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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 15-091

#### 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.]**

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

- a. When cross-referencing two statutes, the proper reference is “ss.”. As such, in ss. DCF 105.05 (7) and 105.06 (5), the cross-references to two statutes should be rewritten as “ss. 49.97 (9) (d) or 108.133, Stats.”. [s. 1.07 (2) (second note), Manual.]
- b. When internally referencing a different part of the same subsection, the proper internal citation is “this subsection”. As such, the internal citation found in s. DCF 105.05 (8) should be replaced with “this subsection”.
- c. In s. DCF 105.09 (2), the cross-reference to “s. 49.163, Stats (b), Stats.” should be reviewed and corrected for the precise citation.

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

- a. In s. DCF 105.02 (2), use of the phrase “confirmed test” as a synonym to “confirmation test” may create confusion with the term “positive test”. The agency should consider referring only to a “confirmation test” to refer to the procedure defined in s. DCF 105.02 (2).
- b. In s. DCF 105.05 (2), the agency lists suitable methods of analysis for a confirmation test. Should the agency also specify suitable methods of analysis for an initial test? Additionally, should the list of controlled substances to be included in a test be specified by rule rather than added or deleted by policy?

c. It is unclear whether the term “medical review officer” is a person that is employed by the testing vendor. [See s. DCF 105.06 (1).] The agency should consider clarifying who the medical review officer is and how the medical review officer is connected with the screening process.

d. The definition of the term “treatment” does not clearly state that it is limited to controlled substance abuse treatment. The proposed rule also uses the terms “treatment”, “substance abuse treatment”, and “controlled substance abuse treatment” interchangeably. [See s. DCF 105.06 (1), (8) and (9).] The agency should clarify that the term treatment is limited to controlled substance abuse, and use the defined term consistently throughout the proposed rule.

e. In numerous places the rule uses the word “any” followed by words in their plural form. For example, the proposed rule uses the phrase “any forms or releases of information” in numerous places. However, in general, the singular form of a word should be used. [s. 1.01 (9) (f), Manual.] As such, phrases such as “any forms or releases” could be rewritten to read “a form or release of information”.

f. The proposed rule uses the terms “drug testing vendor”, “drug-testing vendor” and “testing vendor” interchangeably. [See ss. DCF 105.05 (4), (6) and 105.06 (1).] The agency should determine which term to consistently use and should consider defining this term.

g. It is unclear what the term “medical review process” means. [See s. DCF 105.05 (4) (f).] The agency should consider defining this term and clarify what the medical review process entails.

h. The definition of “work experience program” refers to one of three options. As such, when using this term, is it grammatically correct to use the phrase, “a work experience program” and should replace other phrases such as “the work experience program” or “any work experience program”. [See s. DCF 105.05 (5).]

i. New proposed rules should eliminate all terminology that is not sex-neutral. [s. 1.01 (3), Manual.] As such, in s. DCF 105.06 (6) (intro.), the phrase “he or she” should be replaced with the term “individual”.

j. In s. DCF 105.06 (6) (c), it is unclear how many attendance or participation requirements an individual must fail or refuse to meet in order to be considered as refusing to participate in treatment. The agency should clarify how many attendance or participation requirements constitute a refusal to participate in treatment.

k. In s. DCF 105.06 (7) (a), it is unclear what an alternative treatment option is. For example, is it a different type of therapy? Is it provided by the same treatment provider or a different treatment provider? If the alternative treatment option is provided by a different provider, then why must the treatment provider first agree to continue treatment? Why would an individual be given an opportunity to participate in an alternative treatment option only after refusing to participate in the first type of treatment recommended by the treatment provider? The agency should clarify what this alternative treatment option is.

l. In general, the proposed rule refers in several instances to ineligibility for a work experience program arising from certain action or inaction by an individual. The proposed rule

negates this ineligibility if “the individual provides satisfactory evidence of successful completion of a drug treatment program from a treatment provider certified under ch. DHS 75 and evidence of a negative test for the use of a controlled substance carried out at the completion of that treatment program”. [See s. DCF 105.06 (7) (b) and (8) (d).] It appears to be the agency’s intent that this method of regaining eligibility is conducted outside the treatment process administered by ch. DCF 105. Is that accurate? If so, the agency may wish to clarify the relationship between these external drug treatment programs and treatment under ch. DCF 105, including the “one-time” re-entry into treatment under ch. DCF 105. Additionally, the phrase “treatment provider certified under ch. DHS 75” is unnecessary because the certification requirement is included in the definition of treatment provider in s. DCF 105.02 (12).

m. In s. DCF 105.06 (8) (a), it is unclear who determines, and how, the number of randomly administered tests for the use of a controlled substance that an individual must undergo during the individual’s treatment. It is also unclear that the minimum number applies to the time that the individual is participating in treatment (i.e. during the individual’s course of treatment). Paragraph (a) should be rewritten to clarify these questions.

n. In s. DCF 105.06 (8) (b), it is unclear whether an individual is removed from a treatment program if the individual tests positive for use of a controlled substance. It is also unclear how eligibility to re-enter is determined by the provider. The rule should clarify these questions.

o. In s. DCF 105.06 (8) (c), the reference to “this subsection” should be rewritten to read, “par. (b)”, as this paragraph is the only place that mentions how an individual may re-enter treatment.

p. Section DCF 105.06 (10) should be rewritten to clarify that the administering agency must attempt to place an individual in program activities while the individual is participating in treatment and what the administering agency will do during the time period that the individual is removed from treatment.

q. The first sentence in s. DCF 105.08 contains the phrase, “shall not” as well as a double negative. The correct way to express a prohibition is to use the phrase, “may not”. [s. 1.01 (2), Manual.] The first sentence in s. DCF 105.08 should be rewritten to read, “Screening questionnaires, testing results, and treatment records relating to this chapter may not be disclosed unless for purposes connected with...”.