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CLEARINGHOUSE RULE 99−142

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. This rule defines the term "service," in s. HFS 32.03 (21), as a part of a hospital where patients receive inpatient mental health treatment. Therefore, it is unnecessary to continually repeat the entire phrase "an inpatient mental health service." Rather, the term "a service" could be used alone. See, for example, s. HFS 32.04 (1). The entire rule should be reviewed for occurrences of this problem.

b. Section HFS 32.04 (8) (a) defines "suspension" for purposes of sub. (8). However, since it appears that "suspension" is not used in sub. (8), the defined term should be "suspend."

3. Conflict With or Duplication of Existing Rules

This rule proposes to repeal ss. HFS 61.70, 61.71 and 61.72, all of which pertain to community inpatient mental health services. The rule analysis in the transmittal letter to the Rules Clearinghouse states that for ch. HFS 32, "we are pulling the standards out of ch. HFS 61 . . . ." However, there is no proposed repeal of s. HFS 61.79, which pertains to standards and requirements relating to community inpatient mental health services for children and adolescents. This provision should be thoroughly reviewed to determine how it relates to the provisions in proposed ss. HFS 32.06 (5) (c) and 32.07 (3), which sets forth additional requirements for inpatient services treating children and adolescents. If it is the department's intent that s. HFS 61.79 be retained, an explanation should be provided in the analysis as to how

it fits in with the language in proposed ch. HFS 32 on the same subject. If s. HFS 61.78 pertains to ***inpatient*** services treating children and adolescents, the same comments pertain. Also, it should be noted that s. HFS 61.78 (1) (intro.) contains a reference to these standards being in addition to ss. HFS 61.70 through 61.77. Since ss. HFS 61.70 through 61.72 are proposed for repeal, this reference must be changed.

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

In s. HFS 32.07 (3) (d) (intro.), reference is made to procedural requirements for the use of seclusion, isolation and restraint in s. HFS 32.11 (4). However, there is no sub. (4) in the cited provision. The reference should be to sub. (3) instead.

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

a. The rule analysis states that inpatient mental health treatment programs are operated by hospitals, usually as a service or unit which is a part of a hospital. That information is repeated in the note following s. HFS 32.01. Further, s. HFS 32.02 (1) (b) states that this chapter only applies to the inpatient mental health service within a hospital. Therefore, it is rather confusing to read, in s. HFS 32.04 (1), that a "county department" or a "private organization" seeking certification of any inpatient mental health service must apply to the department. Does this mean a county department or private organization that operates a hospital? This should be clarified.

b. In the note following s. HFS 32.01, it is suggested that the words "program" and "service" on line 3 be placed in quotation marks.

c. In s. HFS 32.02 (1) (a), the second "to" on line 2 could be changed to "with." Also, this provision states that ch. HFS 32 applies to all hospitals that are under contract with or operated by county departments under s. 46.23, 51.42 or 51.437, Stats., to provide inpatient mental health treatment. Does this mean that the chapter does ***not*** apply to hospitals that are ***not*** under contract with or operated by a county department?

d. In s. HFS 32.02 (2) (b), it is suggested that the phrase "under par. (a)" be inserted after the word "certification" on line 1.

e. Section HFS 32.03 (8) defines "inpatient mental health services" to mean medically oriented treatment, psychotherapy and other services ***provided in a residential setting*** on a 24-hour per day basis. Since s. HFS 32.02 (1) (b) states that this chapter applies only to the inpatient mental health services within a hospital, would it be more appropriate to state in the definition that these are services provided in a ***hospital*** setting? The term "residential" might be construed to refer to a person's residence or another nonhospital setting.

f. Section HFS 32.04 (1) states that a "county department" or a "private organization" seeking certification of a service must apply to the department for certification. Previously, the reference to "county department" in s. HFS 32.02 (1) included the qualifier "established under s. 46.23, 51.42 or 51.437, Stats." Perhaps a definition of the term "county department" should be

provided, to clarify the meaning of the term and avoid repeating the qualifying language. Also, it is suggested that the term "private organization" be defined, as it is unclear what types of organizations may seek certification of a service.

g. In s. HFS 32.04 (2) (b) (intro.), it is suggested that the phrase "In conducting the on-site inspection," be inserted at the beginning of the sentence. Also, in sub. (2) (b) 1., what is the representative supposed to interview a representative sample of patients about?

h. In s. HFS 32.04 (2) (c) 1., it appears that a comma should be inserted after the word "agent" on line 1.

i. In s. HFS 32.04 (2) (c) 4., (d) and (e), it is suggested that a consistent phrase be used to refer to the person who is the "department's designated representative." Note that sub. (2) (b) (intro.) uses that phrase.

j. In s. HFS 32.04 (5) (a), it is suggested that the first "that" on line 2 be replaced by the phrase "on which." Also, in sub. (5) (b), it is suggested that the phrase "on which" be inserted after the word "date" on line 3.

k. Section HFS 32.04 (7) states that the department shall establish fees for certification. Will these fees be set forth in administrative rules?

l. In s. HFS 32.04 (8) (b), the word "a" on line 1 should be replaced with "an."

m. Section HFS 32.04 (8) (b) 3. permits the department to terminate, suspend or refuse to renew the certification of a service if the department finds that a staff member of the service "has had sexual contact as defined in s. 940.225 (5) (b), Stats., or sexual intercourse as defined in s. 940.225 (5) (c), Stats., with a patient." Does there have to be ***proof*** or a finding of guilt that the person has engaged in that conduct? How does the department "find" this information?

n. In s. HFS 32.04 (8) (b) 6., the word "under" should be inserted after the word "or" on line 4.

o. Should s. HFS 32.04 (9) (b) pertain to the conduct of both "an individual staff member" ***and*** the conduct of more than one staff member?

p. In s. HFS 32.04 (12), is there a form to request a hearing? If so, that information should be included in the note following par. (b). In par. (a), "If" should replace "In the event that."

q. In s. HFS 32.04 (13), it is suggested that the phrase "after a hearing" be inserted after the word "denied" on line 1 if that is the intent.

r. In s. HFS 32.05 (3) (b), why is reference made to 60 ***calendar*** days in the provision, while in other provisions with time limits, reference is made to a number of ***working days*** or just to a number of days, without qualification? Should these provisions all be consistent? See, for example, s. HFS 32.04 (12) (b) for a reference to "working days" and "day" and s. HFS 32.04

(11) (c) for a reference to "days." The use of both "working days" and "days" in s. HFS 32.04 (12) (b) is especially confusing. In s. HFS 32.08 (5) (c) 3., the use of "working days" and "excluding weekends and holidays" is redundant.

s. The language in s. HFS 32.06 (2) (a) requiring that a service ensure that staff members who have patient contact "have never been convicted of an action that may place patients at risk of being harmed" is vague. Which specific convictions are intended to apply here? How does this relate to the offenses cited in s. HFS 32.04 (8) (b) 3.?

t. In s. HFS 32.06 (2) (b), it is suggested that the phrase "contact content" on line 5 be replaced by the phrase "the content of the contact."

u. In s. HFS 32.06 (6) (b), what is meant by "patient staffing" in the language "clinical supervision shall be accomplished by . . . patient staffings"?

v. In s. HFS 32.06 (6) (e) 2., it is unclear what is meant by the requirement that certain staff members "shall participate in a minimum of one hour of peer clinical consultation per month or for every 120 clock hours of face-to-face mental health services he or she provides, whichever is greater." What is meant by "clock hours"? Are they different from "hours"? What is meant by "greater"? This requirement should be restated in a more comprehensible manner.

w. In s. HFS 32.06 (7) (a) 4., it appears that the word "given" on line 1 should be replaced by the phrase "depending on." Also, a comma should be inserted after the word "hospital" on line 2.

x. Section HFS 32.07 (2) (intro.) states that a service shall provide or make readily available at least the following services "for each patient who has a treatment plan." Do all patients not have either an initial treatment plan prepared under s. HFS 32.08 (5) (c) 5. or an ongoing plan prepared under s. HFS 32.09 (2)?

y. In s. HFS 32.07 (3) (intro.), the word "SERVICE" could be deleted from the title. Also, in par. (a) 2., why is the phrase "emergency detention or an order of detention" inserted after the statutory citation on line 2?

z. In s. HFS 32.07 (3) (b) 2., the word "if" on line 3 should not be underscored.

aa. It is suggested that the language in s. HFS 32.07 (4), relating to hours of operation of a service, be moved to follow sub. (2), which deals with minimum hours of service per patient. That way, the provisions dealing with all patients are grouped together, and are followed by a subsection [currently sub. (3), which would be renumbered sub. (4)], which deals with ***additional*** requirements for services treating children and adolescents.

ab. Section HFS 32.08 (1) provides that a person may be admitted to a service only by written referral "from a physician" or a psychologist qualified under s. HFS 32.06 (3) (b) 3., with certain exceptions. May the referral from a "physician" be from any type of physician or must it be from a psychiatrist? The term is not defined in the rule.

ac. Section HFS 32.08 (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.

ad. The note following s. HFS 32.08 (2) (f) states that persons not meeting the selection criteria for admission to a service should be referred to appropriate services. It is unclear why this note is included here, since sub. (5) (a) 2., which follows shortly, ***requires*** that a service have written policies and procedures governing, among other things, the procedures to be followed for referral to another service program when a decision is made not to admit a person. If the note is included at all, it should refer to that requirement.

ae. Section HFS 32.08 (3) states that to be admitted to a service, the person "shall be in need of inpatient mental health treatment . . . ." Who determines whether the person is in such need, the physician or psychologist referring the person under sub. (1) or the service staff person reviewing the referral request?

af. Currently there are two subs. (4) in s. HFS 32.08. The second one should be renumbered sub. (5), which will result in the renumbering of subs. (5) to (7) to become subs. (6) to (8). This will also necessitate a change in the reference in s. HFS 32.09 (1) (intro.). The entire rule should be reviewed for other necessary citation revisions.

ag. Section HFS 32.08 (5), relating to intake and assessment, states in par. (a) 1. that a service must have written policies and procedures governing intake and assessment, including the type of information to be obtained from or about a person "seeking or referred for admission." ***[Note that references in this report to subsections in s. HFS 32.08 are to the subsections as currently numbered, before the renumbering discussed in the previous comment.]*** Is it not the case that, under sub. (1), a person may be admitted ***only by written referral***? If so, why is there a reference to a person ***seeking or*** referred for admission? Also, with regard to sub. (5), no reference is made in par. (a) or (b) as to who must conduct the intake and assessment, including the explanation of procedures required in par. (b). It is only in par. (c) 1. that reference is first made to an assessment of the patient at admission, to be conducted by a registered nurse or staff person qualified under s. HFS 32.06 (3) (b) 1. to 8. In par. (c) 1., it is suggested that a period be placed after the word "condition" on line 4, and that the phrase "which is to" should be replaced by the phrase "The assessment shall." Also, the "of" on line 5 should be deleted.

ah. Section HFS 32.08 (5) (c) 4., refers to the "attending psychiatrist" completing a comprehensive assessment of the patient's psychiatric status within 60 hours after admission, excluding weekends and holidays. This is the first mention of an attending psychiatrist. Is this person, or could this person be, the same as the clinical director? Will there always be an attending psychiatrist available to complete such an assessment? If so, where is the requirement stated that an attending psychiatrist is to be available at all times? Is every patient assigned an attending psychiatrist?

ai. In s. HFS 32.08 (6) (b), it is suggested that the phrase "that likelihood" be moved to follow the word "identifying."

aj. Section HFS 32.08 (7) (a) and (b) (intro.) both refer to explaining or asking the patient "or the patient's parent or guardian, if required . . . ." Would the parent or guardian only be required to receive the explanation or give the acknowledgement if the patient is a minor? If so, it might be helpful to replace the word "required" in both instances with the phrase "the patient is a minor." If there are other circumstances in which a patient's parent or guardian would have to receive the explanation or sign the acknowledgement, those circumstances should be spelled out.

ak. Section HFS 32.09 (4) pertains to administering medications. However, it is unclear whether it applies only to ***psychotropic*** medications, as certain provisions imply, or whether it applies to a broader category of medications. Note, for example, that subds. 1. and 2. refer just to "medication," while subd. 3. refers to psychotropic medications. Further on in the subsection, there are more references to psychotropic medication. The entire subsection should be reviewed and clarified as to whether it pertains just to psychotropic medications or to others as well. If the provision is intended to apply to just psychotropic medication, the term "medication" could be defined to be "psychotropic medications," obviating the need for continuously repeating the entire phrase. If it applies to both psychotropic and other medications that should be clarified and any additional procedures required for the administration of psychotropic medications is clearly identified.

al. In s. HFS 32.09 (4) (c) 4., reference is made to a patient not taking a prescribed psychotropic medication "due to absence." Could there be any other reason why a person would not take the medication; for example, illness? Also, it is suggested for clarification in subd. 5. that the phrase "the patient's" be inserted before "physician" on line 2. In subd. 7., it is suggested that the word "Need" on line 1 be replaced by the phrase "A requirement."

am. In s. HFS 32.09 (6) (b) 6., the word "patients" should be singular. In sub. (6) (c), the word "it" on line 2 should be replaced by the phrase "the plan." Also, in sub. (6) (d), what is meant by an attempted "elopement"? Does this mean an attempted "departure" from the facility?

an. In s. HFS 32.10 (2), reference is made in par. (a) to patient ***treatment*** records and in par. (b) to patient ***clinical*** records. Are these the same type of record? If not, how do they differ?

ao. Section HFS 32.10 (5) requires that a hospital establish a plan for maintenance and disposition of records in event of the hospital closing. No reference is made to what the service within the hospital must do in that event. Is it strictly the hospital's responsibility?

ap. The note following s. HFS 32.11 (3) is unnecessary. Also, in sub. (3) (c), what is meant by the phrase "(PRN)" orders? Parentheses should not be used in rules and if acronyms are used, they should be defined.

aq. Section HFS 32.11 (3) (f) 1. states that when a patient is placed in restraints, isolation or seclusion, a staff person specifically trained to understand and respond to the needs of patients in restraints, isolation or seclusion shall be present. Does this mean present at all times? Also, in subd. 2., the word "isolation" on line 4 is misspelled. In subd. 5., who is the "authorized

professional person" referenced to on lines 2 and 3? Also, is the language in subd. 10. requiring patients to be constantly monitored inconsistent with the language in subd. 3., which requires that staff shall observe a patient in restraints, isolation or seclusion ***every 15 minutes***?

ar. Section HFS 32.12 (3) refers to the "certification survey" under s. HFS 32.04 (6). Is this the certification ***inspection*** referenced in that provision?