



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 18-042

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

The proposed rule meets the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule. An “unauthorized rule” is a rule for which an agency lacks the authority to promulgate the rule due to the repeal or amendment of the law that previously authorized its promulgation.

In this case, the repeal of s. 49.45 (3) (i), Stats., in 2005 Wisconsin Act 25, removed the requirement for the department to obtain a second opinion before it could reimburse a provider for certain surgical procedures. The proposed rule likewise removes the Administrative Code provision implementing the second opinion requirement. The proposed rule accordingly follows the Legislature’s intent to remove the second opinion requirement from state law.

2. Form, Style and Placement in Administrative Code

a. An introductory clause should be inserted to specifically enumerate the rule provisions treated and to state the subject matter of the proposed rule. [s. 1.02 (1), Manual.]

b. The rule summary’s listing of statutes interpreted should be revised to cite the specific statutory provision that was interpreted for administration and enforcement in the department’s original rule: s. 49.45 (3) (i), 2003 Stats. [s. 1.02 (2m) (a) and (b), Manual.]

c. The rule summary’s listing of statutory authority should be revised to cite the specific statutory provision that granted rulemaking authority for the original rule: ss. 49.45 (10) and

49.665 (3), Stats. The statutory provision for the expedited rulemaking process, s. 227.26 (4), Stats., should not be cited, as that provision establishes the process and does not remove or confer rulemaking authority for the subject matter addressed in the proposed rule. [s. 1.02 (2m) (a), Manual.]

d. The rule summary's explanation of agency authority should be updated to reflect any revisions made in accordance with the previous comment.

e. The rule summary's listing of related statutes or rules should be revised to identify any statutes or rules that relate to the subject matter addressed in the proposed rule.

f. The department should review its Administrative Code provisions to repeal any cross-references to the provision that is repealed in the proposed rule. For example, s. DHS 107.30 (3) (b) contains a cross-reference to s. DHS 104.04.

g. The department should determine whether other code provisions that address a second opinion requirement without citing s. DHS 104.04 are also affected, such as s. DHS 107.06 (4) (e).