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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 20-013

#### 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.]**

#### 1. Statutory Authority

Proposed s. VA 11.06 requires the department to “establish standard operating guidelines for administering the veterans outreach and recovery program,” and “review [these] guidelines at least annually and...update the guidelines on a continuous basis to reflect current operations”. [Proposed s. VA 11.06 (2) (a) and (c).] Does the department intend these guidelines to have the effect of law? If it does, then the guidelines would constitute a “rule” within the meaning of s. 227.01 (13), Stats., and would need to be promulgated as a rule. Alternatively, if the department intends the guidelines to be a “guidance document”, as defined by s. 227.01 (3m), Stats., the guidelines would be subject to the requirements of s. 227.112, Stats.

#### 2. Form, Style and Placement in Administrative Code

a. The proposed rule’s “purpose” statement provides that the purpose of the rule is to establish rules from the implementation and administration of the veterans outreach and recovery program that provides case management [among other services] for eligible veterans who may have a mental health or substance abuse disorder”. The proposed rule provides a definition for “case management”, but the substantive provisions of the rule do not address case management. If the department intends the program to provide case management, it should establish requirements related to this within the rule’s substantive provisions.

b. The proposed rule’s definition of “community provider” is tautological. Proposed s. VA 11.02 (2) defines “community provider as “a public or private agency that provides one or

more services under s. VA 11.05". Proposed s. VA 11.05 provides that "any of [various enumerated] services for assistance or referrals to a community provider for assistance may be provided".

c. The proposed rule's definitions of "enrolled" and "participant" contain substantial overlap. It appears the definition of "enrolled" could be eliminated. If the department considers it essential to define both terms, the department should revise the definitions so the distinctions between the two terms are clear and align with department's use of the terms in the substantive provisions of the rule.

d. The proposed rule's definition of "veteran" is overly expansive, unclear when read in conjunction with the rule's substantive provisions, and contains substantive requirements that should not be included in a definition. [See s. 1.01 (7), Manual.] The proposed rule defines "veteran" as "an individual who meets the requirements of s. 45.48 (1), Stats.". Section 45.48 (1), Stats., however, is not a definition and essentially contains all of the requirements of the program. In addition, the department might also consider whether a term other than "veteran" should be used to describe individuals to whom services may potentially be provided under the grant program because s. 45.48 (1), Stats., includes individuals other than individuals who meet the definition of "veteran" under s. 45.01 (12), Stats.

e. The department defines the term "veterans outreach and recovery program", but it uses both this term and the term "program" throughout the rule text interchangeably. The department should consider defining the term "program" to mean the veterans outreach and recovery program and then using the term "program" throughout the rule text.

f. The department should revise the proposed rule to more clearly state the eligibility requirements for a person to receive services under the program. Proposed s. VA 11.03 is titled "Eligibility", but does not clearly describe who is eligible to receive services. For example, proposed s. VA 11.03 (1) requires that the department "verify a veteran's residency and veteran status [during an assessment required by a separate rule provision], but does not directly state the criteria an individual must satisfy to be eligible for services. This problem is amplified by the rule's problematic definition of veteran because, although it appears the department intends the term "veteran" to describe the categories of individuals who could potentially be served by the program, it would be impossible for a reader to discern, from the text of the rule itself, who may receive services under the program.

g. Related to comment f., the requirements contained in proposed ss. VA 11.03, 11.04, and 11.05 are not well organized. Rule provisions should be organized "in their order of importance, time sequence, or other logical arrangement". [s. 1.02 (3), Manual.] Ascertaining the various steps in receiving services under the proposed rule, however, requires a reader to go back and forth between multiple rule provisions that do not necessarily logically connect. For example, s. VA 11.03, titled "eligibility", refers the reader to an assessment under s. VA 11.04, which requires the department to conduct an assessment "prior to enrollment in the [program] to verify residency and veteran status determine [needs]". It would follow that if the pre-enrollment assessment indicates the veteran should be provided services under the program, the next step would be to enroll the veteran in the program. Although the rule does not explicitly state how a veteran becomes enrolled, the definition of "enrolled" in s. VA 11.02 (3) suggests this occurs when

the veteran enters into a written agreement with the department to receive services. To find the provision governing this agreement, the reader must go back to s. VA 11.03 (4) (a), but that provision requires the applicant to have first established a need for assistance under the preceding subsection, s. VA 11.03 (3). The plain language of s. VA 11.03 (3), however, suggests it applies *after* a participant has been enrolled and does not provide criteria for enrollment, though this is unclear because it is located within a section titled “Eligibility”. (“Assistance shall be provided to a participant enrolled in the veterans outreach and recovery program when the veterans need arises because of any of [a variety of enumerated] circumstances.”) The department should reorganize the proposed rule in a way that enables a reader to easily understand the steps required to obtain assistance through the program and ensures each step logically connects to the others.

h. The proposed rule contains a number of provisions that provide the department with discretion to make decisions related to the program without detail about how that discretion is to be exercised. For example, four of the seven reasons listed for discharge from the program refer to the department making a finding or determination, but the rule does not provide any guidance that would assist a person who may be discharged from the program about how these findings and determinations are made and whether there is any mechanism to appeal a finding or determination that resulted in the person’s discharge from the program.

i. The “Note” following proposed s. VA 11.02 is unnecessary. [See s. 1.09, Manual.]

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

a. The department should revise throughout the proposed rule to use active voice. [See, for example, proposed ss. VA 11.03 (4) (b) and (c) and 11.05.] The rule’s use of passive voice is particularly problematic in proposed s. VA 11.03 (4) (c), because it is not clear who has an obligation to secure and protect data and personal information. Does this obligation apply to the department, anyone who provides services under this program, or some other entity? Revising to active voice would also improve the clarity of s. VA 11.05.

b. Proposed s. VA 11.03 (4) (d) 7. provides that an individual may be discharged from the program if “The department determines that a participant does not meet the eligibility requirements of the veterans outreach and recovery program.”. Because enrollment in the program presumably entails the department determining the person is eligible at some point, the department should consider modifying this language to clarify that a person may be discharged if the department determines the participant *no longer meets* the eligibility requirements.

c. Proposed s. VA 11.04 (4) (e) would be easier to read if it were framed in the positive rather than the negative; e.g., “Assistance under the veterans outreach and recovery program is additional to any other benefits or services a veteran is entitled to receive....”.

d. The phrasing of proposed s. VA 11.06 (2) (b) is too colloquial and does not address whose obligation it is to provide individuals involved in the program with the necessary information. This requirement might be better framed as an obligation for the department to provide training and materials to these individuals.

e. The department should ensure the proposed rule consistently uses the singular form of words. For example, “veterans who are incarcerated...are not eligible...” should be “a veteran who is incarcerated...is...not eligible...”. [s. VA 11.03 (3).]