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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-151

AN ORDER to amend HFS 133.03 (9), 133.06 (4) (d) 1., 133.10 (1) and 133.20 (4); to repeal and recreate HFS 133.02 (6g), 133.03 (3) (h) Note, (4) (b) and (8) and Note, 133.04 (4) and 133.09 (3); and to create HFS 133.02 (6m) and (8g) and Note, 133.03 (4) (d), 133.04 (2) Note and 133.14 (6), relating to home health licensure.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

- 10-30-00 RECEIVED BY LEGISLATIVE COUNCIL.
- 11-28-00 REPORT SENT TO AGENCY.

RS:PS;jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

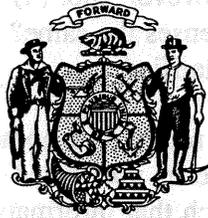
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-151

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. The material in SECTIONS 2, 3 and 4 could be combined into a single SECTION. See s. 1.04 (2) (a) 4., Manual.
- b. In SECTION 3, to facilitate future insertions of material, it is suggested that sub. (8g) be relettered (8m), as provided in s. 1.03 (7), Manual.
- c. As in comment a., above, the material in SECTIONS 5 and 6 could be combined into a single SECTION.
- d. In SECTION 8, the title "HEARINGS" should be inserted after the notation "(8)" on line 1.

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

- a. In s. HFS 133.02 (8g), the phrase "the net of" on line 1 could be deleted.
- b. In s. HFS 133.02 (8g) Note, the word "Uniform" on line 2 should read "Uniformed." Also, there should be commas surrounding the phrase "as authorized under 32 C.F.R. 199." Finally, the word "payers" on line 3 should be singular.

c. Section HFS 133.03 (4) (b) 1. b. refers to s. 50.49 (10), Stats., which governs granting of *provisional* licenses to home health agencies which are temporarily unable to conform to rules of the department. However, sub. (4) (b) 2. refers to the department issuing a *probationary* license. Are these two licenses the same? If so, consistent terminology should be used. If not, the differences should be clarified.

d. Section HFS 133.03 (4) (d) refers to a home health agency's financial information "submitted to the department in the form prescribed by the department." Where does the department "prescribe" the form in which that information must be provided? It appears that it should be in this rule. See also s. 227.14 (3), Stats.

e. In the treatment clause to SECTION 8, the notation "(9)" should be "(8)" and the word "is" should be "are."

f. In s. HFS 133.03 (8) (b), the comma on line 1 should be replaced by the word "and."

g. In s. HFS 133.03 (9), a period should be inserted after the phrase "and sub. (4) (d)" on line 4. Also, the comma following the word "report" on line 6 should be deleted.

h. Section HFS 133.04 (4) (a) requires that, upon determining that a home health agency is in violation of a requirement of this chapter, the department must promptly serve a statement of deficiency "to the home health agency." The current rule specifies that the statement must be served "on the administrator or another designated person." Is there a reason why the more specific language is not included in this rule?

i. In s. HFS 133.04 (4) (b) 4., the word "that" should be inserted after the word "verify" on line 1. The same insertion should be made after the word "verified" in s. HFS 133.04 (4) (c) 1.

j. In s. HFS 133.04 (4) (c) (intro.), the word "rule" on line 1 should be changed to "chapter."

k. The Legislative Reference Bureau recently began spelling the word "employe" in its more conventional form, "employee" in statutory drafting. Therefore, it is suggested that the department also use the conventional spelling of the word, for example, in s. HFS 133.06 (4) (d) 1.

l. In s. HFS 133.09 (3) (a) 1., the abbreviation "subd." on line 5 should be changed to "subds."

m. In s. HFS 133.09 (3) (a) 2. b., is it obvious to the reader what is meant by a "non-emergent change" in the patient's condition?

n. In s. HFS 133.09 (3) (b) 3., the language should be rewritten in the active voice to clarify who is responsible for reviewing and responding to a patient's appeal of a discharge decision. Further, more information should be provided regarding the manner in which the agency "shall hold a review" of an appeal. Is there or should there be a time period within

which the review must be conducted? Finally, in par. (b) 4., the agency is required to provide "written documentation of the appeal review." Does this mean that the agency only has to indicate that a review was conducted or must it also set forth a decision on the appeal?

o. In s. HFS 133.09 (3) (c), a patient may file a formal complaint with the department if he or she believes the agency has not complied with this chapter. Does the patient first have to appeal the discharge decision to the agency under sub. (3) (b) 1. before filing a complaint with the department?

p. The language in s. HFS 133.14 (6) is awkward and could be improved as follows:

A home health agency may purchase nursing services on an hourly or per visit basis, in accordance with the requirements in s. HFS 133.19. Persons providing nursing services under contract shall meet the requirements in s. HFS 133.06 (4) (a) and be assigned only to duties for which they are licensed and trained.

Also, in addition to meeting the orientation requirements in s. HFS 133.06 (4) (a), should persons providing contract nursing services also be required to meet the health requirements in s. HFS 133.06 (4) (d) or any other requirements in sub. (4)?

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING, REPEALING AND RECREATING AND CREATING RULES

2

To amend HFS 133.03 (9), 133.06 (4) (d) 1., 133.10 (1) and 133.20 (4); to repeal and recreate HFS 133.02 (6g), 133.03 (3) (h) (Note), ~~133.03 (4) (b)~~, ~~133.03 (8)~~ and (Note), 133.04 (4) and 133.09 (3); and to create HFS 133.02 (6m), ~~133.02 (8g)~~, 133.02 (8g) (Note), 133.03 (4) (d), 133.04 (2)(Note) and 133.14 (6), relating to home health licensure.

X
X

Analysis Prepared by the Department of Health and Family Services

The Department's rules for licensing home health agencies are found in ch. HFS 133 of the Wisconsin Administrative Code. The rules were originally issued in June 1984 and were substantially revised in November 1985. Through this rulemaking order, the Department is making changes in the rules to increase funding for this program, incorporate into administrative rules policies currently used by the Department and to define discharge procedures and associated patient rights.

Specifically, the home health agency licensing rules are being revised to:

1. Change the basis for program funding from "annual net income" to "patient fee revenue" pursuant to the authority in 1999 Wisconsin Act 9 amending s. 50.49 (2) (b), Stats.
2. Incorporate existing Department policy expressed in bureau of quality assurance memos and variances into chapter HFS 133 of the Wisconsin Administrative Code. The memos are BQC-94-046, BQC-94-071 and DSL-BQA-99-028.
3. Specify both the home health agency's role and consumers' rights related to discharge from the agency's care.
4. Add a license requirement for home health agencies to serve at least 3 skilled care patients in order to be eligible for initial Medicare certification.

Pursuant to authority vested in the Department of Health and Family Services by ss. 50.49 (2), Stats., the Department of Health and Family Services hereby amends, repeals and recreates and creates rules interpreting s. 50.49, Stats., as follows:

SECTION 1. HFS 133.02 (6g) is repealed and recreated to read:

HFS 133.02 (6g) "Medical assistance" has the meaning given in s. HFS 101.03 (95).

SECTION 2. HFS 133.02 (6m) is created to read:

HFS 133.02 (6m) "Medicare" has the meaning given in s. HFS 101.03 (98).

SECTION 3. HFS 133.02 (8g) is created to read:

(8g) "Patient fee revenue" means the net of gross patient revenue less the following deductions:

1. Contractual adjustments from medical assistance, medicare, other federal payment sources, and third party payers.

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2. Bad debts that cannot be collected from private pay clients.

3. Charitable contributions.

SECTION 4. HFS 133.02 (8g) (Note) is created to read:

HFS 133.02 (8g) **Note:** Examples of other federal payment sources are the Civilian Health and Medical Program of the Uniform Services (CHAMPUS), as authorized under 32 CFR 199 and benefits provided through the Veteran's Administration. An example of a third party payers is a commercial insurer, including a health maintenance organization.

SECTION 5. HFS 133.03 (3) (h) (Note) is repealed and recreated to read:

HFS 133.03 (3) (h) **Note:** To obtain a copy of the license application form, send your request to the Bureau of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969. The completed application form should be sent to the same office.

SECTION 6. HFS 133.03 (4) (b) is repealed and recreated to read:

HFS 133.03 (4) (b) 1. Within 90 days after receiving a complete application, the department shall either approve the application and issue a license or deny the application, unless either of the following applies:

a. The department has not yet completed its investigation; or

b. The agency, under s. 50.49 (10), Stats., is temporarily unable to conform to all the rules in this chapter.

sub (10) refers to "provisional license"

2. If either of the circumstances in subd. 1. a. or b. applies, the department may within the 90-day period issue a probationary license for a term of 90 days, and may renew that license for additional 90-day terms for up to one year from the original application date pending completion of the department's investigation.

3. During the probationary period specified in subd. 2., the home health agency shall actively serve at least 10 patients requiring skilled nursing care or other therapeutic services in Wisconsin. At least seven of the 10 patients shall be actively receiving skilled services when the home health agency submits a written request for an on-site licensure survey. At least 3 patients shall be receiving skilled services at the time of the on-site licensure survey.

SECTION 7. HFS 133.03 (4) (d) is created to read:

HFS 133.03 (4) (d) Once the home health agency is issued an initial regular license, the department may not charge the home health agency an additional licensing fee until the annual, continuing license fee is due. The fee shall be 0.25% of patient fee revenue of the home health agency based on the agency's financial information submitted to the department in the form prescribed by the department, with a maximum fee of \$2,500 and a minimum fee of \$500.

SECTION 8. HFS 133.03 (9) and Note is repealed and recreated to read:

HEARINGS.

HFS 133.03 (8)(a) An applicant or home health agency adversely affected by any decision or action of the department may appeal that decision or action in accordance with the hearing rights and procedures set out in ch. 227, Stats.

(b) A request for a hearing shall be in writing, ^{and} shall be filed with the department of administration's division of hearing and appeals within 10 days after the date of the notice in sub. (7). A hearing request shall be considered filed on the date of actual receipt by the division of hearings and appeals, or the date of the postmark, whichever is earlier. A request filed by facsimile is complete upon transmission. If the request is filed by facsimile transmission and such transmission is completed between 5 p.m. and midnight, one day shall be added to the prescribed period.

Note: The mailing address of the division of hearing and appeals is P.O. Box 7875, Madison, WI 53707. The hearing request may be delivered in person to that office at 5005 University Avenue, Room 201, Madison, WI.

SECTION 9. HFS 133.03 (9) is amended to read:

HFS 133.03 (9) REPORTING. Every 12 months, on a schedule determined by the department, a licensed home health agency shall submit to the department an annual report in the form and containing the information that the department requires, including payment of the fee required under s. ~~50.135 (2)(a)~~ 50.49 (2) (b), Stats., and sub. (4) (d). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. If a licensed home health agency that has not filed a timely report, fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

SECTION 10. HFS 133.04 (2) Note is created to read:

HFS 133.04 (2) **Note:** A complaint may be filed by writing the Health Services Section, Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 2969, Madison, WI 53701-2969 or by calling the Wisconsin Home Health Hotline toll free at 1-800-642-6552.

SECTION 11. HFS 133.04 (4) is repealed and created to read:

HFS 133.04 (4) ENFORCEMENT (a) *Statement of deficiency.* Upon determining that a home health agency is in violation of any requirement of this chapter, the department shall promptly serve a statement of deficiency to the home health agency. The statement of deficiency shall specify the rule violated and state the facts that constitute the violation.

(b) *Plan of correction.* 1. When the department issues a statement of deficiency, the licensee shall submit a plan of correction within 10 working days of receipt of the statement of deficiency to the department for approval. The department may require that a plan of correction be submitted for approval within a specified time that is less than 10 working days after the date of the statement of deficiency for violations the department determines may be harmful to the health, safety, welfare or rights of patients.

2. The department may require modification in the proposed plan of correction until it approves the plan of correction.

3. The department may require a licensee to implement and comply with a plan of correction that is developed by the department.

Division of Supportive Living
Spec Admin

4. The department shall verify ^{that} the home health agency has completed the plan of correction submitted or imposed in par. (b). ¹ X

(c) *Penalties*. If a home health agency is in violation of any requirement of this rule, the department may impose any of the following penalties: chapter? X

1. Suspend admissions of new patients until the department has verified the home health agency has completed the plan of correction under par. (b). ^{not} X

2. Place conditions on the license.

3. Revoke the license as specified under s. HFS 133.03 (7).

SECTION 12. HFS 133.06 (4) (d) 1. is amended to read:

HFS 133.06 (4) (d) 1. Physical health of new employees. Every employe having direct patient contact shall be certified in writing by a physician, ~~or physician's assistant~~ or registered nurse as having been screened for tuberculosis infection and found free from clinically apparent communicable disease ~~within 90 days before beginning work.~~ The employe's certification shall occur no more than 90 days prior to the employe having direct patient contact.

SECTION 13. HFS 133.09 (3) is repealed and recreated to read:

HFS 133.09 (3) DISCHARGE OF PATIENTS. (a) *Notice of discharge*. 1. A home health agency may not discharge a patient for any reason until the agency has discussed the discharge with the patient or the patient's legal representative and the patient's attending physician and has provided written notice to the patient or the patient's legal representative in the timelines specified in subd. 2. and 3. X 5

2. The home health agency shall provide the written notice required under subd. 1. to the patient or the patient's legal representative at least 10 working days in advance of discharge when the reason for discharge is any of the following:

a. Payment has not been made for the patient's care, following reasonable opportunity to pay any unpaid billings.

b. The home health agency is not able to provide the care required by the patient due to a non-emergent change in the patient's condition.

3. The home health agency shall provide the written notice under subd. 1. to the patient or the patient's legal representative at the time of discharge when the reason for discharge is any of the following:

a. The safety of staff is compromised, as documented by the home health agency.

b. The attending physician orders the discharge for emergent medical reasons.

c. The patient no longer needs home health care.

4. The home health agency shall insert a copy of the written discharge notice in the patient's medical record.

5. The home health agency shall include in every written discharge notice to a patient or the patient's legal representative all of the following:

- a. The reason for discharge.
- b. A notice of the patient's right to appeal the discharge decision under par. (b) and information about how to exercise that right.
- c. A notice of the patient's right to file a complaint with the department and the department's toll-free home health hotline telephone number and the address and telephone number of the department's bureau of quality assurance.

Note: A complaint may be filed by writing the Health Services Section, Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 2969, Madison, WI 53701-2969 or by calling the Wisconsin Home Health Hotline toll free at 1-800-642-6552.

(b) *Appeal of a discharge decision.* 1. A patient may appeal a discharge decision to the home health agency within 10 working days of receipt of the discharge notice.

2. The home health agency shall have a written procedure that describes how the home health agency will respond to an appeal under subd. 1.

3. The home health agency shall hold a review of an appeal by agency staff and at least one independent reviewer.

4. The home health agency shall provide written documentation of the appeal review to the patient or the patient's legal representative and the patient's physician and retain a copy of the documentation on file at the home health agency.

(c) *Filing a complaint.* The patient or the patient's legal representative may file a formal complaint with the department as specified under s. HFS 133.04 (2) and par. (a) 5. c., if the patient or the patient's legal representative believes the home health agency has not complied with this chapter.

Note: A complaint may be filed by writing the Health Services Section, Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 2969, Madison, WI 53701-2969 or by calling the Wisconsin Home Health Hotline toll free at 1-800-642-6552.

(d) *Discharge summary.* When a patient is discharged from a home health agency, the home health agency shall complete a written discharge summary within 30 calendar days following discharge. The discharge summary shall include a description of the care provided and the reason for discharge. The home health agency shall place a copy of the discharge summary in the former patient's medical record and provide the attending physician with a copy. If requested, a former patient or the patient's legal representative shall be provided with a copy of the discharge summary.

SECTION 14. HFS 133.10 (1) is amended to read:

HFS 133.10 (1) **REQUIRED SERVICES.** The home health agency shall directly provide or arrange for at least part-time or intermittent nursing services and provide or arrange for home health aide services.

SECTION 15. HFS 133.14 (6) is created to read:

HFS 133.14 (6) CONTRACTED NURSING SERVICES. A home health agency may purchase nursing services on an hourly or per visit basis. Contracted nursing staff shall be all of the following: *aw*

- (a) Arranged for under the contract requirements specified in s. HFS 133.19.
- (b) Required to meet all requirements specified under s. HFS 133.06 (4) (a).
- (c) Assigned only to duties for which they are licensed and trained.

SECTION 16. HFS 133.20 (4) is amended to read:

HFS 133.20 (4) PHYSICIAN'S ORDERS. Drugs and treatment shall be administered by the agency staff only as ordered by the attending physician. The nurse or therapist shall immediately record and sign oral orders and obtain the physician's countersignature within ~~40~~ 20 calendar days.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____
Joseph Leean
Secretary

SEAL: