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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-115

#### 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 s. HFS 149.01, the phrase “The rule” should be replaced by the phrase “This chapter.”

b. In s. HFS 149.03 (27), the note should be included in the text of the rule by making it the second sentence of the definition.

c. Section HFS 149.03 (35) refers to “program policies.” If any of these policies meet the definition of the term “rule” in s. 227.01 (13), Stats., they should be placed in the administrative code.

d. Section HFS 149.10 (2) to (6) describe various mandatory disqualifications. However, it appears that, under s. HFS 149.12, a civil money penalty may be imposed rather than a disqualification. If this is an accurate statement of the interrelationship between the two rule sections, then s. HFS 149.10 (2) to (6) should indicate that an exception to mandatory disqualification may be found in s. HFS 149.12.

e. In s. HFS 149.12 (1), the phrase “in its sole discretion” is unnecessary and should be deleted.

f. In s. HFS 149.18, sub. (3) (intro.) should be numbered sub. (3) (a).

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

a. In s. HFS 149.03 (7), “(ix-x)” should be replaced with “(ix) and (x).”

- b. In s. HFS 149.03 (29), it appears that the citation to s. 253.06 (5) (b) 5., Stats., should be to s. 253.06 (5) (b), Stats.
- c. In s. HFS 149.05 (7), “chs.” should be replaced with “ch.”
- d. In s. HFS 149.07 (1) (b), “s.” should be replaced with “ss. HFS.”
- e. In s. HFS 149.07 (1) (e), “ss. HFS 149.05, 149.06, and 149.07 (1)” should be replaced with “this subsection and ss. HFS 149.05 and 149.06.”
- f. In s. HFS 149.07 (4) (a) 1., “s. 149.05, s. 149.06, and s. 149.07 (1)” should be replaced with “sub. (1) or s. HFS 149.05 or 149.06.”
- g. In s. HFS 149.08 (4) (d), the first instance of “s.” should be replaced with “ss. HFS” and the second instance of “s.” should be deleted.
- h. In s. HFS 149.09 (2), the first instance of “s.” should be replaced with “ss.” and the second instance of “s.” should be deleted. Also, it may be better to replace the “and” between the citations with “or.” If “or” is used, the first instance of “s.” should be retained.
- i. In s. HFS 149.10 (2) (b), “U.S.C.” should be replaced with “USC.” This comment also applies to sub. (3) (b) 6.
- j. In s. HFS 149.12 (1), “HFS” should be inserted after “s.”
- k. In s. HFS 149.12 (2), “s.” following “CFR” should be deleted. Also, a space should be inserted between “HFS” and “149.10 (2).”
- l. In s. HFS 149.18 (1) (a), “ch. 227 Subch. III, Stats., and s. 253.06 (6), Stats., and HA 1” should be replaced with “subch. III of ch. 227 and s. 253.06 (6), Stats., and ch. HA 1.” Also note that 2007 Wisconsin Act 20 renumbers s. 253.06 (6), Stats., to s. 49.17 (6), Stats., effectively July 1, 2008.

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

- a. In the analysis, under “Statutory authority,” the statutes should be listed in numerical order.
- b. In the analysis, under “Explanation of agency authority,” the comma following “vendors in the WIC program” should be replaced with a semicolon.
- c. Section HFS 149.03 (6) should conclude with a period.
- d. It appears that the definition of “draft” in s. HFS 149.03 (12) should be deleted because the word “draft” is not used in the rule. “WIC check” is used instead.
- e. In s. HFS 149.03 (24), it appears that “non-sale price” instead of “non-sale” should be the defined term.
- f. In s. HFS 149.03 (26), the phrase “postpartum woman” is used without any time limitation. However, in s. HFS 149.19 (1), this individual is described as one who is within six

months of delivery. It appears that the six-month time limit should be incorporated into the definition of the term “participant.”

g. In s. HFS 149.05 (3), it would be helpful if there were a note describing what is meant by “business integrity.”

h. In s. HFS 149.05 (4), “has not been convicted of a crime” should be replaced with “have not been convicted of a crime” and “have had a civil or criminal judgment” should be replaced with “had a civil or criminal judgment.” Also, in the note to that subsection, it appears that “any of these activities” should be added at the end of the sentence.

i. In s. HFS 149.05 (15), what is the “minimum stock requirement”?

j. In s. HFS 149.06 (1) (c) 1., a hyphen should be inserted between “5” and “mile.” Also, this paragraph should clearly state what an authorized vendor must do if a new location is opened within a five-mile radius of the vendor’s previous authorized location and the previous location is being closed or the previous location remains opened. A similar clear statement should be made regarding a location that is opened five miles or more from the previous location.

k. In s. HFS 149.06 (1) (d), a hyphen should be inserted between “3” and “year.” Also, the language concerning renewing the authorization every three years is somewhat vague. The concept is clarified later in the rule, so the language in this paragraph could perhaps be deleted.

l. In s. HFS 146.06 (2), a comma should be inserted after “requested.”

m. Section HFS 149.07 (1) (c) 1. would be clearer if a period were inserted after “may issue a corrective action plan.” Then, a second sentence could read, for example, “Following receipt of the corrective action plan, the vendor may submit information describing how the items in the corrective action plan have been addressed and request a second preauthorization site visit.”

n. In s. HFS 149.08 (b), should a reference be made to “ordinances” as is done in s. HFS 149.07 (4) (a) 4.?

o. In s. HFS 149.08 (2) (b), “participants” should be replaced with “a participant.”

p. In s. HFS 149.08 (3) (c) and (f), “as” should be inserted after “same.”

q. In s. HFS 149.08 (3) (g), “would make the vendor eligible for authorization” should be replaced with “are required for vendor authorization.”

r. In s. HFS 149.08 (3) (m), “or” before “the USDA” should be deleted.

s. In s. HFS 149.09 (2), a comma should be inserted after the word “When.”

t. In s. HFS 149.12 (1), it may be more appropriate to provide that the WIC office may impose a civil money penalty in lieu of disqualification instead of requiring it.

u. In s. HFS 149.15, it appears that “actions under” should be inserted before “s. HFS 149.10 (1).”

v. In s. HFS 149.18 (3) [(a)] 3., what is meant by vendors that are “comparable to above-50-percent vendors”? It appears this should be clarified.

w. In s. HFS 149.18 (4), is an abbreviated review the same as an expedited review as referenced in sub. (1) (a)? This should be clarified by using a consistent term or describing what an expedited review is.

x. In s. HFS 149.18 (4) (b) 4., “shall not” should be replaced with “may not.”

y. In s. HFS 149.18 (4) (c) 1. c., the word “the” should be inserted before the word “decision.”

z. In s. HFS 149.19 (1), the defined term “participant” should be used. Also, subs. (2) to (4) should begin with “Lives,” “Has,” and “Has” respectively to be consistent grammatically with sub. (1). Finally, in sub. (3), “other such programs” should be replaced with a phrase such as “another similar economic support program.”

aa. Subchapter IV of the rule is replete with inconsistent terminology regarding who is affected by the rule. For example, the following phrases are used: “applicant, participant or their representatives”; “participant, parent, or guardian”; “participant”; “participant and the participant’s proxy and other family members”; “applicant, participant, parent, guardian, or other representative”; and “participant or proxy.” These phrases should be reviewed to ensure the greatest consistency possible and to ensure that only certain persons are affected by the rule when consistent terminology is not used.

bb. In s. HFS 149.22 (2), is a “determination of repayment” a notice of intent to recover funds or is it a determination that the person has made a complete repayment?

cc. In s. HFS 149.24 (2) (c), “Attempted to or actually stole” should be replaced with “Stole or attempted to steal.” This comment also applies to the wording in subs. (3) (e) and (4) (h).

dd. In s. HFS 149.24 (2) (d), “other WIC participants” should be replaced with “another WIC participant.” This comment also applies to sub. (3) (b).

ee. In s. HFS 149.24 (4) (b), “two” should be replaced with “2.”

ff. In s. HFS 149.24 (5), “on the WIC program” should be replaced with “of the WIC program.”

gg. In s. HFS 149.25 (2) (d), the word “must” should be replaced by the word “shall.” This section also contains two subsections numbered “(3).” These subsections refer to a “timely appeal” and a “timely and appropriate hearing request.” The periods for taking these actions should be specifically stated in the rule or an appropriate cross-reference should be made to a provision that contains specific time periods. Finally, in the first occurrence of sub. (3) (b), what is meant by the term “categorically ineligible”?