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CLEARINGHOUSE RULE 95-070

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Proper list format should be used in s. HSS 275.13. This would require some modification of the introductory paragraph and placement of periods, instead of semicolons, at the end of each numbered paragraph. Using this format makes subsequent revisions to the list much easier. [See s. 1.03 (intro.), Manual and the example in s. 1.03 (8), Manual.]

b. Section HSS 275.14 (1) would read better if drafted in list format. It could begin with: “(1) The hearing officer may do all of the following:”.

c. Section HSS 275.16 (10) (a) and (b) could be consolidated into one paragraph. The same comment applies to s. HSS 275.16 (11).

d. The effective date clause is on page 10 of the rule. However, the page before that is page 8. Is a page missing or was there a misnumbering of pages?

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

a. In the first paragraph of the analysis, a reference to the appropriate Code of Federal Regulations section would be helpful.

b. In the third paragraph of the analysis, 29 U.S.C. s. 722 (9) is cited. The correct citation is 29 U.S.C. s. 722 (d) (4).

c. In s. HSS 275.01, the reference to 29 U.S.C. s. 721 (a) (6) does not appear to be relevant to this rule.

d. In s. HSS 275.03 (16), the U.S. Code citation for “section 112 of the act” should be included.

e. Section HSS 275.14 (1) cites s. HSS 255.05. This citation does not appear to be relevant. Is it possible that the correct citation is s. HSS 275.08?

f. Section HSS 275.16 (5) (b) cites s. HSS 275.22. No such rule section exists. Is it possible that the correct citation is s. HSS 275.18?

g. In s. HSS 275.17 (1), the cites to 29 U.S.C. ss. 711 (c) and 721 (a) (6) do not appear to be relevant and should be deleted. 29 U.S.C. s. 711 (c) provides general rule-making authority and 29 U.S.C. s. 721 (a) (6) is not relevant to the issues in this rule section.

h. In s. HSS 275.17 (1), it would be helpful to insert a cross-reference to 34 C.F.R. s. 361.48 (c) (2) (iii), which directly tracks the requirement found in this subsection.

i. It may be helpful to insert a cross-reference to 34 C.F.R. s. 361.48 (c) (2) (iv) in s. HSS 275.18, since this paragraph directly tracks that regulation.

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

a. In s. HSS 275.03 (15), the “a” at the end of the first line should be “an.”

b. Because s. HSS 275.04 is written in the passive voice, it implies that both parties may appeal. If only clients are granted the right to appeal, this section should be rephrased. It could begin with: “_____ may appeal...”

c. It may be useful to the reader to define “ex parte motions” in s. HSS 275.08 (6).

d. It may be useful to enumerate, in s. HSS 275.09 (1), what other types of individuals may be designated as a representative for an appellant for the purposes of the appeal. [See 34 C.F.R. s. 361.48 (c) (2) (ii).]

e. Section HSS 275.09 (2) states that “if a representative was properly designated prior to an appeal that designation shall be valid for the appeals process.” This could be interpreted to mean the designation may not be changed. Any option for an individual to change his or her representative should be clarified in this subsection.

f. In s. HSS 275.12, the two “unless” clauses, one at the beginning and one at the end, may cause confusion. Also, “may not” should replace “shall not.” It is suggested that the section be redrafted as follows:

HSS 275.12 SERVICES WHILE AN APPEAL IS PENDING.

The department may not institute a suspension, reduction or termination of services under an IWRP unless either of the following applies:

(1) The appellant requests the suspension, reduction or termination.

(2) The services were obtained....

g. In s. HSS 275.15 (2), it would be helpful to divide the first sentence into two separate sentences.

h. In s. HSS 275.16 (3), the confusing wording of this subsection could be clarified by using commas or by rewording the subsection. The first sentence could be broken down into two sentences--one that sets forth the right to submit a motion and one that states when the motion must be submitted.

i. In s. HSS 275.16 (5) (b), the first “or” should be replaced by a comma.

j. The term “positions” in s. HSS 275.16 (6) is vague. Does this mean the party’s occupation or their stand on the issues at the hearing?

k. In s. HSS 275.16 (9) (c), the word “a” at the end of the third line should be deleted.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

References to 34 C.F.R. s. 361.48 (c) (2) (v) and (vi) should be inserted in s. HSS 275.18. These two components are required components of the state’s formal review procedure but were not included in this rule.