



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-144

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. The department’s analysis for the proposed rule lists ss. 45.50 and 45.51, Stats., as statutes interpreted, but both of those contain a number of provisions that do not appear to be applicable to the specific subject matter. Consider providing more precise citations to specific subsections of these statutes that the rule interprets.

b. The treatment clause for SECTION 4 of the proposed rule states that this SECTION amends s. VA 6.01 (16); however, SECTION 5 also creates s. VA 6.01 (16) (a) and (b). The department should remove the treatment of s. VA 6.01 (16) from the amended provisions in SECTION 4 and instead include a separate SECTION to renumber and amend s. VA 6.01 (16) as s. VA 6.01 (16) (intro.). The department should also ensure the introductory material in s. VA 6.01 (16) (intro.) ends in a colon and includes an introductory statement that leads into the subunits. [s. 1.03 (3), Manual.] The department should revise the rule caption’s listing of affected provisions accordingly.

c. The proposed rule adds a substantial amount of material to s. VA 6.01 (16). The department might consider instead creating a separate rule section for the provisions related to charges for care and maintenance. For example, s. VA 6.01 (16) could be renumbered as s. VA 6.015 (intro.), rather than renumbered as s. VA 6.01 (16) (intro.).

d. Relatedly, the formula created in s. VA 6.01 (16) (a) for calculating the private pay rate is complicated and difficult to follow. The department might consider restructuring and simplifying the narrative explanation of this formula.

e. The note following s. VA 6.01 (16) (a) 4. should be removed, as s. VA 6.001 (intro.) already specifies that its definitions apply throughout the chapter. [ss. 1.01 (7) (a) and 1.09 (1), Manual].

f. SECTION 7 of the proposed rule should be divided into five SECTIONS to separately treat the amended subunits under ss. VA 6.02, 6.03, 6.04, 6.05, and 6.06. Subunits of one rule provision may be treated together in one SECTION, but may not be combined with subunits from a different rule provision. [s. 1.04 (2) (a) 4., Manual.]

g. In s. VA 6.02 (5), the underscored period after the word “home,” should be moved to appear after the phrase “and for such purposes, the”. Also, the final period in that provision should be shown without underscoring.

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

In s. VA 6.001 (2), the reference to a value established by the Department of Health Services (DHS) should be revised to identify where the established value may be found. For example, is there a DHS rule provision that could be cross-referenced?

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

a. The department’s plain language summary for the proposed rule contains a cross-reference to s. 20.485 (1) (gk), Stats., without any explanation about what that statute provides. Consider revising the summary to sufficiently enable a reader to understand the content of the proposed rule. [s. 1.02 (2) (b), Manual.] Further, if s. 20.485 (1) (gk), Stats., is relevant to this rulemaking, the department could consider listing it either as a statute interpreted by the proposed rule or as a related statute or rule.

b. In the department’s plain language summary, should any DHS rules be cited as related rules?

c. In ss. VA 6.001 (2) and 6.01 (16) (a) 8., it appears that the word “services” should be inserted in both instances after “department of health”.

d. In s. VA 6.001 (7), the proposed rule defines the term “level of care” as “a classification that corresponds to the services required to be provided to a member based on the member’s physical or mental condition and abilities”. Levels of care are integral to the formula the rule creates, but the rule does not indicate what constitutes a particular level of care or how many levels of care the department recognizes.

e. In s. VA 6.01 (3) (c), the department should rephrase the requirement to use the active voice. [s. 1.01 (1), Manual.]

f. Section VA 6.01 (16) (a) (intro.) is titled “Formula for calculating the private pay rate.”. The introductory material then states that “The private pay rate shall be based on formulas using the following steps”. The steps that follow appear to be part of one formula, so it is unclear why the introductory material refers to “formulas” in the plural.

g. In s. VA 6.01 (16) (a) 3. and 10., the department refers to a “ratio” of patient days and the “weighted patient day ratio”. Generally, a ratio refers to the relationship of one number to another. It is unclear whether the department is using the word ratio in that sense.

h. Section VA 6.01 (16) (b) should be revised to specify that the department shall, when applicable, reduce “a member’s” daily rate of pay by the amount of the per diem reimbursement paid on behalf of the member by USDVA.

i. Throughout the proposed rule, the department has made revisions to current rule provisions to remove the phrases “his or her” and “he or she”. The department should review these changes to ensure the changes do not sacrifice clarity or precision, and that any resulting substantive changes are intended. Additionally, any references to “his or her” or “he or she” that the department determines are necessary to revise should be replaced with the noun to which it refers, as is done in s. VA 6.05 (5). [s. 1.01 (3), Manual.]

j. The department should review and revise the proposed changes to s. VA 6.06 (2) for clarity and grammar. For example, generally, “neglect” or “ill treatment” would not be preceded by an article in this context. Additionally, the insertion of the word “occurs” is confusing because it appears to condition the obligation on the occurrence of an act that has been alleged, rather than on an allegation having been made.