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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-148

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 two instances, the terms defined in s. HFS 36.03 are out of alphabetical order. Subsections (5) and (6) should be reversed, as should subs. (27) and (28).
- b. The second sentence of s. HFS 36.03 (5) is not definitional. It could be included in a note.
- c. In s. HFS 36.04 (intro.), the phrase “individual receiving services from the CCS” should be replaced with the defined term “consumer.”
- d. In s. HFS 36.07 (3) (b) 2. (intro.), “all of the following” should be inserted before the colon. A similar change is needed in subd. 7. (intro.).
- e. In s. HFS 36.07 (3) (b) 18., the reference to par. (b) 3. should be to subd. 3. However, it may be clearer merely to repeat the language of subd. 3 in subd. 18., rather than cross-reference it.
- f. Section HFS 36.07 (4) (c) (intro.) is not correctly drafted as introductory material. It should be redrafted as subd. 1. and the subsequent subdivisions should be renumbered as subsd. 2. and 3.

g. In s. HFS 36.07 (4) (c) 2., the use of “either” with “and” is confusing. Should “either” be deleted?

h. In s. HFS 36.07 (7), par. (a) should be divided into two separate paragraphs and the remaining paragraphs should be renumbered accordingly. The first paragraph should describe what the training plan entails [s. HFS 86.07 (7) (a) 1. to 3.]; the second paragraph should set out what staff should know and understand. [s. HFS 86.07 (7) (a) 4. to 8.]

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

a. The analysis cites s. 51.421 (3) (a), Stats. This is a reference to community support programs. However, under s. 49.45 (30e) (a) 3., Stats., comprehensive community services for persons with mental illness, are “less than the services provided by a community support program.” Accordingly, this statutory reference should be deleted.

b. In s. HFS 36.02 (2), is a “county consortium” intended to be the same as a multicounty department of human services under s. 46.23, Stats.? If so, that statute should be referenced.

c. In s. HFS 36.03 (9), the authority in ch. 155, Stats., should be cited as authority for a power of attorney for health care (referred to as an “advanced directive” in the rule).

d. In s. HFS 36.03 (14) (c), the reference should be to federal regulations rather than rules. Also see sub. (17).

e. Section HFS 36.05 (14) (b) refers to “(a)cts that result in conviction for a criminal offense related to services provided under s. 632.89, Stats.” However, that statute relates to mandatory insurance coverage, not to criminal offenses. It is not clear what is intended.

f. The department should review s. HFS 36.07 (1) for consistency with s. 111.321, Stats. The rule does not include all of the bases for employment nondiscrimination that are included in the statute.

g. Section HFS 36.07 (3) (c) 5. is awkwardly drafted. It is also not clear how ch. N 4, which relates to nurse-midwives, affects licensed practical nurses.

h. In s. HFS 36.11, where the prescriptive authority for advanced practice nurses is referenced, a cross-reference to N 6, Wis. Adm. Code, should be included.

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

a. In s. HFS 36.03 (1), persons 17 years of age are defined as “adults” for certain purposes. Is this permissible under state law?

b. In s. HFS 36.03 (15), the phrase “mental health problems” should be replaced by “mental illness.”

c. The definition of “mental illness” in s. HFS 36.03 (16) is different from the definition in s. 51.01 (13) (a), Stats. Similarly, the definition of serious mental illness in s. HFS 36.03 (25) is different than the definition of chronic mental illness in s. 51.01 (3) (g), Stats. It is not clear why these two definitions in the rule are different from the statutory definitions.

d. The definition of “psychotropic medication” in s. HFS 36.03 (23) is different from four statutory definitions--ss. 48.599 (2), 50.035 (5) (a) 2., 50.04 (2t) (a) 2. and 51.64 (1) (b), Stats. It is not clear why the statutory definitions are not followed.

e. In s. HFS 36.05 (1) (a) 6., this subdivision should be rephrased as follows: “A description of how services are coordinated and delivered when a program provides CCS in conjunction with substance abuse services, protective services, or any other service, including school services.”

f. Section HFS 36.05 (4) (c) states that the department may limit the initial certification of the comprehensive community services (CCS) to one year. What are the outside limits for the time period for initial certification? Section HFS 36.05 (7) specifies that renewals can be for up to three years. Does the same time limit hold true for initial certifications?

g. Section HFS 36.05 (7) (a) implies that certification periods may be for varying lengths of time, with three years as the outside limit. Is it workable to have variation in the length of certification periods?

h. In s. HFS 36.05 (13) (c), the phrase “and appeals” should be inserted after the word “hearings.”

i. In s. HFS 36.07 (1) (b), should “a written” replace “written a”?

j. In s. HFS 36.07 (3) (b) 16., the word “demonstrated” should be replaced by “who demonstrates.”

k. In s. HFS 36.07 (7) (f) (intro.), is the reference to the maintenance of written administrative records intended to include electronic records?

l. In s. HFS 36.10 (1) (c) 21., “agencys” should be “agencies.”

m. In s. HFS 36.10 (2) (a) 2., “participate” should replace “participates.”

n. In s. HFS 36.11 (5) (a) (intro.) and elsewhere in the rule, “physician assistant” should replace “physician’s assistant.”

o. Section HFS 36.11 (5) (e) provides that CCS staff other than psychiatrists, physicians, physician assistants, advanced practice nurses, registered nurses or licensed practical nurses must be responsible for observing the consumer taking medication. Under what circumstances is this permissible, as opposed to having the previously listed health care professionals responsible for medication administration?

p. In s. HFS 36.11 (5) (f) 2., Note, the words “compliance monitoring” should be inserted after the first word “medication.”