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CLEARINGHOUSE RULE 96-034

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 1994.]

1. Statutory Authority

a. Section SFC 3.13 (3) (a), among other things, requires at least 400 hours of direct practice with clients as part of the internship requirement. One of the Governor’s partial vetoes of 1995 Wisconsin Act 27 struck from the relevant statutory section, as created by Act 27, the requirement that the internship involve “at least 400 hours of” direct practice [1995 Wisconsin Act 27, partial veto of SECTION 6620]. The effect of the veto is that the relevant statute requires an internship that “involves direct practice with clients....” The Governor’s veto message states:

I am partially vetoing this section to delete the 400 hour minimum requirement for the human service internship because this requirement is onerous and reduces the hiring flexibility of employers of social workers, which is the opposite impact that the creation of the social worker training certificate is intended to achieve. [Journal of the Assembly, p. 401, July 27, 1995.]

The partial veto was not overridden by the Legislature. The 400-hour requirement in the rule is directly contrary to the Governor’s veto of the provision.

b. The requirements of s. SFC 3.13 (3) (b) and (4) exceed the statutory requirements of s. 457.09 (4), Stats. Under s. 457.09 (4m) (a), Stats., the Social Worker Section determines whether an internship or employment satisfies the statutory requirements. That requirement may be read to restrict the Social Worker Section’s rule-making authority regarding internship and

employment requirements. On the other hand, that requirement, plus the Social Worker Section's general rule-making authority may be read to support the Section's authority to make additional requirements for internship and employment requirements.

2. Form, Style and Placement in Administrative Code

a. Section SFC 3.13 (1) (intro.) makes reference to an application form. [See s. 1.09 (2), Manual.]

b. Paragraphs (a), (b) and (c) of s. SFC 3.13 (2) contain titles that appear to be intended as part of the substance of the rule. A title is not part of the substance of a rule. In addition, the use of titles in those paragraphs is inconsistent with the use of titles in the remainder of the rule. [See s. 1.05 (1), Manual.] If the underscoring is deleted, what is drafted as titles could become part of the text of the rule.

c. In s. SFC 3.13 (2) (a), "must" should be replaced by "shall." This comment applies to other provisions of the rule as well.

d. In s. SFC 3.13 (1) (intro.) and (2) (b) (intro.), "all of the following" should precede the colon.

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

a. The reference to 1995 Wisconsin Act 150 in the portion of the analysis relating to statutes authorizing promulgation is incorrect. The correct reference is to 1995 Wisconsin Act 27. Also, "27" should be inserted after the first occurrence of "Act" in the first full paragraph of the analysis.

b. Reference to "under this chapter" in s. SFC 3.13 (3) (a) and (b) appears to be incorrect. Social workers are not certified under ch. SFC 3. It appears a statutory cross-reference would be more appropriate.

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

a. Is the requirement for a "sealed" certificate in s. SFC 3.13 (1) (a) archaic?

b. Section SFC 3.13 (1) (a) references "another human service program approved by the section." No standard is provided in the rule for Section approval of other human service programs.

c. The relationship of s. SFC 3.13 (1) (b) to par. (a) is unclear. Moreover, given the requirement of par. (a), the meaning of par. (b) is unclear.

d. Section SFC 3.13 (1) (d) is vague, particularly in light of s. 457.26 (2) (b), Stats., and s. SFC 20.02. More specificity is recommended. Note also that reference should probably be made to denial of an applicant's license.