WISCONSIN LEGISLATIVE COUNCIL
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CLEARINGHOUSE RULE 02-154

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 2002.]

2. Form, Style and Placement in Administrative Code

a. In s. HFS 109.03 (15), "Medicaid" should be replaced by either "MA" or "medical assistance," both of which are defined in s. HFS 101.03 (95).

b. The last sentence of s. HFS 109.11 (2) (c) should be written in the active voice; i.e., "The applicant, participant, or person described in par. (d) . . . shall report . . .".

c. The rule contains some transitional provisions that appear to be holdovers from the emergency rule and that should be deleted. In s. HFS 109.11 (5) (a) 1., "for applications the department receives on or after September 1, 2002" can be deleted. In s. HFS 109.51 (8) (a) (intro.), "Beginning on September 1, 2002" can be deleted.

d. In s. HFS 109.13 (1), the phrase "are only available" should be changed to "shall be available only". In sub. (3) (d) 4., the word "will" should be changed to either "shall" or "may". In sub. (3) (e), the phrase "shall not" is incorrect; the correct way to express a prohibition is "No participant may be required…". In sub. (4) (c) 1. and 2., "are" should be changed to "may be"; in sub. (4) (c) 4., "will count" should be changed to "may be counted"; in sub. (4) (c) 6., "will be" should be changed to "may be". In sub. (4) (d), "shall not" should be changed to "may not".

e. In s. HFS 109.14 (6) (intro.), the notation "s. HFS" should be inserted before "109.15". In sub. (6) (g), "shall not" should be changed to "may not". This problem also occurs in s. HFS 109.15 (3). In s. HFS 109.15 (4) (b) (intro.), "shall" should replace "will".

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f. In s. HFS 109.16, the phrase "program participants" should be changed to the singular "a program participant".

g. In s. HFS 109.17, "they" should be changed to "the person".

h. In s. HFS 109.31 (2) (b) 1., the word "Department" should be changed to lower case.

i. In s. HFS 109.31 (3) (f), "are" should be changed to "shall be" or "may be". In sub. (3) (g), the word "only" should be moved in between "service" and "when", and "is" should be changed to "shall be", so that the phrase is "The innovator of a multiple-source drug shall be a covered service only when…".

j. In the note to s. HFS 109.52 (5) (b), "can" should be changed to "may". In sub. (5) (d), "of this section" should be deleted. In subs. (12) and (13), the titles "Involuntary termination or suspension from program participation" and "Effects of suspension or involuntary termination" should be deleted. In sub. (12), it appears that the word "or" should be changed to "and".

k. In s. HFS 109.53 (3), the phrase "need not provide prior written notice" should be changed to "is not required to provide written notice". In sub. (4) (c) 3., "shall not" should be changed to "may not".

l. In s. HFS 109.61 (1), it appears that the word "drugs" should be changed to "covered drugs".

m. In s. HFS 109.63 (2), "shall not" should be changed to "may not".

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

a. Section HFS 109.17 allows a person to "file an appeal pursuant to the requirements under ch. HA 3 that apply to the medical assistance program, except for the provision under s. HA 3.05 (2) (a)". It is not clear what the purpose of the exception is. Does this mean that all requests for appeals must be in writing? Does it mean that the agency does not need to date-stamp the request?

b. In s. HFS 109.31 (1), it appears that the citation to a dentist licensed under "447.05, Stats." is incorrect and should be changed to "s. 447.04, Stats.". In sub. (2) (b) 1., "s. HFS 107.04 (3) (e)" is the wrong cite; it should be changed to "s. HFS 107.02 (3) (e)".

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

a. Throughout the rule, "spenddown" should be replaced by "spend-down". The term "spenddown" does not appear in the dictionary and "spend-down" is used in other rules of the department. For example, see ss. HFS 101.03 (168) and 103.03 (1) (f) 8.

b. In s. HFS 109.11 (2) (intro.), the phrase "by the department" should be inserted between "reviewed" and "in". In sub. (4) (a) (intro.), can the department clarify what is meant by "data elements"?

c. In s. HFS 109.13 (6) (d), does the "timely notice of decision" refer to the notice received under s. HFS 109.53? If so, the phrase should be changed to "a timely notice of a decision under s. HFS 109.53".

d. In s. HFS 109.15 (intro.), in the phrase "when the spouse of a SeniorCare participant files an application or review for SeniorCare", does a "review" refer to a review of eligibility? The rule should be more specific.

e. In s. HFS 109.31 (2) (b) 1., the rule should specify who should make the prior authorization request to the department. In sub. (2) (b) 2. b., does the phrase "the recipient may request a fair hearing" refer to the procedure under s. HFS 109.17? If so, that provision should be cited; if not, what procedure should a recipient use to request a hearing? In sub. (3) (c) 1., "Generically-written prescriptions for drugs" should be changed to "A prescription for generic name drugs".

f. In s. HFS 109.31 (3) (c) 2., it appears that "than the" should be inserted before "generically".

g. Section HFS 109.31 (3) (e) refers to "certain maintenance drugs as identified by the department". How will these drugs be identified and how may a person ascertain which drugs have been identified? Can a note be inserted to clarify the latter point?

Similarly, in s. HFS 109.52 (10) (a) 1., a note should indicate how the forms may be obtained.

h. Section HFS 109.61 appears to prohibit a participant from filling a prescription at a pharmacy in one month and then filling it at a different pharmacy the next month. Is this intended?

i. In s. HFS 109.63 (2), is the "timely notice period specified in 42 CFR 431.231 (c)" the same as the "45 days from the effective date of the adverse action in which to file a request for hearing" under sub. (1)? If so, only one term should be used.