



---

---

## 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 10-091

#### 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 September 2008.]**

#### **1. Statutory Authority**

In SECTION 48, the department is proposing to repeal ch. DHS 165, relating to laboratory certification, on the basis that it has no statutory authority for the rule and that, in Wisconsin, laboratories are monitored under federal regulations in 42 CFR 493 and 1310 to 405.1317 (this citation seems incorrect). Did the department previously have statutory authority to certify laboratories, as stated in current s. DHS 165.01 (1), citing s. 299.11, Stats., that it no longer has? An explanation of the statutory basis for the repeal should be provided in the rule analysis.

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

a. In the third paragraph of the plain language analysis, both occurrences of the notation “ss.” should be replaced by the notation “s.” Also, in the fifth paragraph, the notation “s.” should be inserted before “DHS 124.16, (5) (c).”

b. In s. DHS 148.03 (11m), the notation “ch.” should be replaced by the notation “s.”

c. In s. DHS 148.07 (1), a more specific reference to the relevant provision or provisions in ch. Med 17 would be helpful.

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

a. Under the SUMMARY OF PROPOSED RULE, the first heading should be “Statutes Interpreted,” which should be followed by a colon. Also, “and” should be inserted before “255.056, Stats.”

b. Under the “Statutory Authority” heading, a comma should be added after “1.a.”

c. The “Explanation of agency authority” should state that the cited statutes *require* (rather than authorize) the department to promulgate rules. Therefore, “authorized” should be changed to “required” throughout. As a whole, the explanation could be shortened by simply stating: “The department is required to promulgate rules to do all of the following:” and then listing the requirements, placing the statutory citation in brackets at the end of each item. In the third paragraph, on line 1, a comma should be inserted after “1. a.”. Finally, the phrase “who are a non-client resident” should be replaced by the phrase “who are non-client residents.”

d. The following comments pertain to the plain language analysis:

(1) It is suggested that the analysis be rewritten to provide a more clear and concise explanation of the rule, beginning with an introductory sentence such as: “In this rule, the department makes a number of changes, primarily of a minor and technical nature, to current rules relating to caregiver background checks, community-based residential facilities, licensed adult family homes, hospitals, rural medical centers, the cancer and chronic disease drug repository program, and laboratory certification.” The description of changes made in the rule could be grouped according to those general topics.

(2) Where rule provisions are repealed (for example, in SECTIONS 16 and 19), the analysis should briefly explain the reason for the repeal, including specifying any statutory change that necessitates the repeal.

e. In the “Comparison with rules in adjacent states,” does the entry “Not applicable” mean that the states have no rules on the subjects contained in the Wisconsin rule? If so, “No relevant rule provisions found” would be more accurate.

f. In the “Analysis and supporting documents used to determine effect on small business,” there should be analysis and supporting documents, not just a conclusory statement that the rules will not have a fiscal effect on small businesses. Also, in the text of this entry and the next one, reference should be made to “*small* businesses.”

g. In s. DHS 12.02 (1) (b), “and” should be inserted after “252,” on line 3.

h. In s. DHS 12.06 (intro.), the title should be bold. Also, the comma should be stricken through after “crime” on line 2 and “a” should be inserted before “delinquency.”

i. In s. DHS 12.08, the underscored material should be moved to follow “component,” on line 3.

j. In SECTION 5 of the rule, the department is repealing Appendix A to ch. DHS 12 (relating to caregiver background checks), which contains a list of offenses affecting a person's eligibility to be a caregiver. The rule analysis does not indicate whether there is, or previously was, a statutory requirement that the offenses be set forth in the rules (as there is in s. 50.065 (2m) (d), Stats., which requires the department to promulgate rules specifying crimes for which an entity must disclose a caregiver's conviction to a client or guardian). The reason given for the repeal is that the list of offenses is out-of-date and could more readily be updated on the department's website. However, it is unclear how a reader would know that the information is on the website, or where the offenses are listed in the statutes. A note could be inserted at the beginning of ch. DHS 12, citing the statutory provisions that list the offenses and noting that a list may be found on the department's website.

k. In the treatment clause to s. DHS 83.15 (1) (c), the word "is" should be replaced by the word "are." Also, in this provision, who is the "designee" that may approve the training course?

l. In s. DHS 83.28 (7), the citation before the title should read: "DHS 83.28 (7)."

m. In s. DHS 83.35 (1), a space should be inserted before "or" on line 3. Check the entire rule for spacing problems.

n. In s. DHS 83.37 (1) (h) 1., the citation on the last line should read: "s. DHS 83.42 (1) ~~(n)~~ (q)." The current rule refers to s. DHS 83.42 (1) (n), rather than (q), but par. (q) contains the requirement for documentation that is referred to in this provision.

o. In s. DHS 83.38 (1) (g), adding advanced practice nurses to an existing provision under which physicians perform certain examinations appears to be a substantial change which should be mentioned in the rule analysis.

p. SECTION 18 repeals and recreates Appendix A to ch. DHS 83, which shows the regional offices of the Division of Quality Assurance and the counties included in each region. The format of *current* Appendix A is more readable than the new one, and contains a helpful two-sentence introductory explanation of the fact that DHS licenses CBRFs through the regional offices, which should be retained. The same comment applies to the new Appendix A to ch. DHS 88 in SECTION 21.

q. The language in s. DHS 124.16 (5) (c) is unclear. In effect, it states that the "nutritional needs shall...to the extent medically possible...meet the nutritional needs of each patient." The language should be reviewed and clarified. Is another standard replacing the standard in Appendix A to ch. DHS 124, which the rule repeals? If so, that should be explained in the analysis.

r. In s. DHS 148.01, to which individuals may the unused drugs and supplies be donated?

s. In s. DHS 148.03 (1), it is suggested that the definition of "Cancer or chronic disease drug" or "drug" be repealed and the new definition of "Drug" be created in s. DHS 148.03 (7g),

to preserve alphabetical order. Likewise, the definition of “Cancer or chronic diseases drug repository” in current s. DHS 148.03 (2) should be repealed and the new definition of “Drug repository” created in s. DHS 148.03 (7r).

t. Section DHS 148.05 states broadly that any Wisconsin resident is eligible to receive drugs or supplies under the drug repository program. However, s. 255.056 (2), Stats., states that individuals must meet eligibility criteria established by the department by rule. Where are those eligibility criteria? Section DHS 148.05 should specify that a Wisconsin resident who meets the eligibility criteria under (add rule citation) may receive the drugs or supplies.

u. In the treatment clause to SECTION 37, “and” should replace the comma after the second occurrence of “(intro).”

v. In s. DHS 148.06 (2) (a) (title), the extra “s” in “*drugss*” should be deleted. In sub. (2) (b) (title), the stricken-through title should read: “~~Cancer and chronic disease supplies~~” and the new title should read: “Supplies.” See s. 1.05 (3), Manual, about revising titles.

w. In s. DHS 148.06 (5), the language at the beginning of the sentence should read as follows: “~~Cancer and chronic disease drugs~~. Drugs.” [See s. 1.06 (3), Manual, about amending the beginning of a sentence and review the entire rule for other occurrences of this problem.]

x. In s. 148.11 (1), the hyphen following “Drug” should be deleted.