

08-097

ORDER
OF THE DEPARTMENT OF HEALTH SERVICES
TO ADOPT RULES

The Wisconsin Department of Health Services proposes to repeal and recreate chapter DHS 97, relating to complaint procedures for inmates of the Wisconsin Resource Center.

SUMMARY OF PROPOSED RULE

Statute interpreted: Section 46.056 (1), Stats.

Statutory authority: s. 46.056 (1) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 46.056 (1) Stats., authorizes the Department of Health Services (DHS) to establish the Wisconsin Resource Center (WRC) and gives DHS the responsibility for administering WRC as a correctional institution. Chapter 227.11 (2) (a), Stats., gives state agencies general rulemaking authority to effectuate the purpose of a statute enforced or interpreted by the agency.

Related statute or rule: Ch. DOC 310

Plain language analysis:

DHS proposes to repeal and recreate ch. DHS 97 to adopt ch. DOC 310, except where stated, as the process for handling inmate complaints in order to facilitate the following:

1. Eliminate the need for coordination and duplication of effort to keep ch. DHS 97 and ch. DOC 310 synchronized.
3. Eliminate ambiguity about the applicability of ch. DOC 310 to WRC inmates.
4. Allow the Department of Corrections (DOC) to continue to be involved in decision-making regarding inmate complaints at WRC for the purposes of continuity.
5. Eliminate the confusion that s. DHS 97.14 causes by bringing the DHS Secretary into the decision-making process, but not linking that decision to that of the DOC Secretary.

DHS administers the Wisconsin Resource Center under s. 46.056 (1), Stats., as a correctional institution that provides psychological evaluations, specialized learning programs, and training and supervision for inmates whose behavior poses a serious threat to themselves or others in state prisons and whose mental health needs can be met at WRC. The inmates housed at WRC are prison inmates under the authority of DOC and are secured by DOC correctional officers.

Although existing ch. DHS 97 largely parallels the process for handling inmate complaints under ch. DOC 310, there is ambiguity about the applicability of ch. DOC 310 to the inmates at WRC. There are also issues with coordination and duplication of efforts when ch. DOC 310 is revised, in maintaining ch. DHS 97. Therefore, DHS and DOC have determined that the interests and input of the DHS can be best accommodated by repealing and recreating ch. DHS 97 to adopt ch. DOC 310, and address only necessary differences.

Summary of, and comparison with, existing or proposed federal regulations:

DHS knows of no federal regulations that relate to the subject matter of ch. DHS 97. There are certain federal statutory standards a state correctional grievance system must meet in order for state inmates to be required to exhaust those administrative remedies before filing a federal lawsuit challenging conditions of confinement. DHS believes the process established under ch. DOC 310 and the proposed rules satisfy those federal statutory requirements.

Comparison with rules in adjacent states:

Minnesota – Rule 2911.2900 only requires a grievance procedure. The actual procedure is not codified in the administrative code.

Iowa – IAC 50.21 (3) only requires a grievance procedure. The actual procedure is not codified in the administrative code.

Michigan – Michigan Admin Code R. 791.718 concerning grievances only requires a grievance procedure. The actual procedure is not codified in the administrative code .

Illinois –77 Ill. Adm. Code 504.800 to 504.870 includes Illinois’ inmate grievance process. The process is substantially similar to the grievance process under ch. DOC 310.

Summary of factual data and analytical methodologies:

The proposed rules were developed by DHS and DOC to better integrate processes for handling inmate complaints.

Analysis and supporting documents used to determine effect on small business:

Chapter DHS 97 does not affect businesses.

Effect on small business:

Chapter DHS 97 does not affect businesses.

Agency contact person:

Byran Bartow
Wisconsin Resource Center
1505 North Drive
Box 16
Winnebago, WI 54985
(920) 236-4180
Bartobd@dhfs.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the date stated in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> when the hearing is scheduled.

TEXT OF PROPOSED RULE

Section 1. DHS 97 is repealed and recreated to read:

DHS 97.01 Authority and applicability. Pursuant to authority under ss. 46.056 (1) and 227.11 (2), Stats., the department adopts this chapter as the procedures governing complaints by inmates pertaining to the Wisconsin Resource Center.

DHS 97.03 Definitions. (1) In this chapter:

(a) "Corrections complaint examiner" or "CCE" has the meaning given in s. DOC 310.03.

(b) "DMHSAS administrator" means the administrator of the department's division of mental health and substance abuse services.

(c) "Department" means the department of health services.

(d) "Wisconsin Resource Center" or "WRC" means the state prison established pursuant to s. 46.056, Stats., and administered by the department.

(2) Notwithstanding s. DOC 310.03, the following terms, when used in ch. DOC 310 in connection with processing WRC inmate complaints under this chapter, have the meanings given below:

(a) "Appropriate reviewing authority" means the director of WRC or that person's designee.

(c) "Director" means the director of the WRC or that person's designee.

(d) "Institution complaint examiner" means the person assigned by the director of WRC to investigate complaints filed by inmates.

DHS 97.04 Revisions in procedure. (1) For complaints pertaining to WRC, the provisions of ch. DOC 310 apply, except as provided in sub. (2).

(2) (a) Notwithstanding s. DOC 310.04 (2), the director shall appoint an institution complaint examiner.

(b) The CCE shall send a copy of his or her recommendation under s. DOC 310.13 (6) to the DMHSAS administrator, and the DMHSAS administrator or designee may make a recommendation to the secretary of corrections.

SECTION 2. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health Services

Dated: April 6, 2009

Karen E. Timberlake, Department Secretary

SEAL: