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CLEARINGHOUSE RULE 00-055

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.]

1. Statutory Authority

a. In s. HFS 10.42 (2) (b), the department is permitted to contract with an organization which “substantially but not completely meets the requirements for certification.” This does not appear to be permitted in the statutes.

b. Section HFS 105.47 (3) provides that certain care management organizations (CMOs) need not be licensed by the Office of the Commissioner of Insurance. What is the statutory authority for this provision?

2. Form, Style and Placement in Administrative Code

a. In ss. HFS 10.11 and 10.12, the items relating to authority and purpose and applicability should be listed for easier reading.

b. In s. HFS 10.31 (6), it is not necessary to include the adjective “uniform” when referring to the functional and financial eligibility screens; this is inherent in the definitions.

c. In s. HFS 10.32 (1) (i), the word “and” should be inserted after the number “49.453” and the phrase “shall apply to” should be replaced by the word “applies.”

d. In s. HFS 10.32 (1) (g) (title), the term “medicaid” is used. The terms “medical assistance” or “MA” should be used consistently throughout the rule, rather than the term “medicaid.” See s. HFS 10.13 (33).

e. Section HFS 10.33 (2) (c) should begin with the phrase “A person is functionally eligible at the comprehensive level if.” Incorporating this change will make this paragraph agree with s. HFS 10.33 (2) (d).

f. In s. HFS 10.34 (3) (d) 2., the word “shall” should be deleted.

g. In s. HFS 10.35, the word “shall” should be deleted.

h. In s. HFS 10.42 (3) (intro.), the last line should begin: “The department may contract with a certified organization” rather than: “The department shall contract with a certified organization.”

i. The second paragraph of the note following s. HFS 10.42 (3) contains substantive material that should be included in the text of the rule.

j. In s. HFS 10.44 (2) (j) (intro.), the phrase “all of” should be inserted after the word “include.”

k. In s. HFS 10.51 (1) (f), the word “Centers” should be replaced by the word “centers.”

l. In s. HFS 10.53 (1) (a) and (b) and (2) (a) and (b), the phrase “be responsible for the effective operation of” should be replaced by the phrase “effectively operate” and the phrase “is responsible for reviewing complaints and resolving grievances” should be replaced by the phrase “shall review complaints and resolve grievances.”

m. In s. HFS 10.62 (3) (a) and (b), the word “were” should be replaced by the word “are.”

n. In s. HFS 89.295 (3), the phrase “in its sole discretion” is unnecessary and should be deleted.

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

a. Section 46.288 (2) (b) and (c), Stats., require definitions of “mental illness” and “substance abuse” to be promulgated in the family care rules. These should be added to s. HFS 10.13.

b. In s. HFS 10.22 (4), reference is made to state and federal requirements for organizational independence from any CMO. Is it possible to cite these state and federal requirements?

c. In s. HFS 10.23 (7), the phrase “as defined in s. 19.32 (2)” should be added after the words “no record”; in addition, the phrase “as defined in s. 19.62 (5)” should be added after the phrase “personally identifiable information.” See s. 46.284 (7), Stats.

d. Section HFS 10.23 (7) (b) should include references to the statutes which are “notwithstanding” under the statutory provision which pertains to this section. See s. 46.284 (7), Stats.

e. In s. HFS 10.32 (1) (c), reference is made to a person with a developmental disability as being eligible for the family care benefit. However, under s. 46.286 (1m), Stats., a person with a developmental disability is only eligible if a developmental disability is their “primary disabling condition.” This paragraph should clarify that a person with a developmental disability is eligible for the family care benefit only if that is their primary disabling condition. Further, s. 46.288 (2) (a), Stats., requires the term “primary disabling condition” to be defined.

f. In s. HFS 10.32 (3), the notation “HFS” should be inserted following the notation “s.”.

g. In s. HFS 10.33 (1) (a), reference is made to an impairment that is “expected to last for more than 90 days or result in death within one year.” Under s. 46.288 (2) (f), Stats., the term “condition that is expected to last at least 90 days or result in death within one year” must be defined in the rules. A definition of this term should be inserted in the appropriate place.

h. Section HFS 10.34 defines financial eligibility and cost-sharing criteria. Definitions of “gross monthly income” and “deductions and allowances” should be inserted in this section. See s. 46.288 (2) (h) and (i), Stats.

i. In s. HFS 10.34 (3) (d) 1., the notation “subd.” should be replaced by the word “subdivision.”

j. In s. HFS 10.41 (2), as for the reference to home and community-based waivers, the statutory citations [ss. 46.275, 46.277 and 46.278, Stats.] to those waiver programs should be inserted.

k. Section 46.284 (4) (a), Stats., requires the terms for disenrollment to be in the contract between the CMO and the department. This requirement should be inserted into s. HFS 10.45 (2) (b). Also, the notation “s. HFS” should be inserted after the word “under.”

l. Section HFS 10.45 (5) should be reviewed for its consistency with s. 46.284 (7), Stats.

m. Section HFS 10.55 (1) (f) should be reviewed for its consistency with s. 46.287 (2) (a) 1. f., Stats.

n. In s. HFS 10.73 (2), nursing homes, community-based residential facilities, adult family homes and residential care apartment complexes should be referred to collectively as “health care facilities.” See the definition in s. HFS 10.13 (32).

o. The rule makes numerous references to forms. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

a. The rule is replete with the notion that CMOs must meet standards established by the department outside of the Wisconsin Administrative Code. For example, see ss. HFS 10.43 (1) (a) and 10.44 (2) (intro.). To the extent these standards are known, they meet the definition of the term “rule” in s. 227.01 (13), Stats., and should be included in the Wisconsin Administrative Code.

b. In s. HFS 10.11, the phrase “to establish standards for the performance of aging” should be replaced by the phrase “establishes standards for the performance of aging.”

c. In s. HFS 10.13 (38), what is “receptive language”?

d. In s. HFS 10.23 (2), should a reference to providing enrollment assistance be included? See s. 46.283 (3) (g), Stats., which seems to imply that this is required.

e. Section HFS 10.31 seems to interpose a “county agency” somewhere between a resource center and a CMO. How is a county agency involved in this process if it was not acting as a resource center or a CMO? See s. 46.283 (3) (b) and (e), Stats.

f. In s. HFS 10.31 (4) (b), reference is made to someone acting responsibly for an applicant who is incompetent or incapacitated. However, if an individual is legally determined incompetent, he or she must have a guardian. This paragraph should be rephrased to reflect this.

g. In s. HFS 10.32 (1) (i), the sentence should begin: “The person is not currently eligible for the family care benefit.”

h. In s. HFS 10.34 (3) (a), the term “uniform financial eligibility and cost-sharing screen” is used. The term used in the definition is “uniform financial eligibility screen.” Section HFS 10.34 (3) (a) should be changed to reflect the defined term in s. HFS 10.13 (23).

i. Section HFS 10.44 (2) (f) seems to require participation of the enrollee’s family members or other representatives. Should this participation be optional at the determination of the enrollee? See s. 46.284 (4) (c), Stats.

j. Section HFS 10.44 (2) (f) 5. should be rephrased so its syntax agrees with the other subdivisions. The subdivision should begin as follows: “If the enrollee and the CMO do not agree on a service plan, provide a method for the enrollee to file a grievance under s. HFS 10.53,”. Also, in sub. (2) (f) 5. a., the notation “subd.” should be replaced by the notation “subds.”.

k. Sections HFS 10.72 (5) (b) and 10.73 (5) (b) provide that a hearing request is considered filed on the date of actual receipt by the Division of Hearings and Appeals, or the

date of the postmark, whichever is earlier. Why do these provisions differ from a similar provision in s. HFS 10.55 (3)?

7. Compliance With Permit Action Deadline Requirements

Section HFS 10.42 (2) (a) provides that the department must review an application for certification as a CMO in a “timely manner.” The department should ensure that the requirements of s. 227.116, Stats., if applicable, are met.