



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-036

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 December 2014.]

1. Statutory Authority

Section DWD 131.30 (1) (b) provides that an individual may enroll in a substance abuse treatment program one time per benefit year. The department could consider specifying the conditions under which this requirement does or does not apply. This requirement could, in certain circumstances, be interpreted as being more restrictive than ss. 108.04 (8) (b) and 108.133 (3) (d), Stats., which do not limit eligibility to the first claim an individual files within a single benefit year. For example, if an individual remains in full compliance with a treatment program and job skills assessment but obtains employment or completes the program and subsequently files a second claim within the same benefit year, the proposed rule would prohibit the individual from maintaining his or her eligibility as provided under s. 108.133 (3) (d), Stats. That section specifies that an individual remains eligible “for each week” that the individual is in full compliance, if otherwise eligible.

2. Form, Style and Placement in Administrative Code

a. The department should make clear in the plain language analysis that the treatment and job skills assessment parameters apply only to circumstances of pre-employment drug testing. If that is not the scope, reconsider the format of the proposed rule and its description in the analysis.

b. A specific date should be given for the deadline to submit comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

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

- a. In the introductory clause for the proposed rule, a reference to “DWD” should be inserted before “131”.
- b. In s. DWD 131.10 (7) (a) to (c), each reference to “under this chapter” should be revised to more specifically reference to “under this section”.
- c. In ss. DWD 131.30 (1) (a) and 131.40 (1), the references to “under this chapter” should be revised to more specifically reference “as reported under s. DWD 131.10 (2)”.

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

- a. In s. DWD 131.001 (1) (c), the definition of “substance abuse treatment provider” means an individual or organization that is licensed by a state agency. The department could consider specifying whether the individual or organization must be licensed by a particular state agency.
- b. Section DWD 131.10 (1) (b), which provides that an employing unit may report positive results to the department if the respective test was conducted or confirmed by a laboratory certified by the substance abuse and mental health services administration of the U.S. Department of Health and Human Services, should be removed because it repeats the language given in the proposed defined term “positive results” under s. DWD 131.002 (2) (b).
- c. Sections 108.04 (8) (b) and 108.133 (3) (d), Stats., each refer to testing positive without a valid prescription. However, s. DWD 131.10 (2) (e), which lists the information that an employing unit must submit to the department regarding a test and its results, does not require an employing unit to report information on whether an individual presented evidence of any prescriptions. Likewise, s. DWD 131.30 does not refer to testing positive without a valid prescription. The department could consider explaining in the rule, or the plain language analysis, whether the department is relying on standards enforced by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services to ensure that prescription information is collected and evaluated by the laboratory and presented in the laboratory report.
- d. In s. DWD 131.10 (2) (h) (Note) and (4) (g) (Note), the website address for the department should be updated.
- e. Section DWD 131.30 (1) (b) provides that an individual may enroll in a substance abuse treatment program one time per benefit year. Section DWD 131.30 (5) provides that an individual is considered to be enrolled in a substance abuse treatment program if the individual schedules an assessment or requests placement on a waitlist for an assessment. It is unclear whether s. DWD 131.30 (1) (b) prohibits an individual from requesting placement on more than one waitlist, or prohibits an individual from changing to a different provider after initially beginning treatment with another provider.
- f. Section DWD 131.10 (5) provides what the department must do with information submitted by an employing unit if the department determines that an individual is receiving benefits. The department could consider specifying what the department must do with information

submitted by an employing unit if the department determines that the individual is not receiving benefits.

g. In s. DWD 131.30 (1) (a), the proposed defined term “positive results” under s. DWD 131.001 (2) (b) should be used.

h. In the following sections, the phrase “individual that” should be changed to “individual who”: ss. DWD 131.10 (7) (a) to (c), 131.30 (1) (a), (2), and (6) (b), and 131.40 (1) and (3).