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CLEARINGHOUSE RULE 97-014

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.]

2. Form, Style and Placement in Administrative Code

a. The analysis of Clearinghouse Rule 96-014 does not conform to the Manual. As stated in s. 1.02 (2) (b), Manual: “The purpose of the analysis is to provide an understandable and objective description of the effect of the rule. The analysis . . . should contain sufficient detail to enable the reader to understand the content of the rule and the changes made, if any, in existing rules.”

An explanation of the changes in existing rules is essential because Clearinghouse Rule 97-014 repeals and recreates entire sections of current rules, rather than renumbering and amending particular provisions within those sections. Thus, the changes in existing rules are not apparent from the text of the rule revision. An analysis such as that provided for Clearinghouse Rule 97-014, which primarily describes the end product of the rule revision, rather than explaining how the current rule is changed, is inadequate to provide the reader with an understanding of the effect of the rule revision on existing rules.

For example, items 11. and 12. of the analysis deal with the authority to impose no-contact visiting for up to one year or longer with the approval of the administrator. Current s. DOC 309.165 (4) also authorizes the imposition of no-contact visiting for six months or less, more than six months or, with the approval of the division administrator, for more than one year. The analysis is not helpful in describing the change in the current rule and, because s. DOC 309.165 is repealed and recreated in its entirety, rather than renumbered and amended, it is difficult for interested persons to determine which provisions of the recreated section contain substantive changes.

b. The repeal and recreation of s. DOC 309.10 has the effect of renumbering this rule section as s. DOC 309.06. Currently, s. DOC 309.06 deals with “publications” and it is not apparent from this rule revision what happens to the existing rule. Also, it is not appropriate drafting style to renumber a provision of a rule through repealing and recreating it. If the department chooses not to use renumbering and amending, the appropriate drafting style is to repeal the current rule and create the proposed rule.

c. Section DOC 309.12, which is repealed and recreated, could have been renumbered s. DOC 309.08 and current provisions could have been amended or new provisions could have been created, as necessary. As discussed in item a. above, this approach would have made it easier for an interested person to understand the substantive differences between the current section and the revised section.

d. In s. DOC 309.06, “visitation” should be substituted for “visiting.”

e. Section DOC 309.08 (1) (intro.) is improperly drafted as introductory material since it does not end in a colon and lead into the paragraphs that follow. [s. 1.03 (8), Manual.] Therefore, it should be numbered par. (a) and the subsequent paragraphs should be pars. (b) to (g).

f. The second sentence of s. DOC 309.08 (1) (a) should be preceded by a cross-reference to par. (c); e.g., “Except as provided under par. (c),”.

g. In s. DOC 309.08 (1) (c), “as defined in s. DOC 309.02 (4)” should be deleted since the definitions in s. DOC 309.02 apply throughout the chapter.

h. Paragraph (f) of s. DOC 309.08 (4) should be rewritten to parallel the style of other criteria listed in pars. (a) to (j).

i. Sections DOC 309.07 and 309.08 (1) (b) use the phrases “are required to” and “shall be required to.” These phrases should be replaced with the active verb “shall” in accordance with s. 1.01 (1), Manual.

j. In s. DOC 309.12 (2), the periods after “(a)” and “(b)” should be deleted.

k. In s. DOC 309.12 (7), a specific cite should replace “these sections.” Also, “on” should replace “with” in the fifth line. Finally, the reference to sub. (6) seems wrong since s. DOC 309.12 (6) does not appear to relate to appeals.

l. In s. DOC 309.13 (1) (c), consistent with the new definitions with pars. (a) and (b), the correct term should be “rescission” rather than “rescinding.” The word “affects” should not be underscored. Also, the three definitions should be placed in alphabetical order.

m. There are references in the rule to “potential visitor” and “proposed visitor.” One term should be chosen and used consistently.

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

a. In s. DOC 309.08 (1) (c), it is unclear what is meant by “all such visitors.” Is it all the visitors on the visiting list or all the visitors after the first 12 on the visiting list? This should be clarified.

b. Section DOC 309.08 (1) (d) is a new provision requiring an inmate to provide accurate and complete information “as required.” Apparently, the information relates to the visitor, although this is not made clear, except in the example of the information that may be required. Additionally, it is not clear who will determine what information is required or whether the information will be required of all visitors in a uniform manner.

c. Section DOC 309.08 (1) (e) should be revised to clarify that it is information regarding the visitor that may be required and obtained from sources other than the inmate.

d. Section DOC 309.08 (3) authorizes the warden to place additional limitations or conditions on the visitation of inmates during periods of intensive programming or special placements. The terms “intensive programming” or “special placements” are not defined, nor is it clear that they refer to particular inmates or the prison population in general. Additional clarification is needed. In addition, it is not clear what is meant by “televisits”; this word does not appear in the dictionary.

e. Section DOC 309.08 (4) specifies that the warden shall determine whether a person may be approved for visiting or removed from a visiting list. Section DOC 309.09 (4), on the other hand, requires each institution to permit each inmate in a segregated status the opportunity for visitation “with the exception of controlled segregation and observation, which require approval of the warden.” Additional clarification is needed regarding the relationship between the general warden approval requirement of s. DOC 309.08 (4) and the specific warden approval requirement of s. DOC 309.09 (4). Additionally, the terms “controlled segregation and observation,” which are used in s. DOC 309.09 (4), are unclear without further definition or explanation.

f. Section DOC 309.08 (4) (d), like current s. DOC 309.12 (4) (e), makes a reference to “any correctional institution, including the county jail.” Perhaps the “including” clause should be omitted or expanded to include houses of correction to avoid possible ambiguity. In the alternative, the department may wish to use the phrase “penal facility, as defined in s. 19.32 (1e), Stats.”.

g. Section DOC 309.09 (3) makes a reference back to sub. (2), relating to establishment of a visitation schedule. Rather than using the phrase “pursuant to sub. (2)” a more descriptive reference should be used; e.g., “according to the visitation schedule established under sub. (2).” In the alternative, it may be clearer to simply combine subs. (2) and (3) to emphasize that the opportunity for at least nine hours of visitation per week is dependent on the visitation schedule which takes into account other institution activities and available resources.

h. In the first sentence of s. DOC 309.10 (2), the term “give” is used to describe the provision of professional services; a better term would be “provide” or “render.”

i. The second sentence of s. DOC 309.12 is ambiguous. What is the phrase “criteria shall be considered as in s. DOC 309.08 (4)” mean? If the warden is required to apply the criteria set forth in s. DOC 309.08 (4) in making a determination regarding no-contact visiting, the rule should state this.