



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-046

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 to identify 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.] For example, it appears the department may wish to cite s. 49.688 (1) (c) 2., (10m), and (11), 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 SeniorCare prescription drugs”. [s. 1.01 (1) (a), Manual.]

b. The rule caption’s listing of affected provisions should be revised to move the listing of s. DHS 109.03 (10) from the items amended to a new category of treatment “to renumber and amend”. This would reflect the treatment applied in SECTION 1 of the proposed rule.

c. In the department’s summary for the proposed rule, the statutory authority and explanation of statutory authority sections should be reorganized. The entry for statutory authority should simply list the statutes that provide rulemaking authority. The explanation of agency authority should provide a narrative description of the statutory authority in order to explain the department’s authority to promulgate the rule. Compare, for example, those entries in [CHR 21-110](#). [s. 1.01 (2) (a), Manual.]

d. In the department’s summary for the proposed rule, entries should be inserted for the analysis and supporting documents used to determine the effect on small business, and for the effect on small business.

e. In the treatment clause for SECTION 1 of the proposed rule, the designation “(10)” should be inserted before “(intro.)”.

f. In SECTION 3 of the proposed rule, it appears that only the title of s. DHS 109.13 (2) (c) is amended. If so, the treatment clause should be revised to add the designation “(title)” after “DHS 109.13 (2) (c)”, and the text should show only the affected title for par. (c), without the text of par. (c). [s. 1.10 (2) (c) 1. and 3., Manual.] Alternatively, if the department intended to amend the text of par. (c), the amendments should be shown with striking and underscoring.

g. In SECTION 4 of the proposed rule, the creation of s. DHS 109.13 (2) (bm) should be moved to a separate SECTION immediately preceding SECTION 3 that amends par. (c). Subunits that receive the same treatment may be included in the same SECTION of a proposed rule, but subunits may not be placed in the same SECTION if the sequential order is interrupted by a subunit with a different treatment. The affected paragraphs must be treated in sequential order, with the treatment of par. (bm) appearing before the treatment of par. (c). [s. 1.03 (2) (c) 2., Manual.]

h. The department could consider adding an initial applicability clause to identify whether or not the rule applies to vaccines that have already been administered before the effective date of the rule. For example, would the rule apply to vaccines that were administered before the effective date of the rule but not yet submitted for reimbursement? Or does the department intend the rule to apply only to vaccines that are administered after the effective date of the rule? Alternatively, the department could specify that the rule applies to any vaccines administered or submitted for reimbursement after some other identified date or event. [s. 1.03 (3), Manual.]

i. The rule caption’s listing of affected provisions should be updated to reflect any changes made in response to these comments.

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

The department defines “prescription drug” and alters the word “drug” to “prescription drug” in a number of places throughout the proposed rule. “Drug” is not defined in ch. DHS 101 or 109. Currently, in ch. DHS 109, “drug” appears 128 times and “prescription drug” appears 48 times. Consider whether a separate definition of “drug” or uniform phrasing is appropriate.