WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-058

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. The introductory clause should enumerate the rule sections treated in the proposed rule. [s. 1.02 (1) (a) and (b), Manual.] As such, the introductory clause should be replaced with the following:

> The Wisconsin Department of Justice proposes an order to amend Jus 11.01 (1) to (4) and (5) (intro.), Jus 11.06 (1) (intro.) and (2) (intro.), Jus 11.07 (2) (a), Jus 11.09 (2) (intro.), (3) (b), (c), and (h), Jus 11.11 (1) and (2), and Jus 11.13 (1), (4), and (5) (intro.); and to create Jus 11 subch. II, relating to compensation for health care providers who perform sexual assault forensic examinations.

b. A specific date should be given in the rule summary for the deadline to submit comments on the proposed rule.

c. The references to "chapter" that are amended in subch. 11 should each be shown with a strike-through. For example, SECTION 2 should appear as follows:

> **Jus 11.01 Description of the program.** (1) AUTHORITY AND PURPOSE. This ~~chapter~~ subchapter is promulgated….

This change to include strike-throughs of the word "chapter" should be made throughout the text of the proposed rule.

d. A provision for the effective date of the proposed rule should be inserted as a numbered SECTION at the end of the rule-making order. [s. 1.02 (4), Manual.]

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

a. In SECTION 9, s. Jus 11.14 (4) should be revised to refer only to "papers" and "filing", and the references to "petitions", "service", and "served" should be removed.

b. In SECTION 9, at s. Jus 11.16 (1) (b) and (c), the rule requires a health care provider to provide an itemized bill to the department listing each service for which the provider is seeking payment. The rule also requires a provider to indicate the "amount sought for all of the following categories of examination costs: (a) Services of the provider; (b) Facilities used for the examination; and (c) Other expenses.".

However, the preceding section, s. Jus 11.15 (2), enumerates the specific services that may be paid from an award under the subchapter. Are "facilities used for examination" and "other expenses" additional items that may be paid from an award? If so, the rule should directly provide such authority.

Alternatively, is the intent to provide a breakdown of overhead costs that are calculated into other reimbursable "service" costs (i.e., what part of a charge for a physical examination of the victim is really to help pay for the clinic building itself)? The applicability of each itemized cost should be clarified.

c. In SECTION 9, at s. Jus 11.16 (2), the subsection could be removed because it does not provide any additional interpretation to the billing limitation given in s. 949.26 (2) (a), Stats. [s. 1.01 (1), Manual.]

d. In SECTION 9, at s. Jus 11.16 (4), the rule limits an award to "a maximum aggregate amount of $1200 for each examination". Does this aggregate cap mean that only $1,200 will be paid out for all services involved in the exam, even if there are multiple health care providers involved for separate aspects of the exam, such as physician services, hospital or clinic services, and laboratory services? Does sub. (3) limit the ability to pay for those separate aspects, if billed from different entities? Can multiple providers be paid for performing the same eligible service? Is this intended as a "first-come, first-served" system for paying for eligible services?

e. Also in SECTION 9, at s. Jus 11.16 (4), the text of the rule includes an explanation for how the department arrived at the $1,200 maximum limit, stating: "The department calculated the $1200 maximum by considering the maximum amounts of other states and the amounts health care providers billed for examination costs prior to the implementation of these rules.". This explanatory language should be removed from the text of the proposed rule.

f. Also in SECTION 9, at s. Jus 11.16 (4), the rule provides that the director may approve an award in excess of the $1,200 maximum "in exceptional cases" if the health care provider submits evidence that limiting the payment to $1,200 would be "unfair and inequitable". There is no guidance provided regarding what constitutes an exceptional case or what circumstances would render the cap unfair and inequitable. This should be addressed.

g. Lastly in SECTION 9, at s. Jus 11.16 (4), the reference to "director" should be revised to "department", or the word "director" should be defined for the subchapter.