

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 19-020

Ch. DHS 1

Basis and Purpose of Proposed Rule

The Department proposes to restate provisions to minimize confusion and inconsistency of interpretation and application of Chapter DHS 1 at the local level.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The Department accepted all recommendations, except recommendation 4(e) because a reference to DOR statutory authority was already in the rule text.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

This rule does not affect small business.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

N/A

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

N/A

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

N/A

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

N/A

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

N/A

Fiscal Estimate/Economic Impact Analysis

N/A

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on 5/13/19. A public hearing was held on 5/24/19, in Madison, WI. Public comments on the proposed rule were accepted until 5/24/19

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
Rachel Morgan – Walworth Co.	Opposed
Andrea Sweeney – Green Co.	Opposed

Summary of Public Comments to the Proposed Rule and the Agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
1.04 (5)	Patients should be liable for the entire fee amount if they refuse to apply for Medicaid or other insurance options they are eligible for.	DHS lacks the statutory authority to add this comment to the suggested promulgated rule. Counties would need to contact their representatives to make a change to the law for this to occur.
General	DHS 1 should make a distinction between inpatient and outpatient collections.	Statutes and applicable law do not differentiate between these service types. DHS lacks the statutory authority to add this comment to the suggested promulgated rule.
1.02 (3)	DHS 1 should clarify the statute of limitations provisions.	A sentence was added to 1.02 (3) under the collection period definition to note that the action that starts the 10 year collection period begins in the month the service is provided.
DHS 1 Handbook	Multiple comments were received addressing items in the DHS 1 handbook.	As only the DHS 1 rule was up for public comment and no changes were suggested for the rule itself, we did not make any changes to DHS 1 as a result of these comments. DHS will keep this feedback for our next review of the DHS 1 Handbook.
1.04(2)(c)	The fee schedule conflicts with the liability limits for Children's Long Term Support.	This comment related to the existing DHS 1 rule. The wording being commented on was removed from the proposed DHS 1 language. As such, no changes were made as a result of this comment.
1.04 (4)(a)(4)	There is a typo in one of the references.	DHS agrees and has changed the reference from 1.02 (10)(f) to 1.02 (9)(f).
1.05 (4)(b)	There is confusion to clients by showing the 3 rd party liability on the billing statement.	Including the 3 rd party liability on the billing statement is consistent with the Explanation of Benefits forms used by insurance company and is standard medical billing procedure. DHS is going to keep this provision worded as is.
General	Several provisions should be changed to include the county departments ability to perform tasks in DHS1.	While these were spelled out in the previous rule, it added a lot of unnecessary wording to the rule text. With the proposed DHS 1 rule, DHS 1.07 was recreated to add a general delegation agreement with county departments that would encompass the areas that one county inquired about for several provisions. DHS believes this delegation section would cover all the items asked about.
1.02(9)	Court ordered services should be exempted from the definition of services in DHS 1.	If DHS exempted court ordered services, counties would not be able to bill for court ordered mental health services that make up much of what we bill for under DHS 1. DHS believes current definition of services is adequate.
1.05 (1)	County does not want to be required to send out monthly billing statements if the client is not in active collections.	DHS believes that the phrase "as applicable" in 1.05(1) indicates that counties would not be required to send out a billing statement unless the client is in an active collection period. Existing wording is adequate to DHS.

1.05 (3)	Term legal representative is too broad and not defined.	DHS believes that removing this term could be limiting to the rule. The suggested wording provided by the commenter was too restrictive in our opinion. DHS has worded this statement to be inclusive of all future changes to laws and regulations. The term including is used to define examples of the legal representative but this listing is not exclusive and is meant to represent anyone defined to be a representative of the client in the eyes of the law.
1.05(4)(a)	Asked if the ability to pay applies to delinquent fees.	DHS is not allowed to charge delinquent fees by statute. Agencies are discouraged from restating statute in the rule text so we do not believe changes are necessary for this comment.
1.05 (4)(b)	Clarification of rule text related to non-married parents and parental liability.	Most of this comment was focused on the word "person" being singular in the rule text. Per our Office of Legal Counsel, the term "person" can also encompass the plural. This could include both parents simultaneously. Both parents are jointly and severally liable for the entire fee until it is paid in full. Which parent pays the fee can dependent on the parties relationship and status but is for the responsible parties to work out. DHS does not believe the rule text needs to be altered for this comment.
1.06 (2)	Clarification on what defines delinquency.	After analysis, DHS agrees with this comment. The wording was clarified to indicate that a client that hasn't sent in their established payment amount for 90 consecutive days would be considered delinquent. This eliminates the possibility for someone to submit a very small payment every 90 days to avoid delinquency as the previous wording would have allowed.
1.06(6)	Question about delinquent account deferral wording.	This section appears to be a holdover from the previous rule. After reviewing the comment, we do not believe 1.06(6) should be in the rule text. In practice, DHS does not accept delinquent account referrals from county departments. This reference has been removed.
1.02 (9), 1.03 - Fees	DCF submitted several comments aimed at clarifying services fees will be charged for and would like DHS to adjust fee calculations to utilize the federal poverty limit rather than consumer price index.	While we understand DCF's reasoning for wanting consistency between fee schedules, DHS believes that using the consumer price index is a fair method for determining ability to pay. Changing our fee structure at this point would jeopardize our ability to meet our DHS 1 Statement of Scope deadline of 2/4/2020. DHS does not plan to alter our fee structure prior to this rule promulgation.
1.04 and 1.05	DCF made additional comments for consistency in the liability and billing sections.	DHS understands DCF's reasoning for wanting consistency between rules. However, none of the items DCF raised would appear to change the functionality of DHS 1. We believe that DHS can have our rule and DCF can have a similar rule that makes some additional statements or different clarifications without creating issues for local entities.

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		X	
Department response to Rules Clearinghouse recommendations	X		
Final Regulatory Flexibility Analysis			X
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			X
Public Hearing Summary	X		
List of Public Hearing Attendees and Commenters	X		
Summary of Public Comments and Department Responses	X		
Fiscal Estimate/Economic Impact Analysis		X	
Revised Fiscal Estimate/Economic Impact Analysis			X
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			X
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			X
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			X
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			X