



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-026

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In the department’s summary for the proposed rule, an entry should be inserted for each statute that the proposed rule interprets. An agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if an agency considers it necessary to effectuate the purpose of the statute. [ss. 227.11 (2) (a) (intro.) and 227.14 (2) (a) 1., Stats.]

2. Form, Style and Placement in Administrative Code

a. The caption for the proposed rule should be revised to include a relating clause that briefly identifies the subject matter addressed in the proposed rule. Consider inserting, for example, “relating to long-term care services and medical assistance fair hearing process”. [s. 1.01 (1) (a), Manual.]

b. In the department’s summary for the proposed rule, under the heading for the analysis and supporting documents used to determine the effect on small business, it appears that dates or register numbers should be inserted in the blank spaces.

c. In SECTION 4 of the proposed rule, amending s. DHS 10.13 (1) (b) 7., text from s. DHS 10.13 (3m) is included that should either be removed in its entirety or be added to the treatment clause and be shown on a separate line.

d. The numbering sequence for SECTIONS 5 to 7 are omitted in the proposed rule, which appears to be an error. The SECTION numbering sequence should either be corrected, or intended changes should be inserted.

e. Because the treatment of s. DHS 10.13 (36m) in SECTION 11 of the proposed rule and treatment of s. DHS 10.13 (40m) in SECTION 13 interrupt the treatment of s. DHS 10.13 (16) to (46) in SECTION 12 of the proposed rule, the treatment should be revised to appear in five SECTIONS as follows:

- (1) To create s. DHS 10.13 (14m).
- (2) To amend s. DHS 10.13 (16), (20), and (28).
- (3) To create s. DHS 10.13 (36m).
- (4) To repeal s. DHS 10.13 (40m).
- (5) To amend s. DHS 10.13 (46) (a) to (c).

f. In SECTION 16 of the proposed rule, amending s. DHS 10.21 (4), the final period should be shown with a strike-through.

g. In SECTION 19 of the proposed rule, amending s. DHS 10.23 (2) (d) 3., the abbreviation “s.” should be inserted before the citation to “HA 3.03”.

h. In the treatment clause for SECTION 21 of the proposed rule, the listing of “(a) 2., 2. c.” should be revised to “(a) 2. (intro.) and c.”.

i. In SECTION 22 of the proposed rule, amending s. DHS 10.31 (4) (a), the strike-throughs and underscoring in the first three sentences should appear as follows:

- (1) DHS 10.31 (4) (a) *Making application*. Any person in the target population served by resource centers may apply for a family care benefit ~~on a form prescribed by the department and available from a resource center~~. Application for the family care benefit requires that a person apply for financial, non-financial and functional eligibility. Financial and non-financial eligibility determination shall be made to by the income maintenance agency serving the county, or tribe or family care district in which the person resides. Application may not be made to an agency in a county or tribe in which the family care benefit is not available. Functional eligibility determination shall be made by the resource center serving the county or tribe in which the person resides.

j. Because the treatment of s. DHS 10.31 (6) (am) in SECTION 23 of the proposed rule interrupts the treatment of s. DHS 10.31 (6) (a) and (b) in SECTION 22 of the proposed rule, the treatment should be revised to appear in three SECTIONS as follows:

- (1) To amend s. DHS 10.31 (4) (a) and (b), (5), and (6) (a).
- (2) To create s. DHS 10.31 (6) (am).
- (3) To amend s. DHS 10.31 (6) (b).

k. SECTION 26 of the proposed rule repeals s. DHS 10.42 (6) (b), which leaves only sub. (6) (intro.) and (a)—these should be consolidated, in the same manner that s. DHS 10.21 (3) (intro.) and (a) are consolidated in SECTION 14 in connection with the repeal of sub. (3) (b) in SECTION 15. [s. 1.11 (4), Manual.]

l. In the treatment clause for SECTION 27 of the proposed rule, the listing of “10.52 (1)” should be revised to “10.52 (1) (intro.)”.

m. In SECTION 27 of the proposed rule, amending s. DHS 10.52 (3) (intro.), the department should consider further amending the text to conform to current drafting conventions for an introduction to a list of subunits. In particular, the final period should be amended to a colon, and a phrase such as “in accordance with all of the following” should be inserted. [s. 1.11 (2) and (3), Manual.]

n. In SECTION 27 of the proposed rule, amending s. DHS 10.52 (3) (b) 1., the amendment of the word “service(s)” should be revised to appear as “service or services”. Likewise, in subd. 7., both instances of the word “service(s)” should be revised to appear as “service or services”. A word may only be amended in its entirety, and “(s)” should not be used to indicate that a word may be singular or plural. Alternatively, in both subds. 1. and 7., consider using only the singular “service”, as under Wisconsin law the singular includes the plural, and the phrasing already refers to “any service”, which implies that it could be more than one. [s. 990.001 (1), Stats.; and ss. 1.04 (4) (b) and 1.05 (1) (c), Manual.]

o. Because the treatment of s. DHS 10.52 (3) (b) 1m. in SECTION 28 of the proposed rule interrupts the treatment of s. DHS 10.52 (3) (b) 1. to 9. in SECTION 27 of the proposed rule, the treatment should be revised to appear in three SECTIONS as follows:

- (1) To amend s. DHS 10.52 (1) (intro.), (3) (intro.), (a) 2., and (b) (intro.) and 1.
- (2) To create s. DHS 10.52 (3) (b) 1m.
- (3) To amend s. DHS 10.52 (3) (b) 2. to 9.

p. SECTION 30 of the proposed rule should be revised to appear in two SECTIONS as follows:

- (1) To amend s. DHS 10.53 (title) and (1) (a) and (b).
- (2) To renumber and amend s. DHS 10.53 (1) (c) to (c) (intro.). Also, in the text for this provision, the final period in the existing text should be shown with a strike-through after the word “~~writing~~” and the colon at the end of the material should be shown with underscoring. Alternatively, par. (c) could be repealed and recreated, and the text of subds. 1. to 4. that are created in SECTION 31 of the proposed rule could be moved to appear in this SECTION.

q. SECTIONS 32 and 33 of the proposed rule should be revised to appear in four SECTIONS as follows:

- (1) To amend s. DHS 10.53 (2) (title), (a), and (b).
- (2) To create s. DHS 10.53 (2) (bg) and (br).
- (3) To repeal and recreate s. DHS 10.53 (2) (c). The text of subds. 1. to 4. that are created in SECTION 33 of the proposed rule should be moved to appear in this SECTION.
- (4) To create s. DHS 10.53 (2) (d), (e), and (f). In the text of the provisions, the designations for pars. (f) and (g) should be revised to pars. (e) and (f), to match provisions identified in the treatment clause. Alternatively, the treatment clause could be revised to identify pars. (f) and (g).

r. In SECTION 33 of the proposed rule, creating s. DHS 10.53 (2) (d), the reference to “subd. (2) (br)” should be revised to “par. (br)”.

s. SECTIONS 34 and 35 of the proposed rule should be revised to appear in three SECTIONS as follows:

- (1) To amend s. DHS 10.54 (1) (title), (intro.), (a) and (b), and (2) (title).
- (2) To create s. DHS 10.54 (2e), (2j), (2o), and (2v). In sub. (2e), it is not necessary to identify the subunits, as the provision is creating that subdivision in its entirety.
- (3) To amend s. DHS 10.54 (3). It is not necessary to identify the title and re-identify sub. (3), as the provision is affecting sub. (3) in its entirety.

t. In SECTION 37 of the proposed rule, repealing s. DHS 10.055 (1) (d) to (g), it appears that two of the subunits are recreated in SECTION 39. The text of current sub. (1) (d) is created in sub. (1g) (b), and the text of current sub. (1) (f) is created in sub. (1g) (i). Consider revising the treatment of these provisions to appear in separate SECTIONS as follows:

- (1) To renumber sub. (1) (d) to (1g) (b). The corresponding treatment of sub. (1g) (f) should be removed from the treatment clause and text of SECTION 39.
- (2) To repeal sub. (1) (e).
- (3) To renumber sub. (1) (f) to (1g) (i). The corresponding treatment of sub. (1g) (i) should be removed from the treatment clause and text of SECTION 39.
- (4) If intended, to renumber and amend sub. (1) (g) to (1g) (L). The department’s intent with sub. (1) (g) is not clear; see subunits (1) and (3) in the next comment.

u. The following comments apply to SECTION 38 of the proposed rule:

- (1) The treatment clause states that pars. (h) to (k) are renumbered, but a part of the text of the first paragraph appears in current par. (g). If the department intends to also renumber par. (g), the listing should be corrected to “(g) to (k)” in the treatment clause. The department should also review the listing of par. (g) in the treatment clause for SECTION 37 of the proposed rule to revise that listing, if needed.
- (2) It is not clear why the department is renumbering pars. (h) to (k) to different paragraphs that remain in sub. (1). If the department intends to renumber those paragraphs to appear under sub. (1g) rather than sub. (1), the listing should be corrected to “(1g) (L) to (p)” in the treatment clause.
- (3) The text of the renumbered provisions do not appear to be amended. If no amendments are intended, the SECTION should be shown with only a treatment clause identifying the renumbering, and the text of the provisions should be removed. [s. 1.04 (6) (b), Manual.] However, the text of par. (g), as renumbered and shown as par. (L), does not match the full current text of par. (g). If intended, this amendment, and any others in the renumbering, should be shown with strike-throughs and underscoring.

v. In SECTION 39 of the proposed rule, creating s. DHS 10.55 (1g) (a), the designation abbreviation “s.” should be inserted before the citation to “DHS 10.33”.

w. In the treatment clause for SECTION 40 of the proposed rule, amending s. DHS 10.55 (2), the listing for “(2) (title) and (2)” should be revised to “(2)”, as sub. (2) is affected in its entirety. Also, the listing of “(4) (intro.)” should be revised to “(4) (title)” to properly identify the affected provision.

x. In SECTION 41 of the proposed rule, amending s. DHS 10.56 (1), the underscored amendment for the subsection title should be shown in small capital letters. Also, in sub. (2), the strike-through of “sub.” should be removed and the underscored word “subs.” should be removed. The disjunctive “or” in a citation is treated as being singular, rather than plural. [s. 1.15 (2) (d), Manual.]

y. SECTIONS 41 and 42 of the proposed rule should be revised to appear in three SECTIONS as follows:

(1) To amend s. DHS 10.56 (1).

(2) To create s. DHS 10.56 (1m). Also, the subsection title should be shown in small capital letters.

(3) To amend s. DHS 10.56 (2) to (3).

z. In SECTION 43 of the proposed rule, amending s. DHS 10.62 (1) (b), the strike-through of “s.” should be removed, and the underscored abbreviation “ss.” should be removed.

aa. In SECTION 57 of the proposed rule, amending s. DHS 104.01 (5) (a) 1., the abbreviation “ss.” should be revised to “s.”.

bb. Consider adding an initial applicability clause to identify at what point the revised provisions apply to a person in the process. For example, do the revised provisions apply to a person who has already begun an appeal or only to new appeals? [s. 1.03 (3), Manual.]

cc. The caption for the proposed rule should be updated to reflect any changes made in response to these comments.

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

a. SECTION 31 of the proposed rule, in creating s. DHS 10.53 (1) (d), should state that a “resource center shall assist individuals with the filing of grievances with the resources center”.

b. SECTION 31 of the proposed rule, in creating s. DHS 10.53 (1m), should state that a “resource center shall assist clients with the filing of requests for fair hearings with the division of hearings and appeals”.