



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-019

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 January 2005.]

2. Form, Style and Placement in Administrative Code

- a. In ss. DWD 80.03 (1) (g), 80.39 (1), 80.49 (2), (7) (b), and (8), and 80.51 (4), “employee” should replace “patient,” and “employees” should replace “patients.” The current version of these subsections uses “employee” and “employees,” not “patient” and “patients.”
- b. In s. DWD 80.51 (4), “part of” on line 3 is not in the current version of this subsection and should be removed from the proposed amended rule.
- c. In s. DWD 80.73 (2) (d), “podiatrist, physician’s assistant, advanced practice nurse prescriber, or dentist,” should replace “podiatrist, dentist, physician’s assistant, or advanced practice nurse prescriber,” on lines 4-5 for consistency within the paragraph.
- d. In s. DWD 81.01 (2), the substance of the last sentence should be moved to s. DWD 81.03 in the form of definitions for the terms “day” and “week.”
- e. In s. DWD 81.02, the title “Incorporation by reference” should follow s. DWD 81.02, not sub. (1). [s. 1.05 (2) (b), Manual.]
- f. In s. DWD 81.02 (1), the following information should be included in a note to the rule: “It is published by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, and may be purchased through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.” [s. 1.09 (1), Manual.]
- g. In s. DWD 81.03, the defined words should be in alphabetical order.

h. Section DWD 81.03 (3) should be rewritten to read: “‘Condition’ means the symptoms, physical signs, clinical findings, and functional status that characterize a person’s complaint, illness, or injury related to a current claim for compensation.”

i. In s. DWD 81.04 (1) (a), the phrase “; as defined in s. DWD 81.03 (10)” is unnecessary and should be deleted. [See also s. DWD 81.01 (2).]

j. In s. DWD 81.05 (1), the introductory material does not grammatically lead into the following subunits. The introduction should be renumbered as par. (a) and the following paragraphs and internal cross-references should be renumbered accordingly. The entire rule should be reviewed for this structural problem, which occurs intermittently throughout the rule.

k. In s. DWD 81.05 (2) (j) (intro.), the phrase “any of” should be inserted before the phrase “the following circumstances.” The entire rule should be reviewed for clarifying introductory material so that the reader can, with certainty, discern whether every item listed following an introduction must be met or whether it is sufficient to comply with only one of the items listed. That is, the rule should make use of phrases like “any of the following” and “all of the following.”

l. In s. DWD 81.06 (1) (b) 1., the phrase “buttocks and/or leg” should be replaced by the phrase “buttocks or leg, or both.”

m. In s. DWD 81.06 (2) (c) 2. c., the correct cross-reference is “subs. (6), (11), and (13) and s. DWD 81.12.” This cross-reference problem occurs in other portions of the rule as well.

n. In s. DWD 81.06 (8), the introductory material does not grammatically lead into par. (d). Paragraph (d) could be renumbered as par. (b) and the remaining material of sub. (8) could be renumbered as par. (a).

o. In s. DWD 81.06 (3) (f) and (5) (b), the subdivisions should be numerical, and subdivision paragraphs should be alphabetical. [s. 1.03, Manual.]

p. In s. DWD 81.07 (2) (c) 2. d., the phrase “shall not” should be replaced by the phrase “does not.” [See also s. DWD 81.08 (3) (b) 2. and 5. and other places in the rule where the phraseology occurs.]

q. Sections DWD 81.07 (3) (j), 81.08 (3) (j), 81.09 (1) (j) and (3) (i) and (j), and 81.12 (1) (b) to (d) and (2) (b) to (n) contain titles, but other paragraphs in the same subsections do not contain titles. If a title is used for a paragraph, then all paragraphs in that same subsection should be titled. [s. 1.05 (1), Manual.]

r. In ss. DWD 81.07 (6) (a) and 81.12 (2) (d), if subdivisions are used, at least two subdivisions are required. [s. 1.03, Manual.]

s. In s. DWD 81.07 (8), there is no par. (a). The first sentence should be labeled par. (a) to be consistent with similar subsections in different sections.

t. In s. DWD 81.08 (3) (g), the subdivisions should be numerical. [s. 1.03, Manual.]

- u. In s. DWD 81.08 (11), par. (d) should be renumbered par. (c).
- v. In s. DWD 81.10 (3), a period should be inserted after the title. [s. 1.05 (2) (c), Manual.]
- w. In s. DWD 81.12 (1) (d), the title “Indications” should be removed.
- x. Sections DWD 81.12 (1) (d) 5. and (2) (e) 1., 2., and 4. and 81.13 (2) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d) 1. and 2., (e) 1. and 2., and (f) 1. and 2. contain titles, but other subdivisions in the same paragraphs do not contain titles. If a title is used for a subdivision, then all subdivisions in that same paragraph should be titled. [s. 1.05 (1), Manual.]
- y. In s. DWD 81.12 (2) (c), the title should be italicized and should not contain single quotation marks. [s. 1.05 (2) (d), Manual.]
- z. In s. DWD 81.12 (2) (d) 1. and (i) 2. and (3) (c) 2., the subdivision paragraphs should not be titled. [s. 1.05 (1), Manual.]
- aa. In s. DWD 81.14 (2) (a), the period after (a) should be removed. [s. 1.03 (4), Manual.]

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

- a. In s. DWD 81.06 (1) (b) 3., the notation “subd.” should be replaced by the word “subdivision.”
- b. In s. DWD 81.07 (12) (b), “sub.” should replace “subs.” on line 7. [s. 1.03, Manual.]
- c. In s. DWD 81.08 (4) (f) (intro.), “Subdivisions” should replace “Subds.” on line 4.
- d. In s. DWD 81.08 (5) (a) (intro.), “this paragraph and pars. (b) to (c)” should replace “pars. (a) to (c).” [s. 1.07 (2), Manual.]
- e. In s. DWD 81.08 (11) (b) 6. (intro.), the reference to s. DWD 81.12 (1) (c) should be changed to s. DWD 81.12 (1) (d).
- f. In s. DWD 81.09 (3) (a), “pars. (c) to (i)” should replace “par. (b) 3. to 8.” on lines 3-4.
- g. In s. DWD 81.09 (13) (a), the reference to sub. (11) (k) should be changed to sub. (11) (a).

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

- a. In the Summary of Proposed Rule (page 1), a comma should be inserted after “rule” on line 1 of the subsection titled “Supplementary reports by employers and insurance companies.”
- b. In the Summary of Proposed Rule (page 3), “(2)” should be inserted after “80.72” on line 1 of the second paragraph of the subsection titled “Reasonableness of fee disputes.”

- c. In the Summary of Proposed Rule (page 5), on lines 14-16 of the second bullet point, a colon should be inserted after “record;” the “The” following each numbered section should be lowercase; and “and” should be inserted before (3).
- d. In the Summary of Proposed Rule (page 6), the comma after “radicular pain” on line 7 of the second bullet point should be removed.
- e. In the Summary of Proposed Rule (page 6), “non surgical” on line 3 of the fourth bullet point should be hyphenated.
- f. In the Summary of Proposed Rule (page 7), “is” should replace “are” on line 4.
- g. In the Summary of Proposed Rule (page 7), “returning the patient to the highest” should replace “the patient to be returned to highest” on lines 3-4 of the third bullet point.
- h. In the Comparison with Federal Law (page 7), “the” should be inserted between “are” and “Federal” on line 2.
- i. In the Comparison with Rules in Adjacent States (page 7), a comma should be inserted after “states” on line 6.
- j. Section DWD 81.01 provides in part that the purpose of ch. DWD 81 is to establish guidelines for necessary treatment of patients with compensable workers’ compensation injuries to prevent unnecessary treatment. This portion of the rule would benefit by additional explanation as to the consequences of not meeting these guidelines. That is, how will the dispute resolution process be affected if the guidelines are not met? If the guidelines are merely factors in determining how a dispute resolution process will conclude, than the rule should make this clear.
- k. In s. DWD 81.02 (1), information in the beginning of the second sentence is repetitious of information at the end of the first sentence. The following should be removed: “is subject to annual revisions and.”
- l. In s. DWD 81.02 (2), “current” should be replaced with a reference to a certain date. [s. 1.01 (9) (b), Manual.]
- m. In s. DWD 81.02, sub. (1) refers to the incorporation of annual updates of the International Classification of Diseases, but sub. (2) states that the guidelines in the chapter cover only the current version of the document. This inconsistency should be clarified.
- n. In s. DWD 81.03 (9), “If” should replace “Where” on line 4.
- o. In s. DWD 81.03 (11) and (12), “been” should be inserted between “or” and “noted” on line 2 of the subsections.
- p. In s. DWD 81.03 (14), a period should be inserted at the end of the first sentence.
- q. In s. DWD 81.05 (2) (g) 1., the first “and” should be removed.

- r. In s. DWD 81.05 (2) (g) 2., a comma should be inserted after “sciatica,” and the first “and” should be removed.
- s. In s. DWD 81.05 (2) (g) 4., “In addition to computed tomography scanning or magnetic resonance imaging scanning,” should be removed, and “if” should be capitalized.
- t. In s. DWD 81.06 (1) (b) (intro.), the phrase “shall not apply” in the last sentence should be replaced by the phrase “does not apply.”
- u. In s. DWD 81.06 (1) (f), the acronym “EMG” should be defined in s. DWD 81.03.
- v. In s. DWD 81.06 (1) (j) (intro.), a colon should replace the period at the end of the sentence.
- w. In s. DWD 81.06 (2) (c) 1., “or” should replace “and” on line 2.
- x. In s. DWD 81.06 (2) (c) 2. d., the phrase “at this time” is vague and could be clarified by using the phrase “at any particular time.” Similar provisions in the rule should be reviewed for this problem.
- y. In ss. DWD 81.06 (3) (b) 2. and 81.09 (3) (b) 2., “is not” should replace “may not be.”
- z. In ss. DWD 81.06 (3) (b) 3., 81.07 (3) (b) 3., 81.08 (3) (b) 3., and 81.09 (3) (b) 3., “documents” should replace “shall document.”
- aa. In ss. DWD 81.06 (3) (b) 4., 81.07 (3) (b) 4., 81.08 (3) (b) 4., and 81.09 (3) (b) 4., “includes” should replace “shall include.”
- bb. In s. DWD 81.06 (3) (b) 5. and 6., “does” should replace “may.”
- cc. In s. DWD 81.06 (3) (d) 1. c., “of treatment” should be removed.
- dd. In s. DWD 81.06 (3) (e) (intro.), the acronym “TENS” should be defined in s. DWD 81.03.
- ee. In s. DWD 81.06 (5) (intro.), a period should be inserted at the end of the first sentence.
- ff. In s. DWD 81.06 (5) (a) 1. b., it appears that the phrase “there is” should be inserted before the phrase “a positive response.” The entire rule should be reviewed for this addition.
- gg. In s. DWD 81.06 (5) (c), it appears that the word “shall” should be deleted.
- hh. In s. DWD 81.06 (6) (c), a period should be inserted at the end of the sentence.
- ii. In s. DWD 81.06 (6) (d) (intro.), a verb should be inserted before “a personality” on line 2, and a colon should replace the period at the end of the sentence.
- jj. In s. DWD 81.06 (8) (a), “within the guidelines of” should replace “as specified in.”
- kk. In ss. DWD 81.06 (8) (c) (intro.), 81.07 (8) (d) (intro.), 81.08 (8) (d) (intro.), and 81.09 (8) (d) (intro.), “as part” should replace “within the context of a program or plan.”

ll. In ss. DWD 81.06 (9) (a), 81.07 (9) (b) (intro.), 81.08 (9) (a) (intro.), and 81.09 (9) (b) (intro.), “as specified” should be removed.

mm. In ss. DWD 81.06 (10) (a), 81.07 (10) (a), and 81.09 (10) (a), “without limitation,” should be removed. In s. DWD 81.08 (10) (a), “without limitations,” should be removed. [s. 1.01 (7) (c), Manual.]

nn. In s. DWD 81.06 (11) (b) 3., a period should be inserted after the notation “sub.”

oo. In s. DWD 81.07 (1) (b) 3., “that” on line 2 should be removed, and a comma should replace the semicolon.

pp. In s. DWD 81.07 (1) (c) 1., “or” should be inserted before “systemic.”

qq. In s. DWD 81.07 (1) (k) 2. (intro.), “any” should replace “either.”

rr. In s. DWD 81.07 (2) (a) 2., “no or” should be inserted before “static.”

ss. In s. DWD 81.07 (3) (g) (intro.), “treatments” should replace “treatment” on line 1; a double quotation mark should be inserted after “treatments;” the colon after “treatments” should be removed; and “that” should be inserted after “therapy” on line 2.

tt. In s. DWD 81.07 (5), “THERAPEUTIC” should replace “THERAPEUUTIC” in the title.

uu. In s. DWD 81.08 (1) (b) (intro.), “consistency” on line 3 should be removed.

vv. In s. DWD 81.08 (2) (c) 1., a period should be inserted after “3” on line 2.

ww. In s. DWD 81.08 (2) (c) 2. (intro.), a period should be inserted at the end of the third sentence.

xx. In s. DWD 81.08 (3) (b) (intro.), “may” should replace “my.”

yy. In ss. DWD 81.08 (3) (b) 2. and 81.07 (3) (b) 2., “is not” should replace “shall not be.”

zz. In ss. DWD 81.08 (3) (b) 5., 81.07 (3) (b) 5., and 81.09 (3) (b) 5., “does” should replace “shall.”

aaa. In s. DWD 81.08 (8) (b), a period should be inserted at the end of the sentence.

bbb. In s. DWD 81.08 (12) (a), a colon should replace the period on line 4

ccc. In s. DWD 81.08 (12) (b), a colon should replace the period on line 5.

ddd. In s. DWD 81.09 (2) (d) 2. b., a period should be inserted at the end of the sentence.

eee. In s. DWD 81.09 (2) (d) 3., “as” should replace “is” on line 4.

fff. In s. DWD 81.09 (7), a period should be inserted at the end of the sentence.

ggg. In s. DWD 81.09 (12) (b) (intro.), “in subds. 1. to 3.” should be removed.

hhh. In s. DWD 81.09 (13) (a), a colon should be inserted after “modifications” on line 5.

iii. In s. DWD 81.11 (1) (a), it is not clear what is characterized as inpatient hospitalization. In some ways, the second sentence contradicts the first sentence.

jjj. In s. DWD 81.11 (2) (b) 2. a., is the inclusion of ‘N.P.O.’ and the subsequent note necessary? It seems that the prior description is adequate.

kkk. In s. DWD 81.12 (2) (g) 2. b., the acronym “AC” should be defined in s. DWD 81.03.

lll. In s. DWD 81.12 (2) (i) 2. b., “complaints of” should be removed.

mmm. In s. DWD 81.13 (2) (d) 1., “when” should replace “where” in lines 5-6.

nnn. In s. DWD 81.13 (1) (c), the cross-reference should read: “ss. DWD 81.06 (3) (b), 81.07 (3) (b), 81.08 (3) (b), and 81.09 (3) (b).”

ooo. In s. DWD 81.14 (2) (b), “every” should replace “each,” and “at minimum” should be removed.

ppp. Throughout SECTION 12, numbers are spelled out that should be written in numerals and vice versa. All numbers, except one, should be written in numerals. An exception arises when a number begins a sentence; in that case, the number should be spelled out. [s. 1.01 (5), Manual.]

qqq. Throughout SECTION 12, “thereafter” should be replaced with specific references. [s. 1.01 (9) (c), Manual.]

rrr. Throughout SECTION 12, commas are misplaced and not inserted where needed. The use of commas in proposed rules should adhere to the same rules for the use of commas in legislation. [s. 1.01 (1), Manual.]

sss. Throughout SECTION 12, the sections generally repeat the same information for each type of injury, but a section often contains grammar and punctuation that is inconsistent with another section, despite conveying the same information. All sections should be consistent in their use of grammar and punctuation, especially where the same information is repeated.