), should “county department” be defined in s. HFS 33.03?

b. In s. HFS 33.05 (2) (a) (intro.), “On” should be replaced with “Upon.” Also, “both” could be replaced with “all” so that if additional subdivisions are added in the future, the introductory paragraph will not need to be amended as well. This comment also applies to s. HFS 33.08 (6) (b) and (7) (d).

c. In s. HFS 33.05 (2) (a) 1., “it’s” should be replaced with “its.”

d. In s. HFS 33.05 (2) (a) 2., it may be helpful to note that an inspection for purposes of renewing certification must be conducted before the program’s certification expires.

e. In s. HFS 33.05 (2) (c) 1., a comma should be inserted after “designated agent.”

f. In s. HFS 33.05 (2) (d), “but not limited to” could be deleted because that is implied by the word “including.” This comment also applies to ss. HFS 33.06 (6) (b) 1., 33.07 (1) and 33.12 (2) (intro.).

g. In s. HFS 33.05 (3) (b) 1., “the” should be inserted before “reasons.”

h. In s. HFS 33.05 (4), the word “and” following “services offered” should be replaced with a comma.

i. Section HFS 33.05 (5) suggests that the effective date of the certification is the date of the on-site inspection. Is this correct?

j. In s. HFS 33.05 (6) (a), “an certification” should be replaced with “a certification.” Also, “Upon application and the successful completion of a certified inspection under sub. (2)

(b)” could be deleted because it is repetitive. Finally, the reference to the specification on a shorter time period under sub. (3) (d) (sub. (3) (c) is incorrectly referenced in the text) is confusing because sub. (3) (d) only applies to initial certification.

k. Section HFS 33.05 (8) (a) defines “suspension” for purposes of the subsection. However, “suspension” is used in sub. (9). If the term only is used in sub. (9), then the definition should be placed in that subsection. However, if it is used elsewhere, then the definition could be placed in s. HFS 33.03 or at the beginning of s. HFS 33.05.

l. In s. HFS 33.05 (8) (b) 2., “claimed to be licensed or certified when he or she was not” could be replaced with “made misrepresentations regarding his or her professional licensure or certification.”

m. In s. HFS 33.05 (8) (b) 6., “convicted” should be defined at the beginning of the subsection.

n. In s. HFS 33.05 (8) (b) 2. to 6., perhaps “current” should be inserted before “staff member.”

o. In s. HFS 33.05 (9) (a), “noted” should be deleted.

p. In s. HFS 33.05 (9) (b), “Where” should be replaced with “If.” This comment also applies to s. HFS 33.09 (1) (a). Also, it may be clearer to replace “under par. (a) which is the focus of concern” with “resulting in suspension” under par. (a). Also, it would be clearer to insert “, that factor” after “conduct became known.” Finally, would this provision be better placed in sub. (12)?

q. In s. HFS 33.05 (9) (c), what is meant by “any additional remedies”? In addition, “under the suspension” could be deleted.

r. In s. HFS 33.05 (10) (d), it appears the offer of provisional certification should be limited to programs with fewer than six minor violations to be consistent with sub. (3) (a) 2. This comment also applies to sub. (11) (a).

s. It appears that s. HFS 33.05 (10) (e) could be deleted because it is repetitive.

t. In s. HFS 33.05 (11) (a), “shall issue a notice of deficiency to the program and” could be deleted because it is repetitive.

u. The note to s. HFS 33.05 (12) should be amended to read: “An appeal may be mailed to the Division of Hearings and Appeals at . . . or hand-delivered to the division . . . .” Also, a comma should be inserted after “Madison.”

v. In s. HFS 33.06 (Waivers) (2) (e), “would meet” should be replaced with “meets.”

w. In s. HFS 33.06 (Waivers) (2) (c) and (3) (b), the terms “professional positions” and “professional staff” are used. Do these terms need to be defined?

- x. In s. HFS 33.06 (Personnel) (3) (b) 4., “1500” should be replaced with “1,500.”
- y. In s. HFS 33.06 (Personnel) (3) (b) 5., “the” should be inserted before “examining board.”
- z. In s. HFS 33.06 (Personnel) (3) (b) 6., “3000” should be replaced with “3,000.”
  - aa. In s. HFS 33.06 (Personnel) (4) (c) 2., it appears that the phrase “any of” should be inserted before the phrase “the requirements of sub. (3) (b) 1. to 12.”
  - ab. In s. HFS 33.06 (Personnel) (5) (d) 2., “lets the staff member know how he or she is doing with a particular client” could be replaced with “advises the staff member on his or her conduct with a particular client.”
  - ac. In s. HFS 33.06 (Personnel) (5) (e) 2., it is not clear what is meant by “whichever is greater.” Is the intent to require the option that is more frequent?
  - ad. In s. HFS 33.07 (3) (a), should “required” be replaced with “recommended”?
  - ae. In s. HFS 33.07 (4) (b), it is unclear what is meant by “Subject to the requirement in s. HFS 33.06 (4) (b) 2.” This comment also applies to the similar phrase in par. (d).
  - af. In s. HFS 33.07 (7) (b), should a reference to rehabilitation be included? [For example, see sub. (3) (b) 2.]
  - ag. Section HFS 33.08 (2) provides that a program may not discriminate against a person seeking or referred for treatment based solely on the person’s age, race, creed, color, gender or handicap. This provision should be compared to the prohibited bases of discrimination contained in s. 106.04 (9), Stats., relating to discrimination in a public place of accommodation.
  - ah. In s. HFS 33.08 (3) (b) (intro.), a phrase such as “all of the following criteria are met” should be included to clarify the intent of the provision. This comment also applies to sub. (5) (a) (intro.).
  - ai. In s. HFS 33.09 (4) (a) 3., “in” should be replaced with “receiving.”
  - aj. In s. HFS 33.09 (5) (a) 5., a period should be inserted after “must be reported” and “which shall include” should be replaced with a phrase such as “The policy shall require reporting to.”
  - ak. In s. HFS 33.09 (5) (b) 1. a., should a word such as “assessment” be inserted after “involuntary movement disorder scale”?
  - al. In s. HFS 33.09 (5) (b) 1. b., the comma following “allergies” should be deleted.
  - am. Section HFS 33.09 (5) (b) 2. and (f) 2. make reference to parents of clients. However, under s. HFS 33.08 (3) (a), one of the criteria for admission to a program is that the

person is 18 years of age or older. Are these references to a client's parent appropriate? Also, in sub. (5) (b) 2., it appears that the phrase "or guardian" should be inserted before the phrase "is comfortable."

an. In s. HFS 33.09 (5) (e), it appears that the reference to a dispensing pharmacy is not appropriate because pharmacies are not regulated under this chapter of the rules.

ao. In s. HFS 33.09 (5) (f) 3., the word "is" following "Written so that" should be replaced with "it." Also, the hyphen in "side-effects" should be deleted.

ap. In s. HFS 33.09 (7) (c) 1. c., the phrase "finding out what they know and their views about" is somewhat awkward and could be replaced with a phrase such as "discussing their views on why."

aq. In s. HFS 33.09 (7) (c) 2. f., perhaps the sentence could be rephrased to express the intent to involve all programs in a review, without requiring them to, because some of these programs are likely not regulated under this chapter.

ar. Section HFS 33.12 (4) (intro.), discusses a report that must be prepared prior to recertification. This should be referenced in the provisions relating to recertification.