



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Jessica Karls-Ruplinger
Legislative Council Acting Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 19-018

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. In the rule summary’s listing of statutes interpreted, a statute should be inserted. In this case, it may be the same as the statute that provides rulemaking authority.
- b. In s. DHS 40.03 (24), consider revising the introduction and subunits as follows:
 - (1) In the introduction, state that a major deficiency means “a determination by the department that any of the following occurred.”
 - (2) In par. (a), remove the phrase “; or that any of the following occurred.” and revise the sentence to be a complete sentence as its own subunit.
 - (3) Revise the numbering of the subdivisions under par. (a) to be pars. (b) and (c).
 - (4) Revise the numbering of the remaining pars. (b) to (d) to be pars. (d) to (f).
- c. In s. DHS 40.03, the designation for sub. (53) occurs twice, for the definitions of both “therapeutic specialists” and “transition services”. The numbering for the second occurrence of sub. (53) and all following subsections should be corrected to be sequential.
- d. For easier navigation of the detailed certification provisions, consider dividing s. DHS 40.04 into at least two sections, such as one for initial certification requirements and procedures and one for the ongoing oversight provisions.
- e. The department should combine s. DHS 40.04 (3) and (9), which are both titled “on-site inspection”.

f. In s. DHS 40.04 (9) (intro.), a final sentence should be inserted to the effect that, “All of the following conditions apply to an on-site inspection:”. [s. 1.03 (3), Manual.]

g. In s. DHS 40.05 (2) (a) (intro.), the reference to “1. through 4.” should be removed, as the reference to par. (b) includes all of its subdivisions.

h. In s. DHS 40.05 (3), the designation for par. (a) should be removed, and the numbering of the subdivisions should be revised to be pars. (a) to (c). When creating subunits, at least two subunits must be created. [s. 1.03 (1), Manual.]

i. In s. DHS 40.07 (2) (a) 1., the format of the cross-reference should be revised to “sub. (1)” and “s. DHS 40.07” should be removed. [s. 1.07 (2) (Table), Manual.]

j. In s. DHS 40.07 (2) (a) 2., the word “through” should be changed to “to”. [s. 1.01 (9) (d), Manual.]

k. In s. DHS 40.07 (2) (b) (intro.), the colon after the word “including” should be removed. Also, a final sentence should be inserted to the effect that, “All of the following apply to the program’s engagement of the youth or legal representative:”. [s. 1.03 (3), Manual.]

l. Section DHS 40.07 (3) and (4) should be combined. This could be accomplished by making the material in sub. (3) an introductory clause. A period should also be added at the end of sub. (3).

m. In s. DHS 40.07 (4) (b), the reference to “subd. 1. through 6.” should be removed, as the reference to par. (a) includes all of its subdivisions.

n. The provisions in ss. DHS 40.07 (6) and 40.08, regarding voluntary time outs and emergency safety interventions, respectively, could be moved towards the end of the chapter. The subject matter of the sections in the beginning of the chapter relate to general certification and operational requirements, while the later sections relate to client interactions.

o. In s. DHS 40.08 (1), the reference to “1. to 3.” should be removed, as the reference to par. (e) includes all of its subdivisions.

p. Titles should be added to s. DHS 40.08 (3) and (4), for consistency. [s. 1.05 (1), Manual.]

q. Each paragraph under s. DHS 40.08 (4) should be written to form a complete sentence when read with the introduction. [s. 1.03 (3), Manual.]

r. In s. DHS 40.08 (6) (c) 4., 8., and 9., each instance of the use of parentheses should be removed and the material should be set apart with commas or placed in an explanatory note. [s. 1.01 (6), Manual.]

s. In s. DHS 40.08 (7), the designation for par. (b) occurs twice. The numbering for the second occurrence of par. (b) and the following paragraphs should be corrected to be sequential.

t. In s. DHS 40.09, consider moving sub. (1), which requires written personnel policies, to a section that is more closely aligned to the subject of operational responsibilities.

u. In s. DHS 40.09 (3), the designation for par. (a) should be removed, and the numbering of the subdivisions should be revised to be pars. (a) to (c). When creating subunits, at least two subunits must be created. [s. 1.03 (1), Manual.]

v. In s. DHS 40.09 (4) (a) (intro.), the phrasing should be revised to specify that a coordinator must meet “all of the following” qualifications. [s. 1.03 (3), Manual.]

w. In s. DHS 40.09 (4) (g), the dash in the cross-reference citation should be revised to the word “to”. [s. 1.01 (9) (d), Manual.]

x. For easier navigation of the detailed personnel and services provisions, consider dividing s. DHS 40.10 into at least two sections, such as one for personnel orientation and training requirements and one for operational responsibilities.

y. The material in s. DHS 40.10 (1) should be revised to form a logical introduction and subunits, with a colon after the introductory material. For example, the material could be revised along the following structure: “(a) A program shall include all of the following administrators: 1. A program director. 2. A clinical coordinator. 3. One or more staff members identified as a clinical coordinator designee to whom authority may be delegated in the absence of the clinical coordinator. (b) The following conditions apply to the administrators: 1. A program director shall be responsible for.... 2. The program director may also serve as the clinical coordinator if... 3. A clinical coordinator or designee shall be on the premises....”.

z. In s. DHS 40.10 (1) (b), the word “through” should be changed to “to”. [s. 1.01 (9) (d), Manual.]

aa. In s. DHS 40.10 (2) (intro.), an introductory statement should be inserted, ending in a colon, to lead into the subunits. [s. 1.03 (3), Manual.]

bb. The department should review the rule generally to use the singular form of words. For example, s. DHS 40.10 (3) (a) should refer to “a community-based program”. [s. 1.01 (9) (e), Manual.]

cc. In s. DHS 40.10 (3) (a) 6. and (b) 8., the respective numbers “two” and “four” should be expressed as Arabic numerals. [s. 1.01 (2), Manual.]

dd. In s. DHS 40.10 (4) (intro.), the abbreviation “s.” should be inserted before the cross-reference to s. DHS 40.14. [s. 1.07 (2) (Table), Manual.]

ee. In s. DHS 40.10 (5) (b) (intro.), the final period should be changed to a colon. [s. 1.03 (3), Manual.]

ff. In s. DHS 40.10 (6) (b) (intro.), the following revisions should be made:

- (1) The format of the reference to “s. 40.09 (4) (a)-(f)” should be revised to “s. DHS 40.09 (4) (a) to (f)”.
- (2) The format of the reference to “specified in 1. through 16.,” should be revised to “specified in subds. 1. to 16. of this paragraph.”.
- (3) The format of the reference to “under par. 1. through 16.” should be revised to “under this paragraph”.

(4) A final sentence should be inserted in the introductory material to lead into the subunits, such as, “Training requirements include all of the following:”.

gg. In s. DHS 40.11 (2), a subsection title should be inserted. [s. 1.05 (1), Manual.] Also, the subunits should be designated as pars. (a) to (e). [s. 1.03 (1) (Example), Manual.]

hh. In s. DHS 40.11 (2) 2. [sic], the parentheses and the acronym “IEP” should be removed, and the second instance of the acronym should be spelled out. The acronym is not used elsewhere in the proposed rule.

ii. In s. DHS 40.11 (3) (b), the designation for subds. 6. and 7. occurs twice. The numbering for the second occurrences of subds. 6. and 7. and the following subdivision should be corrected to be sequential.

jj. In s. DHS 40.12 (1), the designation for par. (a) should be removed, and the numbering of the subdivisions should be revised to be pars. (a) to (d). When creating subunits, at least two subunits must be created. [s. 1.03 (1), Manual.]

kk. In s. DHS 40.12 (2) (a), the abbreviation “chs.” should be revised to “ch.”.

ll. In s. DHS 40.13 (2), the structure of the subunits should be reviewed and revised. As written, the material includes only one entry at the paragraph level. Accordingly, the designation for par. (a) could be removed, and each of its subunits could be adjusted upwards. Alternatively, the substance of the material in sub. (2) could be reviewed for appropriate grouping. For example, it appears that the material in par. (a) 3. m. and n. could be renumbered as pars. (b) and (c), in which case the designation for par. (a) would not need to be removed. Likewise, the material in par. (a) 3. L., regarding recommendations, should be reviewed for its intent, as it appears that if it is intended that the assessment must include a recommendation, the provision could be renumbered as a paragraph and revised to form a complete sentence.

mm. In s. DHS 40.14 (2) (f), the format of the cross-reference citation to s. DHS 40.14 (2) (b) should be revised to “par. (b)”.

nn. In s. DHS 40.14 (3) (b) 2., the abbreviation “chs.” should be revised to “ch.”.

oo. The provision in s. DHS 40.14 (4), relating to reporting of deaths, should be moved to its own section. The subject matter is not related to treatment plans, which are the subject of s. DHS 40.14.

pp. In s. DHS 40.15 (9), the abbreviation “s.” should be inserted before the cross-reference citation.

qq. In s. DHS 40.16, the designation and title for sub. (1) should be removed. When creating subunits, at least two subunits must be created. [s. 1.03 (1), Manual.]

rr. In s. DHS 40.17 (1), the designation for par. (a) should be removed, and its subdivisions should be renumbered as pars. (a) and (b). When creating subunits, at least two subunits must be created. [s. 1.03 (1), Manual.]

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

a. In s. DHS 40.03 (22) (a), it appears that the cross-reference to s. 448.03, Stats., should more precisely cite to sub. (1) (a) of that section, if the reference is intended to exclude the licensures for a physician assistant, perfusionist, and anesthesiologist assistant.

b. Section DHS 40.03 (24) (a) 1. states that “sexual contact” is defined in s. 940.225 (3), Stats. However, the phrase “sexual contact” is not defined in the citation given. That citation, s. 940.225 (3), Stats., is, rather, the crime of third degree sexual assault. The phrase “sexual contact” is defined in other criminal law provisions, including ss. 939.22 (34), 940.225 (5) (b), and 948.01 (5), Stats. Either the type of violation or the citation should be corrected, depending on what is intended.

c. Section DHS 40.03 (39) includes a cross-reference to s. Med 8.08. However, that section does not exist. Is this intended to refer to s. Med 8.07? The cross-reference should be corrected.

d. In s. DHS 40.03 (41), the cross-reference to sub. “(8) (m)” of s. 457.01, Stats., should be corrected to sub. “(8m)”. Also, the multiple cross-referenced meanings for one term is confusing; consider which definition meets the desired meaning, and use only that one.

e. In s. DHS 40.03 (43) (b), the cross-references should more precisely be listed as “s. MPSW 4.01, 12.01, or 16.04, or Psy 2.10”. The same comment also applies to s. DHS 40.10 (5) (b) 2. and (d).

f. Section DHS 40.04 (2) (b) 3. d. states that “staffing level requirements” are given in s. DHS 40.09. However, staffing level requirements are given in s. DHS 40.10 (2). The cross-reference should be corrected.

g. Section DHS 40.04 (7) (b) includes a cross-reference to s. DHS 40.045 (3). However, that section does not exist in the proposed rule. The cross-reference should be corrected.

h. In s. DHS 40.07 (4) (b), the cross-reference to s. DHS 40.10 (4) should more precisely cite to sub. (4) (b) of that section.

i. In s. DHS 40.08 (3), the cross-reference to s. DHS 40.10 (6) (b) 1. is pinpointed to subpars. “a. through q.”. However, those subdivision paragraphs do not exist in the proposed rule. Is the cross-reference intended to cite to s. DHS 40.10 (6) (b)? The cross-reference should be corrected.

j. In s. DHS 40.09 (3) (a) 1., is the cross-reference intended to exclude sub. (4) (j)? If par. (j) is intended to be included, the reference to “(a) through (i)” should be removed, as the reference to sub. (4) includes all of its subdivisions. If par. (j) is intended to be excluded, as listed, the format of the citation should be revised to change the word “through” to “to”.

k. In s. DHS 40.12 (2) (a), should ch. 938, Stats., be added to the listing of chs. 48 and 55, Stats.?

l. In s. DHS 40.14 (3) (b) 2., should ch. 938, Stats., be added to the listing of chs. 48, 51, and 55, Stats.?

m. In s. DHS 40.15 (5) (d), the cross-reference to s. DHS 40.11 (4) should be corrected to s. DHS 40.12 (4).

n. In s. DHS 40.15 (5) (k), the purpose of the cross-reference is not clear. Section DHS 40.07 (4) requires general minimum required services, and does not require written documentation of services provided in an individual case. Also, shouldn't the written documentation already be included in the treatment plan? Consider either revising this cross-reference or eliminating the provision.

o. In s. DHS 40.15 (5) (p), the cross-reference to s. DHS 40.11 (2) (a) should be corrected to s. DHS 40.12 (2) (a).

p. All internal cross-references should be reviewed and updated as needed to follow any organizational restructuring made in response to comments in this review.

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

a. The proposed rule contains 60 definitions. Are all of the definitions necessary? For example, rather than defining the term "deficiency", the department could modify the substantive provision in s. DHS 40.04 (10) (a) to state that the department will issue a notice of deficiency if it determines that a program fails to meet a requirement of the chapter. The department could review the rule to identify whether other similar changes could be made to use definitions only when useful for achieving consistency and clarity of terminology within the chapter. [s. 1.01 (7) (a), Manual.]

b. In s. DHS 40.03 (7), the definition of "client" should be revised, since the legal representative is not the person who is receiving mental health day treatment services.

c. In s. DHS 40.03 (11), does a "co-occurring disorder" include any combination of more than one mental health disorders or more than one substance use disorders, or does it mean a dual combination of at least one each of a mental health and a substance use disorder? If the intent is any combination of multiple disorders, the definition could be modified to "any combination of two or more mental health or substance use disorders". If the intent is a dual combination of both, the definition could be modified to "a combination of both a mental health disorder and a substance use disorder".

d. In s. DHS 40.03 (24) (a) (intro.), is a single incident of risk of harm or violation of a client right sufficient to be a "major deficiency", or must two (or more) occur? If two or more are needed to be considered major, what is the time frame within which the incidents must occur in relation to each other? For example, two or more incidents within any 24-month period? Consider clarifying this provision.

e. In s. DHS 40.04 (1), it does not appear necessary to define the term "certification". The subsection could be revised to instead state that no person may establish a program that provides mental health day treatment services for youth without first obtaining a certification from the department.

f. In s. DHS 40.04 (2) (b) 3. a., the second sentence should be revised to form a complete sentence.

g. In s. DHS 40.04 (2) (b) 3. d., should the requirements be split into two separate subdivision paragraphs? If not, the second half of that subdivision paragraph, which begins “A description of the therapeutic milieu...”, should be reviewed and possibly revised for clarity.

h. In s. DHS 40.04 (2) (b) 3. e., the second sentence should be revised to form a complete sentence.

i. In s. DHS 40.04 (2) (b) 3. f., the second sentence should be revised to specify that the application must include a statement of the program’s compliance with building code requirements and local building regulations. As written, it is a substantive directive rather than a description of needed application materials. Additionally, a separate provision should be created in the proposed rule to identify the physical setting requirements that are referred to in this application materials provision and in the on-site inspection provision. For example, the current phrasing in the second sentence, as a directive with which a program shall comply, could be added to the program components in s. DHS 40.07 or elsewhere.

j. In s. DHS 40.04 (7), par. (a) refers to certification that is “suspended or revoked”, and par. (b) refers to certification that is “suspended or terminated”. There does not appear to be any provision for revocation of a certification under the proposed rule. Consider combining the provision to state that “certification is valid until suspended or terminated by the department under sub. (11)”. Also, should a provision be added to recognize that a program itself may terminate or withdraw from certification?

k. In s. DHS 40.05 (3) and (4), consider either combining the subsections or more clearly dividing the circumstances in which each applies, as both provisions require written notification of a decision and both refer to waivers and variances. For example, sub. (3) could be limited to initial decisions on a request for a waiver or variance, and sub. (4) could be limited to decisions to revoke a previously granted waiver or variance.

l. In s. DHS 40.05 (3) (a) (intro.), the word “either” should be revised to the phrase “to do any of the following”.

m. In s. DHS 40.07 (1) (i), the title “American with disabilities act” should be revised to “Americans with Disabilities Act”.

n. In s. DHS 40.07 (4) (intro.), it appears that the phrase “all of” should be inserted before the phrase “the following”.

o. In s. DHS 40.08 (4) (intro.), it appears that the word “only” should be inserted before the phrase “be administered”.

p. Section DHS 40.08 (7) (b) 3. should start with the word “when”, for consistency.

q. In s. DHS 40.08 (7) (g) (intro.), it appears that the phrase “do all of the following” should be inserted after the word “shall”.

r. In s. DHS 40.09, consider revising the section title to “personnel qualifications”, in order to be more descriptive of the content. Also, in sub. (4) (a) 2., should the phrase “at least” be inserted before “1,500 hours”?

s. In s. DHS 40.10 (6) (b) 11., a comma should be inserted after “55” and again after “115”.

t. In s. DHS 40.10 (6) (b) 14., the title “American with disability act” should be revised to “Americans with Disabilities Act”. Also, the title “civil rights act” should be revised to “Civil Rights Act”.

u. In s. DHS 40.12 (1) (a), consider revising the phrase “shall have” or “shall be” in each of the subdivisions to the word “has” or “is”, as appropriate.

v. The department should consider revising s. DHS 40.12 (1) (a) 4. a., for clarity. For example, the phrase “and requiring” could be revised to “that require”.

w. In s. DHS 40.13 (1) (c) (intro.), it appears that the phrase “all of” should be inserted before the phrase “the following”.

x. In s. DHS 40.17 (a) 2., the verb tense should be revised to “preparing and making”, for consistency.