



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-042

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. Immediately before the title and text of ch. HFS 129, the following should be inserted: “Section __. Chapter HFS 129 is repealed and recreated to read:”. Also, the department should clarify whether it is repealing Appendix A to ch. HFS 129.

b. It appears that the title of ch. HFS 129 should include a reference to medication aides.

c. After the title of s. HFS 129.03, “In this chapter:” should be inserted.

d. In light of the department’s pending name change, “department of health services” should be used in s. HFS 129.03 (11).

e. In s. HFS 129.03 (9), “all of” should be inserted before “the following”. This problem also occurs in s. HFS 129.04 (2) (a) 1. (intro.). In s. HFS 129.05 (2) (d) 4. (intro.), “if any of the following have occurred in the previous 2 years” should replace “, which in the previous two years”; each subdivision paragraph should begin with “The program” and end with a period. Introductory material generally includes the phrase “all of the following” or “any of the following”; ends in a colon; and leads into the subunits that follow. All of these subunits should end with a period, rather than a semicolon or “and” or “or”. [See s. 1.03 (intro.) and (8), Manual.] The entire rule should be checked for this problem.

f. In s. HFS 129.03 (11), “Department of Health and Family Services” should be changed to the lower case. Other examples of incorrect capitalization occur in subs. (16) and (41) (b) and (c); s. HFS 129.08 (4); s. HFS 129.09 (5) (c); s. HFS 129.20 (1) (intro.); s. HFS

129.22 (2); s. HFS 129.24 (1) (c) 1.; and s. HFS 129.24 (4) (d) and (e). The entire rule should be checked for this problem. Throughout the rule, “Nurse Aids Registry” or “Wisconsin Nurse Aide Registry” should be replaced by “registry”, which is a defined term. [See 1.01 (4), Manual.]

g. In s. HFS 129.03 (16), the term “long-term care facility” is used, but not defined. This term should be defined. For example, does it include a community-based residential facility, an adult family home, or a residential care apartment complex?

h. In s. HFS 129.03 (20) and (22), “prescribed” should be changed to “specified” in order to conform to the format of the other definitions.

i. In s. HFS 129.03 (24) “or LPN” should be added after “Licensed practical nurse”. In sub. (42), “or RN” should be added after “Registered nurse”.

j. In s. HFS 129.03, subs. (27) and (28) should be reversed so that they are in alphabetical order. A similar change is needed for subs. (31) and (32).

k. In s. HFS 129.03 (30), “(a)” should be inserted after “(30)”; pars. (a) to (f) should be subs. 1. to 6.; and the unnumbered material should be pars. (b) and (c).

l. In s. HFS 129.03 (46), the second sentence is substantive and should be deleted.

m. In s. HFS 129.03 (49), “currently” should be deleted. This problem also occurs in s. HFS 129.05 (2) (d) 3. b.; s. HFS 129.07 (1) (c) 17.; s. HFS 129.09 (6) (c); and s. HFS 129.23 (1). The entire rule should be checked for this problem. [See 1.01 (9) (b), Manual.]

n. In s. HFS 129.03 (39), the second sentence is substantive and should not be included in a definition.

o. In s. HFS 129.04, the history section at the end of this subsection should be deleted. The entire rule should be checked for this problem.

p. In s. HFS 129.05 (2) (b) 2., “will” should be changed to “shall”. In sub. (2) (e) 1. c. 2. and 3., “must” should be changed to “shall”. This problem also occurs in s. HFS 129.07 (2) (a) 1. In sub. (2) (b) 1., “shall not” should be changed to “may not”. This problem also occurs in s. HFS 129.09 (7). In s. HFS 129.07 (7) (c) 1. c., “should” should be changed to “shall”. In s. HFS 129.08 (2) (d), “cannot” should be changed to “may not.” [See 1.01 (2), Manual.] The entire rule should be checked for these problems.

q. In s. HFS 129.05 (2) (d) 3. a., “ten (10)” should be replaced by “10”. Numbers, except “one” are generally written in numerals. [See 1.01 (5), Manual.] This problem also occurs in s. HFS 129.07 (2) (b) 1. and 3. The entire rule should be checked for this problem.

r. In s. HFS 129.05 (2) (e) 1. a. (intro.), “is construed to mean” should be replaced with “means any of the following”. This problem also occurs in sub. (2) (e) 1. b. (intro.). In subs. (2) (e) 1. a. (1), (2) and (3), the periods after these notations should be deleted. In sub. (2) (e) 1. b. (2) (d), “is construed to mean” should be changed to “means”.

s. A rule should never be subdivided below the subdivision paragraph level. [See s. 1.03 (6), Manual.] Section HFS 129.05 (2) (e) goes two levels below the subdivision paragraph level. Its provisions should be consolidated to avoid this problem.

t. In s. HFS 129.06 (3) (c) (intro.), “plan” should be changed to “course” so that the terminology in the section is consistent.

u. In s. HFS 129.07 (1) (e) 3., the parentheses should be deleted and “including” should be added after “equipment”. The use of parentheses should be avoided. [See 1.01 (6), Manual.] This problem also occurs in sub. (2) (c) 1. i. and s. HFS 129.08 (4). The entire rule should be checked for this problem.

v. In s. HFS 129.07 (2) (b) 3., “the above topics” should be changed to “the topics in subd. 2.” [See 1.01 (9) (c), Manual.] Also, “this rule” should be changed to “this subsection”. In sub. (2) (c) 1. i., “i.e.” should be deleted and replaced with “as a”. In sub. (2) (d), “is prohibited from acting” should be changed to “may not act”.

w. In s. HFS 129.09 (1) (intro.), the title should be changed to solid capital letters. [See 1.05 (2) (c), Manual.] In sub. (6) (b) (intro.), “below” should be deleted and replaced with the specific rule citation containing the exceptions. In addition, “being” should be changed to “begin”. In sub. (6) (c), the title should be italicized.

x. In s. HFS 129.12 (4), “e.g.” should be deleted and replaced with “, including”. This problem also occurs in s. HFS 129.14 (1). In addition, the notation “, etc.” should be deleted. The entire rule should be checked for these problems.

y. In s. HFS 129.17 (intro.), the introductory material should end in a colon. [See s. 1.03 (8), Manual.]

z. In s. HFS 129.23 (1), the acronym “HSED” should be deleted. In s. HFS 129.27 (2), “(DON)” should be deleted. Throughout the rule, parenthetical acronyms should be deleted. If an acronym is used often enough, it should be defined in s. HFS 129.03.

aa. It appears that s. HFS 129.27 should be restructured as follows:

HFS 129.27...A hospice medication aide program instructor shall be one of the following:

(1) A registered nurse...

Also, does the registered nurse in sub. (2) or (3) need to be licensed in Wisconsin, as is required for the registered nurse in sub. (1)? In sub. (4), “licensed” should be substituted for “registered”.

3. Conflict With or Duplication of Existing Rules

Since ch. HFS 129 is being repealed and recreated, a number of external cross-references to provisions in the chapter are incorrect. The department should review, and amend if

appropriate, all of the following: ss. HFS 13.03 (5) and (16), 45.11 (8) (a) 4., 46.11 (7) (a) 4., 54.02 (3m) (d), 59.08 (4), 83.14 (6) (a) 1. and 1. g., 88.03 (3) (c), and 133.02 (10m).

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

a. Since the rule includes provisions relating to feeding assistance, the analysis and s. HFS 129.01 should cite s. 146.40 (1) (am) and (2m), Stats., as providing authority.

b. In s. HFS 129.03 (43) (b), it appears that the reference should be to s. HFS 129.09 (5), not sub. (6).

c. In s. HFS 129.03 (55), the entire federal citation for “Public Law 105” should be added. The U.S. Code citation should be included also. [See s. 1.07 (3) (a), Manual.] The entire rule should be checked for this problem. As another example, see s. HFS 129.05 (2) (e) (intro.).

d. In s. HFS 129.06 (1) (b) and (c), references to “sub (a)” should be to “par. (a)”. The reference in s. HFS 129.07 (1) (a) to “sub. (b) to (g)” should be to “pars. (b) to (g)”. The entire rule should be checked for references to paragraphs as subsections.

e. Section HFS 129.07 (1) (f) 1. h. should be rewritten as follows: “h. To immediately report every instance of abuse or neglect of a client or misappropriation of a client’s property, as defined in s. HFS 13.03 (1), (12), and (14), to appropriate facility or agency staff.”

f. In s. HFS 129.09 (4), the reference should be changed to “sub. (1) (b)”.

g. In s. HFS 129.09 (6) (c), “Stats.” should be inserted after the statutory citation and “sub. (5) (c)” should replace “subsec. (5) (c)”.

h. In s. HFS 129.04 (2) (c) (intro.), the reference to “sub (d)” should be to “par. (d)”.

i. The citation at the end of s. HFS 129.05 (2) (c) 3. should be to “s. HFS 129.07 (2) (a) or (c)”.

j. In s. HFS 129.08 (4), “under HFS 129.09” should be added after “registry”, which should replace “Nurse Aide Registry.”

k. In s. HFS 129.21 (3) (c), should the reference to s. HFS 129.22 (1) be modified to refer to all of s. HFS 129.22, not just sub. (1)?

l. In s. HFS 129.22 (2), “under s. HFS 129.06” should be added before the period.

m. In s. HFS 129.24 (1) (c) 2., the rule should include a citation for the state practice act specific to the registered nurse delegation.

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

a. In s. HFS 129.03 (1), a period should be added at the end of the sentence. In sub. (13), “client related” should be hyphenated. Other examples of words that should be hyphenated include “long term” in sub. (16), and “nursing related” in sub. (30) (d). In sub. (39), “Programs” should be changed to the singular. In sub. (41) (b), the term “Advanced Practice Nurse

Prescriber for Adults” should be clarified. In sub. (50), the definition of “substantial change” to mean “any change” is confusing and should be clarified according to the department’s intent. Also, all notations of “(s)” should be removed. The entire rule should be checked for use of “(s)” at the end of a word. [See s. 1.01 (6), Manual.]

b. In s. HFS 129.04 (2) (a) 3., “health care” should replace “healthcare.” The entire rule should be checked for this problem.

c. In s. HFS 129.05 (2) (c) 4., the “3-year period of inactivity” should be clarified – does this begin before or after temporary inactive status is granted? In sub. (2) (d) 1. a., “can not” should be changed to “cannot”. In sub. (2) (d) 3. b., a period should be added at the end of the sentence. In sub. (2) (d) 3. c., the rule should clarify how custody of the records should be provided and provide a source for the “required three year time period”. In sub. (2) (d) 4. b., “it” should be changed to “its”. In sub. (2) (e) (intro.), a period should be added after “1”. Also, the “2-year prohibition for NATCEP programs” should be clarified. In sub. (2) (e) 1. a. (1) and (2), the rule should clarify that the programs are approved by the department. In sub. (2) (e) 1. b. (2) (a) to (d), “cite” should be replaced with “citation”. In sub. (2) (e) 1. b. (2) (c), “resident/nursing” should be replaced with “resident or nursing”. The use of slashed alternatives should be avoided and the entire rule should be checked for this problem. [See 1.01 (9), Manual.] In sub. (2) (e) 1. c. 3., the rule should be changed to clarify who the “office director” is.

d. In s. HFS 129.06 (1) (g), how will the department determine whether the conduct of a primary instructor is “detrimental”? In sub. (2) (a), does “professionals” mean that only persons licensed in certain fields may serve as program trainers? If so, it would be clearer to change “professionals” to “persons licensed in health care and public health fields”. Could “licensed health care professional”, which is a defined term, be substituted?

e. In s. HFS 129.07 (1) (b) (intro.), the commas between the topics should be changed to semi-colons. This problem also occurs in sub. (1) (e) (intro.). In sub. (2) (b) 2. d., “resident’s” should be changed to “residents”. In sub. (1) (c) 1. b., “this” should be changed to “the agreement”.

f. In s. HFS 129.09 (2) (b), a note should be included following this provision stating how the form may be obtained. [See s. 1.09 (2), Manual.] This problem also occurs in s. HFS 129.15 (1); s. HFS 129.17; s. HFS 129.19. (3); and s. HFS 129.21 (3) (e). In sub. (8), the term “substantiated findings of misconduct” is vague and should be explained in the rule.

g. In s. HFS 120.10 (1) (intro.), can the department provide a definition of “aggrieved party”? In addition, the time period in which to appeal to the department of administration should be included in the rule.

h. In s. HFS 129.11 (5), it appears that “that” should be inserted after “stress”.

i. In s. HFS 129.12 (2), a note should be included after this provision stating how to obtain a copy of the video. In addition, in sub. (3), a note should be included after this provision stating where to submit the training materials.

j. In s. HFS 129.14 (1), it appears that this subsection would be clearer if it were rewritten as two sentences. The first sentence should list who is eligible to be an instructor and the second sentence should state that the programs may determine which instructors the programs want to use based on the needs of the selected residents and the facility.

k. In s. HFS 129.15 (1), it appears that “Entities” should be replaced with a list of the specific types of facilities that are authorized to employ feeding assistants. This problem also occurs in s. HFS 129.18 (3) (intro.).

l. In s. HFS 129.16 (5), feeding assistants between ages 16 and 18 must work under the direct supervision of an RN or LPN and in sub. (6), feeding assistants 18 years and older must work under the general supervision of an RN or LPN. It appears that sub. (5) should be changed to “feeding assistants who are 16 or 17 years of age”. In sub. (6), only the acronyms “RN” and “LPN” should be used.

m. In s. HFS 129.19 (1), “by the department” should be added after “reviewed”. In addition, in sub. (2) “by the department” should be added after “termination”.

n. In s. HFS 129.20 (1), “department of administration’s” should be added before “division of hearings and appeals”. This problem also occurs in sub. (2).

o. Subsections HFS 129.21, HFS 129.22 and HFS 129.23 use the term “skilled nursing facility”, but this term is not defined in the rule. A definition of “skilled nursing facility” should be added to the rule. In addition, throughout these sections, the term “skilled nursing facility medication aide” is used; however, the defined term under s. HFS 129.03 (26) is “medication aide”. The entire rule should be changed to use only the defined term.

p. Section HFS 129.21 (1) provides that “the proposal contents are determined by the department”. Can the department provide further guidance in the rule regarding the proposal contents? In addition, the note after sub. (2) contains substantive material and should be moved into the text of the rule. [See s. 1.09 (1), Manual.] In sub. (3) (b), the term “reasonable means” is vague and should be clarified.

q. In s. HFS 129.22 (1) (intro.), can the department be more specific about what the term “teaching experience” means?

r. In s. HFS 129.24 (1) (d) 2., the semi-colon should be deleted. In addition, the note after sub. (1) (f) 1. contains substantive material and should be moved to the text of the rule. In sub. (3) (b), the quotation marks around “qualified medication consultant” should be deleted. In addition, the semi-colon should be replaced with a period. Subsection (4) (a) should clarify that the quizzes should be submitted to the department for approval. This problem also occurs in sub. (4) (b) and (c) and s. HFS 129.26 (2).

s. In s. HFS 129.28 (1), the note contains substantive material and should be moved to the text of the rule. In addition, in sub. (2), can the department clarify the phrase “actively employed”?