



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 20-006

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 department’s analysis for the proposed rule, the citation to s. 49.45 (2) (a) 11., Stats., should be added to the listing of statutes interpreted, in addition to its inclusion in the listing of statutory authority. Also, the department should consider moving the citation to s. 49.45 (47), Stats., from the listing of statutory authority to the listing of statutes interpreted. In addition, the explanation of agency authority cites s. 49.45 (10), Stats., but this is not included in the listing of statutory authority and should be added to that list. Lastly, the department could consider removing the general citation to s. 227.11 (2) (a), Stats., in the explanation of agency authority; it is not cited in the listing of statutory authority, and the cited provisions provide specific rulemaking authority.

2. Form, Style and Placement in Administrative Code

a. In the department’s analysis for the proposed rule, entries should be inserted for the description of the analysis and supporting documents used to determine the effect on small business, and for the description of the effect on small business.

b. The entire rule needs to be reviewed and modified for correct chapter and section numbering format. It appears that the department is attempting to create ch. DHS 105.14, but ch. DHS 105 already exists and “105.14” is the format for section numbering. The additional decimal and digits that are used throughout the proposed rule with “105.14” is improper section numbering. [s. 1.03 (1) and (2), Manual.]

c. In addition, the proposed rule should be reviewed for subunit numbering, and each instance of a single subunit designation that does not have at least one other subunit at the same level should be removed. When any part of a rule is divided into smaller subunits, at least two subunits must be created. See, for example, s. DHS 105.14.09 (3), for which the designation for par. (a) should be removed, and s. DHS 105.14.12, for which the designation for sub. (1) and its title should be removed and the paragraphs under sub. (1) should be designated as subsections, among others. [s. 1.03 (1), Manual.]

d. Throughout the proposed rule, the department should review and correct the format for each citation to the Wisconsin Statutes. The proper format for the source abbreviation is "Stats.". [s. 1.07 (2) (Table), Manual.]

e. In various provisions throughout the proposed rule, the punctuation at the end of subunits should be revised to end with a period, rather than a semicolon or a semicolon and the word "and" or "or". See, for example, ss. DHS 105.14.02 (25) (a) and (b), 105.14.11 (3) (a) 1., and 105.14.23 (2) (a) 1. to 3., among others. [s. 1.03 (4), Manual.]

f. The rule refers to an "ADCC" in numerous places, but does not include "ADCC" in its list of definitions. Furthermore, the rule generally uses the term ADCC, but in some places the entire term is written out or the term "center" is used. Use one variation for consistency, but if some purpose is served by using the full phrase interchangeably with the acronym, include both in the definition. [s. 1.01 (8), Manual.]

g. In s. DHS 105.14.02 (25) (a), the parentheses and the acronym "(ADL)" should be removed and a definition should be created for the term. As the acronym is used elsewhere in the proposed rule, the acronym must be a defined term. Alternatively, as the term "activities of daily living" is defined and used in a number of places in the proposed rule, each instance of the acronym could instead be spelled out, with no use of the acronym, for consistency. [s. 1.01 (6) and (8), Manual.]

h. In s. DHS 105.14.05 (1) (c), what is the purpose of the semicolons? Should those clauses be separate paragraphs in the list of required descriptions?

i. In s. DHS 105.14.05 (1) (e), the use of the internal colon is improper and the requirements of the list is confusing. Consider dividing the paragraph into further subunits, using proper subunit format.

j. Section DHS 105.14.11 (intro.) and (2) (a) 2. make references to "DQA", but that term is not defined in the proposed rule. The department should either change those references to "the department" or write out the abbreviation as "the department's division of quality assurance".

k. Each instance of the introductory material in ss. DHS 105.14.02 (25), 105.14.11 (3), 105.14.23 (2) (a), 105.14.24 (2), 105.14.25 (3) (f), and 105.14.29 (3) should be revised so that each subunit following the introduction forms a complete sentence when read with the introductory statement. [s. 1.03 (3), Manual.]

l. In s. DHS 105.14.03 (2), the subsection title should be removed as subs. (1) and (3) do not have titles. [s. 1.05 (1), Manual.]

m. In s. DHS 105.14.06 (2) (a), (b), and (c), the paragraph titles should be shown in italics. [s. 1.05 (2) (d), Manual.]

n. In s. DHS 105.14.25 (1), the subsection title should be removed as subs. (2) to (4) do not have titles.

o. Section DHS 105.14.28 should be reviewed and revised for consistent use or nonuse of subsection titles. Subsections (1), (3), and (4) do not have titles, while subs. (2), (5), and (6) have titles.

p. In s. DHS 105.14.32 (2), the subsection title should be shown in all capital letters and a period should be inserted at the end of the title.

q. The subdivision paragraphs in s. DHS 105.14.32 (4) (a) 6. that are shown as “(a)” and “(b)” should be revised to be shown as “a.” and “b.” [s. 1.03 (1) (Example), Manual.]

r. In s. DHS 105.14.33 (2) (intro.), an introductory statement that ends in a colon should be inserted. The same comment also applies to s. DHS 105.14.34 (intro.). [s. 1.03 (3), Manual.]

s. In s. DHS 105.14.34 (5), the subsection title should be shown in all capital letters.

t. In s. DHS 105.14.35 (2), the use of the internal colon is improper. Consider dividing the subsection into further subunits or removing the colon. Also, consider moving the last sentence into its own subsection.

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

a. The department cites s. 49.45 (47) (a) and (b), Stats., within the statutory authority section of the rule summary, but those provisions are not referenced in s. DHS 105.14.01, which is the “authority and purpose” section of the proposed rule.

b. In s. DHS 105.14.02 (11) (c), the citation to “(10) to (12)” should be revised to “(10), (11), or (12)” to allow for separate authority under each. Also, consider revising the phrase “as given” to “as described”.

c. The requirements for application for certification under s. DHS 105.14.04 (2) (g) and (h) each state that “proof of transportation liability insurance” and “well water test results” are only needed “(if applicable)”. First, the rule should not include parentheses. [s. 1.01 (6), Manual.] Also, the rule must specify when it would be “applicable” for an applicant to include this information or otherwise reference a statute or rule that specifies applicability.

d. Section DHS 105.14.08 should reference the specific reporting requirements and information that must be submitted to the department. Does this section intend to reference s. DHS 105.14.11?

e. Section DHS 105.14.09 (3) (a) references “in DHS 105.14.09”. It should instead say “in this section”.

f. Section DHS 105.14.13 (2) (d) makes a reference to “DHS 105.14 (11)”, which does not exist in the rule. It appears the department instead intended to reference “DHS 105.14.11”. However, the updated language in s. DHS 105.14.13 (2) (d) should not reference how items are

“defined” unless the reference is to a defined term. The phrase “as described” appears to be more appropriate than “as defined”.

g. Section DHS 105.14.29 (3) (g) references itself. It should instead say “under this paragraph”.

h. Section DHS 105.14.31 (1) (c) 2. and 3. each reference the “Wisconsin Food Code”. Although the accompanying note includes a link to the Department of Agriculture, Trade and Consumer Protection’s website, the department should provide a more specific reference to the parts of the “Wisconsin Food Code” an ADCC operator must satisfy and should identify the specific provisions of the administrative code that apply.

i. Section DHS 105.14.32 (4) (a) 6. (b) references itself. It should instead say “under this section”.

j. Section DHS 105.14.34 (3) (a) references “the total capacity of the building as described under s. DHS 105.14.32 (1) (b)”, but s. DHS 105.14.32 (1) (b) does not describe total capacity of a building. This reference should be corrected.

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

a. The rule includes definitions for “chemical restraint”, “nursing care”, “seclusion”, and “significant change in a participant’s physical or mental condition”, but those terms are not used anywhere else in the rule. If not used in the rule, the definitions should be removed.

b. In a number of provisions in the proposed rule, the plural form of “ADCCs” should be revised to the phrase “an ADCC”. [s. 1.01 (9) (e), Manual.]

c. In s. DHS 105.14.01 (2), it appears the semicolon should be revised to a colon.

d. In s. DHS 105.14.02 (14), (15), and (19) (c) and (d), consider revising each instance of the phrase “as given” to simply “given”. [s. 1.01 (7) (d), Manual.]

e. In s. DHS 105.14.02 (22), the phrase “as given” should be revised to “as defined”, as the defined term is being defined by the use of a different defined term.

f. Section DHS 105.14.03 (1) includes definitions for “waiver” and “variance” specific to that section, but those terms are used elsewhere in the rule. Should the department instead include those definitions in the general definition section so they apply to the entire chapter?

g. In s. DHS 105.14.07 (4) (a), the word “and” before “local” should be revised to “or”.

h. In ss. DHS 105.14.07 (4) (a), 105.14.14 (2) (a), 105.14.18 (1), and 105.14.19 (2) (a), each instance of the phrase “; but not limited to,” should be removed. [s. 1.02 (9) (f), Manual.]

i. Section DHS 105.14.07 (4) (d) references “Medicaid waiver funds”, but that term is not generally used in the statutes or administrative code. Should the rule instead say “ineligible for Medical Assistance waiver funds”? Alternatively, it appears that sentence could be deleted altogether as it is clear that an entity that has its certification revoked would not be eligible for funds.

j. In s. DHS 105.14.10 (1), the phrase “Any ADCC” should be revised to “An ADCC”.

k. Section DHS 105.14.11 (4) (d) requires that an ADCC send a written report to the department within three working days after “a catastrophe occurs resulting in damage to the ADCC”. The department should elaborate and specify the types of circumstances that qualify as a “catastrophe”.

l. The last sentence of s. DHS 105.14.14 (1) (intro.) references a “Director”, but it should instead reference a “program director”.

m. Section DHS 105.14.14 (1) (a) and (b) reference a “health care related field”, but do not provide greater clarity to a potential program director for what qualifies as a “health care related field”. The department should consider providing a description or examples, or, alternatively, creating a definition to identify acceptable health care related fields.

n. The comma in s. DHS 105.14.23 (2) (intro.) could be removed.

o. The introductory material in s. DHS 105.14.30 (1) (intro.) should end with a colon instead of a semicolon.

p. In s. DHS 105.14.30 (1) (a), the semicolon after the phrase “physical exercise” should be revised to a comma.