



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-032

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

In the rule summary’s listing of statutory authority, the reference to s. 46.87 (2), Stats., should be removed because that provision does not confer rulemaking authority. In the reference to s. 46.87 (3) (b), Stats., consider adding citations to subs. (4), (5) (c), (5m), and (7) (c). [s. 1.02 (2m), Manual.]

2. Form, Style and Placement in Administrative Code

a. In the rule summary’s listing of statutes interpreted, s. 46.87, Stats., should be referenced in its entirety. Also, the reference to s. 227.11 (2) (a), Stats., should be removed from the listing of statutes that are interpreted in the rule.

b. In the rule summary’s explanation of agency authority, consider providing a brief plain language description of the authority, rather than repeating the statutory text.

c. In the rule summary’s listing of related statutes or rules, it appears that the entry should be revised to “none”.

d. In the rule summary’s listing of the place where comments are to be submitted and the deadline for submission, consider specifying that the notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register. Also, the website address should be updated to: <https://docs.legis.wisconsin.gov/code/chr/active>.

e. In s. DHS 68.01 (1), the reference to “2015 Act 273” is new language and should be underscored. [s. 1.06 (1) (a), Manual.] Also, the source notation “Wis.” should be inserted after “2015” and before “Act”.

f. In s. DHS 68.02 (6m) and other various places throughout the rule, each subunit that is part of a series should be revised to end in a period rather than a semicolon. See, in particular, ss. DHS 68.04 (3), (3m), and (5), 68.05 (1), 68.06 (1) and (2) (b), 68.07, 68.08, 68.09, and 68.10 (1). Also, the introductory material should contain a phrase such as “all of the following” or “any of the following” to specify whether all or any of the subunits apply. [s. 1.03 (3) and (4), Manual.]

g. Section DHS 68.02 (8m) creates the term “tribe” and numbers it as sub. (8m), which means it falls between the definitions of “expanded services” and “goods and services”. The numbering for the definition of “tribe” should be adjusted to be placed in alphabetical order. [s. 1.01 (7) (a), Manual.] Also, consider referring to the statutory definition in s. 46.87 (1) (c), Stats., rather than creating a lengthy definition. Alternatively, a simplified definition could be created; see, for example, s. DHS 36.03 (33).

h. In s. DHS 68.02 (15), the phrase “family and” should be shown before the word “caregiver” as it appears in the current rule. If intended to be removed, the phrase should be shown with a strikethrough. Alternatively, consider removing the amendment altogether, to maintain the phrasing that is consistent with the statutory title.

i. In the treatment clause for SECTION 14 and other various places throughout the rule, each reference to “(Intro)” should be rewritten as “(intro.)”. [s. 1.03 (3), Manual.]

j. In the treatment clauses for various SECTIONS of the proposed rule, it is not necessary to repeat the subsection, paragraph, or subdivision if various subunits are being treated similarly. For example, in SECTION 14, the treatment clause could be rewritten as “DHS 68.04 (4), (5) (intro.), (a), (b), and (c) (intro.) and 4. are amended to read:”. [See the example in s. 1.04 (2) (a) 5., Manual.] This change could be made throughout the rule.

k. The purpose of s. DHS 68.04 (3m) is unclear. Why would the provision apply when a tribe decides to reinstate participation? Why does the provision only apply to a tribe that became eligible to participate after July 1, 2016, when subs. (2) and (3) are amended under the proposed rule to incorporate tribes? Why does par. (a) allow a solicitation of applications from either a county or a private nonprofit, rather than both? Why is a county allowed to apply to provide services on behalf of a tribe when the statute refers only to a private nonprofit? It appears that this provision could be removed if the applicable circumstances are adequately addressed in the revisions to subs. (2) and (3).

l. In s. DHS 68.04 (5) (c) (intro.), the stricken through period that appears between the words “organization” and “to” should be removed.

m. In the treatment clause for SECTION 15 and other various places throughout the rule, each reference to “(Title)” should be rewritten as “(title)”. [s. 1.05 (3) (a), Manual.]

n. In s. DHS 68.05 (1) (c), the phrase “tribe’s or nonprofit agency’s” is new language and should be underscored. [s. 1.06 (1) (a), Manual.]

o. In s. DHS 68.06 (1) (intro.), because the introductory material is being amended, the designation “(intro.)” should be added in the text before the title, “PURPOSES”. Also, sub. (1) (a) is amended so as to include the plural phrase “caregivers of persons”; however, in general, the singular form of a word should be used. This phrase should be rewritten to use the singular form of the words. [s. 1.01 (9) (e), Manual.]

p. In s. DHS 68.06 (1) (a), the abbreviation “s.” should be inserted before the reference to “DHS 68.02”. [s. 1.07 (2) (Table), Manual.]

q. In s. DHS 68.08 (intro.), the title “Determination of need” should be formatted in bold. [s. 1.05 (2) (b), Manual.]

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

SECTION 10 of the rule references a “funding formula consistent with the department’s formula for distributing Older Americans Act funding” but does not cite where someone may find this formula. The rule also does not cite the federal statute that is commonly referred to as the “Older Americans Act”. Cites to the department’s formula and federal law should be included in the rule and reference to a named federal act may be done in a note. With respect to the department’s formula, if there is no statute or rule to cite, a note that includes a link or address on where to find more information may be helpful. [ss. 1.07 (3) (a) and 1.09 (1), Manual.]

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

a. Because the proposed rule as a whole shifts the terminology from “Alzheimer’s disease” to the more general term “dementia”, consider explaining this shift in the rule summary’s plain language analysis. For example, the plain language analysis could note that the statutory provision defines the term “Alzheimer’s disease” to include other irreversible deteriorations of intellectual faculties, and that the terminology in the proposed rule is accordingly being updated to instead use the broader term “dementia” to include both Alzheimer’s disease and other forms of mental deterioration.

b. For consistency, consider revising the title of ch. DHS 68 to refer to “dementia” rather than “Alzheimer’s disease”.

c. In s. DHS 68.01 (1), an underscored comma should be inserted after “1985 Wis. Act 29”.

d. In s. DHS 68.01 (2), the defined term “tribe” should be used, rather than the phrase “federally-recognized Indian Tribes”. Also, a comma should be inserted after the word “tribe”.

e. In s. DHS 68.02 (1), the defined term “tribe” should be used, rather than the phrase “federally-recognized tribal government”. Alternatively, the term “tribal government” could be used, if defined as suggested in the comments below. Also, a comma should be inserted after the term “tribe” or “tribal government”, whichever term is chosen.

f. In s. DHS 68.02 (4), the definition of “caregiver” references a person who provides care for a person with “Alzheimer’s disease or other dementia”. However, the proposed rule defines the term “dementia” to include both Alzheimer’s disease and other dementia and repeals the definition for “Alzheimer’s disease”. Accordingly, the defined term “dementia” should be used

instead of the undefined term “Alzheimer’s disease or other dementia”. This comment applies throughout the rule in each instance where the undefined term “Alzheimer’s disease” is used.

g. In s. DHS 68.02 (6), the definition of “county agency” includes the undefined term “Aging and Disability Resource Center”. The department should consider defining this term.

h. In s. DHS 68.02 (6m) (j), consider removing the word “dementia”, because that is the term being defined, and instead echo the statutory language. For example, the provision could be rephrased as “any other organic brain disorder that results in deterioration of intellectual faculties”.

i. The amended definition of “residential facility” in s. DHS 68.02 (16) changes the term “community-based residential facility” to “community-based facility”. The term “community-based facility” appears to be a new term, different from the term “community-based residential facility”, which is defined in s. DHS 68.02 (5). The department should review the intent of this change and if the intent is to create a new term, then “community-based facility” should be defined.

j. The definitions of “respite care” and “respite services” created in s. DHS 68.02 (17) and (18) include policy in the definitions. Substantive provisions should never be incorporated as part of a definition and should be removed. [s. 1.01 (7) (b), Manual.] In addition, the definition for the term “respite services” appears to use the terms “respite services” and “respite” interchangeably. The department should review the use of these two terms in the definition of “respite services” to make sure that the appropriate term is being used.

k. In s. DHS 68.02, consider adding a definition for the term “tribal agency” for the chapter. That term is used in various places throughout the proposed rule.

l. In s. DHS 68.02, consider adding a definition for the term “tribal government” to mean a governing body of a tribe. The defined term could then be used throughout the proposed rule in place of the undefined terms “federally-recognized tribal government” and “tribal governing board”.

m. In ss. DHS 68.04 (3) (a) and 68.07 (2), the term “tribal service area” is used. The department should either replace this term with the defined term “tribe” or define this term.

n. In s. DHS 68.04 (3m) (intro.), the phrase in the first sentence, “If a tribal government which became eligible to participate in the program beginning July 1, 2016 notifies ...”, is missing commas and is grammatically incorrect. This sentence should be revised. For example, it could be rewritten as “If a tribal government that became eligible to participate in the program on [or after?] July 1, 2016, notifies ...”.

o. In s. DHS 68.05 (1), each instance of the word “non-profit” with a hyphen should be revised to the consolidated term “nonprofit”, in order to be consistent with the use of that term in the current rule.

p. In s. DHS 68.06 (4), the title “NON SUPPLANTING” appears to be a term that should be hyphenated or consolidated. The department should review this term and hyphenate or consolidate, if appropriate.

q. In ss. DHS 68.07 (intro.) and 68.10 (1) (a), the phrase “county’s or tribe’s” should be revised to “county or tribe’s”, because the possessive applies to the one family and caregiver support program under s. 46.87, Stats.

r. In s. DHS 68.09 (4), the term “residential fees” appears to be a new term that should be defined. The department should review the meaning of this term and define it accordingly. Also, consider whether the language adequately conveys the intent of the amendment; it appears to exclude payment for all services that would be provided to a resident under the resident’s housing contract.