WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-020

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. In the caption for the proposed rule, the enumeration of provisions repealed and recreated should be revised from "DHS 1.01 to DHS 1.07" to "DHS 1.01 to 1.06, and 1.07", due to the intervening treatment in s. DHS 1.065.

b. In the rule summary's listing of statutory authority, the citation to s. 227.10 (1) and (2m), Stats., could be removed. That provision describes when rulemaking may or may not be appropriate, and does not itself confer rulemaking authority. [s. 1.02 (2m), Manual.]

c. The rule summary's plain language analysis should be revised to provide a plain language description of the proposed rule's provisions, and, to the extent reasonable, how those provisions differ from the current rule.

d. The rule summary's comparison with rules in adjacent states could be revised to provide an overview of the approach taken in each of the listed citations.

e. In SECTION 1 of the proposed rule, the title for the chapter should be shown in solid capital letters. Also, throughout the proposed rule, section titles should be shown in bold font. [s. 1.05 (2) (a) and (b), Manual.]

f. In s. DHS 1.02 (3) (a), the abbreviation "ss." should be revised to "s.". Also, the phrase "human or" should be inserted after the phrase "department of".

g. In s. DHS 1.02, the definitions in subs. (4) and (5) for the terms "collection period" and "services", respectively, should be relocated to be arranged alphabetically among the definitions. [s. 1.01 (7) (a), Manual.]

h. In s. DHS 1.02, it appears that sub. (10) is intended to be a subunit for the definition of a "parent" in sub. (9). If so, sub. (10) (intro.) should be renumbered as sub. (9) (a), and sub. (10) (a) and (b) should be renumbered as sub. (9) (b) and (c).

i. In s. DHS 1.03 (1) (Note), an introductory phrase and the actual internet link should be inserted.

j. In s. DHS 1.04 (5), a note should be inserted to specify where the financial responsibility form that is referred to may be obtained. [s. 1.09 (3), Manual.]

k. In s. DHS 1.05 (4) (intro.), an introductory statement should be inserted, ending in a colon, to lead into the subunits. [s. 1.03 (3), Manual.]

l. In s. DHS 1.05 (4) (c), the format of the cross-reference should be changed from "sub. (4) (a)" to "par. (a)".

m. In s. DHS 1.06 (2) (b), the number "three" should be expressed as an Arabic numeral. [s. 1.01 (5), Manual.]

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

a. In s. DHS 1.02 (10) (b), the reference to sub. (1) of s. 48.839, Stats., should be removed. That section as a whole describes the process for an adoption under a foreign guardianship.

b. In s. DHS 1.05 (4) (a) (intro.), the references to par. (b) and s. DHS 1.04 (5) are not clear. Those provisions refer to specific circumstances, rather than events that may trigger a review of a determination. Are the references intended to mean that, unless ability to pay is already addressed by the circumstances in those provisions, ability to pay may be determined upon any of the identified events? If so, consider revising the phrasing from "except as provided in" to "subject to".

c. In s. DHS 1.06 (1), should the reference to s. 46.10 (16), Stats., also include sub. (3) of that section?

d. In s. DHS 1.06 (2) (b), it appears that the cross-reference to s. DHS 1.05 (1) should be corrected to s. DHS 1.04 (1).

e. In s. DHS 1.06 (5), a reference to the Department of Revenue's statutory authority to perform setoffs or intercepts for state and local agencies could be included. See ss. 71.93 and 71.935, Stats. Likewise, a reference to the statutory licensing requirement for a collection agency could be included. See s. 218.04, Stats.

f. In s. DHS 1.06 (6), the reference to sub. (1) should be corrected to sub. (2).

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

a. In s. DHS 1.02 (2), the word "that" should be revised to "who".

b. In s. DHS 1.02 (4), should a collection period also be allowed to end when the liability has been paid in full? Consider revising the provision if it is intended that a collection period could end in that circumstance.

c. In s. DHS 1.02 (5) (a), it appears that the word "or" should be inserted before the reference to subch. III of ch. 49, Stats.

d. In s. DHS 1.02 (10) (intro.), the word "currently" should be removed. [s. 1.01 (9) (b), Manual.] Also, the phrase "except when" should be revised to the word "unless".

e. In s. DHS 1.02 (10) (b), it seems awkward to include any person that a court deems liable as being within the definition of a "parent". Consider moving this language to the list of persons who are liable for services, under s. DHS 1.04 (1).

f. In s. DHS 1.03 (1), the intent is not clear and should be revised. Does it mean only that the department shall publish the fees on its website? If so, that should be specified. Or does it mean, as stated in s. 46.03 (18) (a), Stats., that the department is responsible for establishing a system of fees? If so, consider providing additional details on how the system works, such as how frequently the fees will be reviewed and what factors must be considered. Also, the phrase "department institutions" is used, but that term is not defined in the proposed rule. Consider removing that phrase entirely, if the defined term for "services" adequately identifies by whom the services would be provided.

g. In s. DHS 1.03 (2), the first instance of the word "the" should be revised to "a".

h. Consider revising the phrasing in s. DHS 1.04 (1) (intro.). A number of provisions in the proposed rule refer to a "person, entity, or estate" under s. DHS 1.04 (1). However, that section refers first to a client, spouse, or parent, and then to any "other" person, entity, or estate. In order to more clearly specify that the cross-references to this provision encompass all persons named, consider revising the introductory material to specify that "the following persons are liable for services provided to a client:". All references to a "person, entity, or estate" who may be liable could then be phrased more simply as "a person" or "persons liable".

i. In s. DHS 1.04 (2), the sentence should begin with the phrase "The amount of", as the provision addresses the amount of liability rather than who is responsible for the liability. Also, after the word "services", consider inserting the phrase "provided to a client".

j. In s. DHS 1.04 (4) (a) (intro.), the second comma should be deleted.

k. In s. DHS 1.04 (4) (b), the reference to "sub. (4)" should be revised to "par. (a)". Also, the comma after the word "documented" should be deleted.

l. In s. DHS 1.04 (5), the intent is not clear and should be stated more clearly. The introduction states that a person, entity, or estate under sub. (1), "may" be deemed liable in the identified circumstances of noncompliance. However, under sub. (1), those persons, entities, or estates are already liable for services provided to a client. Does the provision instead mean that in the identified circumstances of noncompliance, liability cannot be waived under sub. (4)? The intent of this provision should be revised to be specified more clearly.

m. In s. DHS 1.04 (6), the phrase "do not apply to individuals that are" should be revised to "do not apply to an individual who is".

n. In s. DHS 1.05 (1) (intro.), should the phrase "or county department" be inserted after the word "department"? Also, it appears that the phrase "each of" should be inserted after the phrase "liability to".

o. In s. DHS 1.05 (1) (b) and (c), consider revising both instances of the phrase "Any and all" to the word "Each".

p. In s. DHS 1.05 (3), the word "any" before the phrase "legal representative" should be revised to "a", and the phrase "such as" should be revised to the word "including". Also, it appears that the phrase "informed consent" should be revised to "written consent", as the consent relates to document sharing rather than authorization for a specific treatment or procedure.

q. The following comments apply generally to considerations raised in s. DHS 1.05 (4):

(1) Consider adding an analysis and determination of who is "best" able to pay, after investigation of each liable person's ability to pay, as required under s. 46.10 (3), Stats.

(2) Consider adding a statement that in the event a minor receives services without the consent of a parent or guardian, only the minor's ability to pay may be considered, as provided under s. 46.03 (18) (b), Stats.

r. In s. DHS 1.05 (4) (intro.), the phrase "maximum monthly payment schedule" should not be capitalized. Also, this term is not defined or explained elsewhere in the rule, but appears to be intended as a general standard that would apply in determining the monthly payment amount. [s. 227.01 (13) (intro.), Stats.] Accordingly, consider inserting a provision in the proposed rule to explain how the maximum monthly payment schedule is determined.

s. In s. DHS 1.05 (4) (a) (intro.), in the second sentence, the word "pay" should be inserted after the phrase "ability to". Also, the word "all" should be revised to "any".

t. In s. DHS 1.05 (4) (a) 1., it appears that the word "to" should be revised to "by", and the word "by" should be revised to "from".

u. In s. DHS 1.05 (4) (a) 2., how would the department or a county department know if a liable person has a change in financial circumstances? As written, it appears to be the department or county department's responsibility to make that determination. Consider inserting a phrase such as, "the department or a county department receives notice that", after the word "When".

v. In s. DHS 1.05 (4) (b) 1. and 2., consider revising both instances of the word "received" to the phrase "is receiving".

w. In s. DHS 1.05 (4) (d), how is a "payment plan" different from the monthly payment schedule? Consider removing this paragraph, or explaining why or how the monthly amount due under a payment plan would differ from the monthly payment amount that is referred to in sub. (4) (intro.).

x. In s. DHS 1.05 (5) (intro.), the phrase "billing statements" should be revised to "a billing statement".

y. In s. DHS 1.05 (6) (d), the phrase "without the consent of a parent or guardian," should be inserted after the phrase "drug abuse,". Also, the word "Shall" should be removed, as it already appears in the introductory material for the paragraphs.

z. In s. DHS 1.06, should each reference to "the department" also include "or county department"?

aa. In s. DHS 1.06 (2), what is the purpose of "deeming" an account to be delinquent? Is that a necessary finding before the enforcement or collection provisions under subs. (4) or (5) may be used? Consider adding a requirement for that finding to those provisions.

bb. In s. DHS 1.06 (2) (b), the parameters of the three notifications should be specified. For example, would a phone call qualify as adequate notification, or must the notification be written? Could the notification be issued three times in one day? What happens if the notifications are spread out over a very lengthy period of time?

cc. In s. DHS 1.06 (3), is the department allowed to not pursue collection if a liable person is deemed to not be in compliance under s. DHS 1.04 (5)? Should the interaction of these provisions be specified?

dd. In s. DHS 1.06 (4), the phrasing in the first sentence should be revised to the singular form.

ee. In s. DHS 1.06 (5), the phrasing in the second sentence should be revised to the singular form. Also, the phrase "or certified" should be removed, as certification is not an option under the licensure requirements in s. 218.04, Stats.

ff. In s. DHS 1.06 (6) (Note), the word "Enterprises" should be revised to the singular form, and the word "services" should be capitalized.

gg. In s. DHS 1.06 (7) (Note), the agency title should be inserted.

hh. In s. DHS 1.07 (1), a closing parenthesis should be inserted after the number "(18".