



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 20-028

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 department should add a citation to s. 256.15 (6) (b) 2., Stats., as a source of rulemaking authority for the proposed rule. Also, the citation to s. 227.11 (2) (a), Stats., could be removed, as the other listed citations provide specific authority to promulgate the rule. [s. 1.02 (2m) (a), Manual.]

2. Form, Style and Placement in Administrative Code

a. In the caption for the proposed rule, the enumeration of treated provisions should be revised to be grouped by the nature of the treatment, in the order identified in the Manual. A relating clause should also be added to concisely identify the subject matter of the proposed rule. [s. 1.02 (1) and (Example), Manual.] For example, the enumeration and relating clause should appear as follows, subject to other corrections and changes made in response to these comments and revisions made before submission to the Legislature:

- (1) AN ORDER **to repeal** DHS 110.04 (11), (29), (30), (33), (34), (41), and (48), 110.06 (1) (c) 2., (g) and (h), 110.40 (3), and 110.50 (3) (b); **to renumber** DHS 110.04 (1) and (10), 110.06 (1) (h) (note), and 110.22; **to renumber and amend** DHS 110.32 (1), 110.46, and 110.50 (1) (d) 1. and 3.; **to consolidate, renumber and amend** DHS 110.06 (1) (c) (intro.) and 1.; **to amend** DHS 110.01 (1) and (2), 110.02 (1), (2), (3), and (5), 110.04 (12), (16), (17), (24), (25), (26), (27), (28), (31), (35), (40) (intro.), (42), (45), (47), (49), (50), (59), (72), and (77), 110.05 (1)

and (2), 110.06 (title), (1) (intro.), (d) and (Note), (e) (intro.) and 2. and (f), 110.07 (1) (intro.), (a), (c), (c) 7., (d), and (e), 110.08 (1), 110.09 (intro.), (1), and (2) (a) 2. and 3., 110.11 (2), 110.12, 110.13 (3) and (5) and (note), 110.14, 110.15 (1) (title) and (b) to (d), (2) (a) and (c), and (3) (a) and (b), 110.16 (1) (d), 110.17 (2) and (3), 110.18 (1) and (3), 110.20, 110.21 (title) and (1) to (3), 110.24 (3) (intro.), 110.27 (1) and (2) (c), 110.28 (1), (2) (a) and (c) and (4) (a) and (b), 110.31 (2), 110.32 (2), (3), and (4), 110.34 (intro.), (2), (3), (5), and (7) to (9), 110.35 (intro.), (2) (f), 110.37 (1), 110.41 (1) (intro.), 110.44 (intro.), (1), (2), (8), (9), (10), (11), and (17), 110.46, 110.47 (1), (2), and (7), 110.49 (1) (a) to (c) and (f), and (2) (f), 110.50 (1) (a) to (c), (d) 2. and 4., (e) to (g), (2) and (Note), and (3), 110.51 (2) (a) and (b), 110.52 (1) and (3) to (8), 110.54 (7), (13), and (17), and 110.59 (Note); and to create DHS 110.04 (1g), (14e), (14m), (14s), (21e), (21m), (21s), (43m), (51m), (61m), and (74m), 110.05 (1) (c) to (e), 110.066, 110.07 (1) (c) 6g. and 6r., 110.088, 110.13 (4m), (6) and (7), 110.15 (1) (dm), 110.16 (1) (g), 110.22 (2) and (3), 110.32 (1) (a) to (c), (3m), and (5), 110.34 (9m), 110.35 (2) (e) 7. to 9., and (g), 110.395, 110.44 (9m), (20g), and (20r), 110.46 (2), 110.49 (1), (fm), 110.495, 110.50 (1) (d) 1. a. to c., and 3. a. to c., and (2m), 110.526, and 110.54 (26e), (26m), and (26s); relating to emergency medical services licensing, certification, and training requirements.

b. In the rule summary, the department could consider simply listing the citations for statutory authority, and then quoting or describing each provision under the heading for the explanation of statutory authority. This would improve the readability for identifying the sources of rulemaking authority, and would provide a better explanation of that authority, which currently has the appearance of being incomplete as only one of the sources is described.

c. The rule summary's plain language analysis should be revised to add a more complete explanation of the numerous changes made by the proposed rule. The description should contain sufficient detail to enable the reader to understand the content of the rule and the changes made to the existing rule. [s. 1.02 (2) (b), Manual.]

d. The text of the proposed rule should be reviewed in its entirety and revised where needed to conform to current drafting conventions. Consider the following drafting conventions that are described in the Manual, among others:

- (1) If an acronym is used, it should be defined among the definitions and should be used consistently. Do not place an acronym in parentheses in a substantive provision. See, for example, the use of the acronym "CEMS". [s. 1.01 (6) and (8), Manual.]
- (2) Where part of a provision is amended and other subunits are not amended, the text for only the amended subunit should be shown, and the designation for only the amended subunit should be identified in the rule caption and the SECTION'S treatment clause. See, for example, the unaffected provisions of s. DHS 110.05 (1), for which the text is shown in the proposed rule. [s. 1.04 (1) (b) 2., Manual.]
- (3) Numbering designations from the current text of the rule that are removed by either renumbering or repeal should not be re-used, as re-use can lead to confusion and

cross-referencing errors. See, for example, SECTIONS 5 and 6 of the proposed rule. [s. 1.03 (5) (a), Manual.]

- (4) When amending a provision by replacing existing text with new text, the stricken material should be shown first, followed by any inserted underscored material. See, for example, s. DHS 110.04 (45). [s. 1.06 (1) (a), Manual.]
- (5) The text of newly created provisions should be shown without strike-throughs and underscoring. See, for example, SECTION 8 of the proposed rule. [ss. 1.055 (2) and 1.06 (1) (b), Manual.]
- (6) Where part of a word or number is amended to change capitalization or to add or remove a letter or digit, the amended word or number should be stricken in its entirety and then shown as amended with underscoring for the entire word or number. See, for example, s. DHS 110.07 (1) (c) 3. [s. 1.06 (2), Manual.]
- (7) A period that appears in existing text should be preserved and should be shown without strike-throughs or underscoring. Also, all sentences should end in a period. See, for example, ss. DHS 110.01 (2) and 110.35 (2) (g) 1. [ss. 1.03 (4) and 1.06 (4), Manual.]

e. In SECTION 1 of the proposed rule, there is an error in the code caption at the beginning of the text. It should refer to s. DHS “110.01 (2)”, rather than “110.02 (2)”.

f. In s. DHS 110.04 (26), the end quote after the word “technician” should be shown with a strike-through.

g. In SECTION 20 of the proposed rule, there is an error in the code caption at the beginning of the text. It should refer to s. DHS 110.04 “(40)”, rather than “(42)”. The proposed rule should be reviewed for any other instances of this issue.

h. In s. DHS 110.04 (49), the inserted final sentence is substantive and should not be included in a definition. The department should move this provision to an appropriate substantive section, or revise the sentence to be descriptive rather than prescriptive. [s. 1.01 (7) (b), Manual.]

i. In s. DHS 110.05 (1) (intro.), the underscored phrase “any of” or “all of” should be inserted before the phrase “the following conditions”, depending on the applicability that is intended by the department. [s. 1.03 (3), Manual.]

j. The department should review and revise s. DHS 110.066 generally for style and clarity. For example, add a period at the end of sub. (1) (d); add an introductory statement to sub. (1) (g) (intro.); renumber sub. (1) (g) 1. a. to be shown as sub. (1) (g) 2.; and revise the rule subunits for parallel grammatical sentence structure.

k. The cross-reference in s. DHS 110.07 (1) (c) 6. should be to “subd. 5.”, rather than to “(5) above”.

l. In s. DHS 110.07 (1) (d), the provision is amended in its entirety. Accordingly, the treatment should be revised to repeal and recreate, rather than amend, that provision. The remainder of the proposed rule should be reviewed for this issue, as this occurs in other instances as well. [s. 1.065, Manual.]

m. In s. DHS 110.088 (1) (d), the numbering for subd. 1. a. should be revised to be shown as subd. 2. An introductory statement should also be added in par. (d) (intro.).

n. In s. DHS 110.16 (1) (g), the provision should be revised to use a grammatical sentence structure that is parallel to the structure used in the other paragraphs of sub. (1). Also, the reference to the application form that must be submitted and the prescribed amount of time for the department's review should be moved to the provisions that describe the application process for a predetermination; this provision is in a section that addresses only the amount of the fee.

o. In the treatment clause for SECTION 65 of the proposed rule, the designation for par. (a) should be inserted, as only that paragraph is treated. The designation should also be updated in the code caption at the beginning of the amended text and in the caption for the proposed rule.

p. In s. DHS 110.32 (1) (a) to (c), the designation “, Stats.” should be inserted for each cross-reference to a statutory provision.

q. In s. DHS 110.34 (9m) (intro.), the word “**two**” should be shown in plain text, no bold.

r. In s. DHS 110.35 (2) (g), the slashed alternative “and/or” should be revised to either “and” or “or”, depending on the department's intent for how the provision should apply. [s. 1.01 (9) (a), Manual.] The first sentence should also be revised to form a complete sentence, rather than appearing as a title phrase, as the other paragraphs in the subsection do not use titles.

s. In ss. DHS 110.395 (3), 110.495 (intro.), and 110.50 (3), each bracketed internal drafting comment should be deleted.

t. In s. DHS 110.395, consider the following comments:

- (1) In sub. (1) (c) and (k), the parenthetical plurals should be removed. This should be rephrased to require the itemized information for “each” medical director and member of an advisory committee and copies of “each” agreement or contract.
- (2) In sub. (1) (g), the phrase “protocols/guidelines” should be revised to “protocols and guidelines”.
- (3) In sub. (2), the cross-reference to ch. DHS 110 should be revised to reference “this chapter”.
- (4) In sub. (3), the reference to the “Wisconsin Ambulance Run Data System” should be revised to the acronym “WARDS”, as this is a defined term.

u. In s. DHS 110.46 (2), the reference to “par. (1)” should be revised to “sub. (1)”.

v. In s. DHS 110.49 (1) (b), the phrase “as specified herein” should be removed. Consider instead using a phrase such as “by either of those organizations”.

w. In s. DHS 110.49 (1) (f), the cross-reference to “(b) above” should be revised to “par. (b)”.

x. Section DHS 110.495 should be reviewed and reorganized to conform to current drafting conventions. For example, the introductory statement should be revised to be an active statement identifying who should do what; the unnumbered hanging paragraph in the introduction should be removed or numbered; and an introductory statement should be added to sub. (1) to

identify to whom the qualification requirements apply and whether “any” or “all” of the requirements must be met. Some additional items to consider:

- (1) In the title, it appears that the second instance of the word “service” after “services” should be removed.
- (2) In sub. (1) (b), the slashed alternative “and/or” should be revised to either “and” or “or”, depending on the department’s intent for how the provision should apply. [s. 1.01 (9) (a), Manual.]
- (3) In sub. (2) (b), the phrase “protocols/guidelines” should be revised to “protocols and guidelines”.

y. In the treatment clause for SECTION 105 of the proposed rule, the designation “(intro.) and” should be inserted before the listing of pars. (a) to (c). This should also be updated in the caption for the proposed rule.

z. In s. DHS 110.50 (1) (d) 1., the final colon should be underscored and an introductory statement should be inserted, such as “if any of the following apply”. Also, the subdivision paragraphs that are created under the subdivision should be revised to appear in the form of a sentence. The same comments also apply to subd. 3., other than the comment on the colon.

aa. In s. DHS 110.50 (2m), it appears that the reference to “(3)” in the code caption at the beginning of the text is misplaced and should be removed. The provision also appears to create sub. (4), although that is not identified in the treatment clause. If the department intends to create sub. (4), that provision should be moved to a new rulemaking SECTION to follow the treatments of sub. (3) (intro.) and (b).

bb. In the treatment clause for SECTION 113 of the proposed rule, the designation “(intro.)” should be inserted. This should also be updated in the caption for the proposed rule.

cc. The proposed rule should be reviewed generally for proper formatting of cross-references.

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

a. In s. DHS 110.04, use either the term “EMS professional” or “EMS personnel” consistently, rather than using both terms interchangeably.

b. The title for s. DHS 110.066 should be revised to refer to individuals who are both licensed and trained in another state, since the rule requires both.

c. Review the rule generally to ensure that the word “or” is not capitalized.

d. In s. DHS 110.07 (1) (c) 5., the word “the” in the phrase “curriculum for the ~~EMT~~ paramedic” should also be shown with a strike-through.

e. In s. DHS 110.35 (2) (e) 9., the department should choose either the phrase “mass casualty” or “multiple patient incidents” and use only one term. Also, only the first word of the sentence should be capitalized.

f. In s. DHS 110.52 (7), the spelling for the word “revoke” should be corrected.

g. In s. DHS 110.526, the provision should be rephrased to be in the active voice, applying to individual rather than “all” EMS practitioners, specifying how the training is obtained or shown, and how a person could determine whether those requirements have been met. The proposed rule should also identify what constitutes adequate training that is necessary to safely administer naloxone or another opioid antagonist: s. 256.15 (8) (e), Stats., as amended by 2013 Wisconsin Act 200, directs the department to determine the necessary training, but the proposed rule only states that EMS practitioners “shall undergo training”.