



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 17-005

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.]

2. Form, Style and Placement in Administrative Code

- a. Section DHS 38.05 (4) (a) and (d) appear to contain the same requirement.
- b. Cross references in s. DHS 38.09 should conform to the style prescribed by s. 1.07 (2) of the Manual.
- c. In s. DHS 38.10, use of “but not limited to” should be avoided. [s. 1.01 (9) (f), Manual.]

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

- a. In s. DHS 38.02 (2), the last reference should be to s. 49.78 (1) (cr), Stats. Additionally, the subsection should be reorganized to form a complete sentence. For example, “or a” could follow the last semicolon.
- b. In s. DHS 38.02 (7), the reference should be to s. 49.79 (1) (c), Stats.
- c. In s. DHS 38.02 (15), should the reference to SPS 163 instead be to SPS 161?

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

- a. Section DHS 38.04 (2) requires an “applicant” to answer all questions on a questionnaire; however, s. DHS 38.02 does not define “applicant”. Should the word “applicant” be replaced with the word “individual”?

b. Section DHS 38.02 (8) defines “individual” to mean a person who is an able-bodied adult and who **has been referred to participate in an employment and training program**. However, s. DHS 38.04 (2) states that “An individual who fails to submit a completed screening questionnaire is not eligible to participate in the employment and training program, and the administering agency **shall not refer the individual to participate in the program**”. The agency should consider clarifying the relationship between these provisions of the proposed rule.

c. Section DHS 38.04 (1) requires an administering agency to administer a controlled substance abuse screening questionnaire, and s. DHS 38.05 (1) provides that an individual whose answers on the screening questionnaire indicate possible abuse of a controlled substance shall be required to undergo a test. The agency could consider clarifying who is responsible for evaluating an individual’s answers to make the determination required by s. DHS 38.05 (1).

d. Section DHS 38.05 (2) states that “The department shall provide to each administering agency a list of all controlled substances or metabolites of controlled substances that must be included in the test and cutoff levels for the initial test and cutoff levels for a conformation test that may be used.”. The agency should consider specifying this information in the proposed rule.

e. Section DHS 38.05 (3) authorizes an administering agency to contract with a “qualified drug testing vendor”, and a footnote provides information about federal drug testing requirements. The agency should consider defining “qualified drug testing vendor” and including appropriate information from the footnote in the text of the proposed rule.

f. The agency should consider defining what constitutes “evidence of a valid prescription”.

g. Section DHS 38.05 (3) does not require a qualified drug testing vendor to collect prescription information from an individual. The agency should consider identifying the party that is responsible for collecting evidence of a valid prescription from an individual.

h. The agency should consider clarifying in s. DHS 38.06 (7) what is required if a treatment provider does not agree to continue treatment. May an individual attempt to re-enter treatment with another provider within 30 days of the refusal to participate?

i. In relation to s. DHS 38.06 (8) (b), the agency should consider specifying that, pursuant to s. 49.79 (9) (d) 1. d., Stats., testing positive for the use of a controlled substance during treatment without presenting evidence of a valid prescription constitutes a departure from the program.

j. The agency should consider clarifying whether s. DHS 38.08 applies to prescription information submitted by individuals.

k. The agency should consider clarifying whether the costs of tests administered as part of a treatment program are subject to s. DHS 38.10 (2) or (3).

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

In the agency’s rule summary, in the section entitled “Summary of, and comparison with, existing or proposed federal regulations”, the agency cites 21 U.S.C. s. 862b, but it does not cite 7 U.S.C. s. 2014 (b). The agency could consider clarifying whether there are any potential conflicts with 7 U.S.C. s. 2014 (b).