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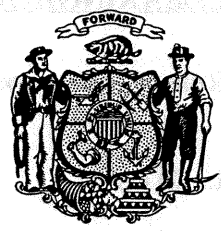
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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-056**

AN ORDER to amend HSS 73.01 and 73.10 (1); and to create HSS 73.11, relating to criteria for county agency determination under the long-term support community options (COP) and community integration (CIP) programs that in-home services are infeasible, as a condition for use of program funds to pay for services to persons who reside in community-based residential facilities (CBRFs).

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

03-13-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-06-00 REPORT SENT TO AGENCY.

RNS:MM:jal;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

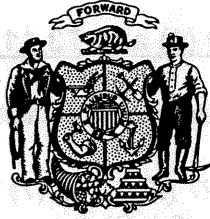
Comment Attached YES  NO

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## CLEARINGHOUSE RULE 00-056

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

- a. In the last sentence in s. HSS 73.11 (intro.), "must" should be replaced by "shall."
- b. Since the rule only sets forth criteria for determining whether in-home services are infeasible, it is unnecessary, in s. HSS 73.11 (intro.), to list the other conditions which must be met. If desired, this material could be placed in a note following the rule.
- c. The requirement regarding documentation set forth in sub. (3) does not correspond to the introductory material in s. HSS 73.11. Specifically, the introductory material identifies the material in the subsequent subunits as "criteria." However, the requirement set forth in sub. (3) is not a criterion. In addition, "suggests" should be replaced with "shall explain."

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

In the statutory sections cited as authority to create the rule, the references to 1997 Wisconsin Act 27 are unnecessary, since the current printed volumes of the statutes include all acts of the 1997-98 Legislature.

## TRANSMITTAL TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

### PROPOSED RULES OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICE

#### HFS 73.01, 73.10 (1) and 73.11, Wis. Adm. Code

**Subject:** COP & CIP: Criteria for Determining Infeasibility of Providing Services in the Home

**Statutory Authority:** Sections 46.27 (2) (h) 2., (7) (cj) 3. b. and (11) (c) 5n. b. and 46.277 (5) (d) 1n. b. and (5r), Stats., as created by 1997 Wisconsin Act 27. The rules interpret ss. 46.27 (3) (f), (7) (cj) and (11) (c) 5n. and 46.277 (3) (c) and (5) (d) 1n., Stats., as affected by 1997 Wisconsin Act 27.

#### **Analysis: Reason for Rules, Intended Effects, Requirements:**

Under the Community Options Program (COP) and related home and community-based medical assistance (MA) waivers, federal and state funds are provided to implement care plans for eligible individuals to enable them to live in community-based settings rather than nursing homes despite disabilities or functional limitations.

Statutory language was added by 1997 Wisconsin Act 27 to restrict the use of Community Options and certain MA Waiver funds (COP-W and CIP II) to paying for services for persons living in their own homes, except under certain circumstances. One of the exceptions permits the use of these funds to pay for services for a person residing in a community-based residential facility (CBRF) if additional conditions are met. One of those conditions is if the county long term support agency documents that the option of in-home services has been discussed with the person, is thoroughly evaluated and is found to be "infeasible" as determined by the county agency in accordance with rules promulgated by the Department. Of the five conditions, this is the only one that is required to be determined in accordance with rules.

This rulemaking order establishes criteria for a county agency to make a determination that home care is not possible for a program participant. Upon meeting the criteria in the rules, along with the four criteria in the statutes, the county agency is permitted to use COP, COP-W or CIP II funds to pay for services for the program participant in a CBRF.

The rulemaking order also amends s. HFS 73.10 to delete the 25% limit on spending for services to program participants who live in CBRFs. Act 27 deleted that limit from the program statutes.

#### **Forms** (Copies attached when available)

No forms are referenced in this rulemaking order.

#### **Agency Procedure for Promulgation:**

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

- ORIGINAL                       UPDATED  
 CORRECTED                       SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # HSS 73.01, 73.10 & 73.11

Subject

**COMMUNITY OPTIONS PROGRAM AND COMMUNITY INTEGRATION PROGRAM: CRITERIA FOR DETERMINING INFEASIBILITY OF PROVIDING SERVICES IN THE HOME**

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation                       Increase Existing Revenues  
 Decrease Existing Appropriation                       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive                       Mandatory  
2.  Decrease Costs  
 Permissive                       Mandatory

3.  Increase Revenues  
 Permissive                       Mandatory  
4.  Decrease Revenues  
 Permissive                       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns                       Villages                       Cities  
 Counties                       Others \_\_\_\_\_  
 School Districts                       WTCS Districts

Fund Sources Affected

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

**These amendments to ch. HSS 73, the Department's rules for the Community Options Program under s. 46.27, Stats., and the Community Integration Program under s. 46.277, Stats., will not affect the expenditures or revenues of state government or local governments.**

**A recent session law, 1997 Wisconsin Act 27, amended ss. 46.27 and 46.277, Stats., to limit the use of Community Options Program funds and related funds to paying for services for persons living in their own homes, except under certain circumstances. One of the exceptions permits use of these funds to pay for services for a program participant residing in a community-based residential facility (CBRF) if certain conditions are met. One condition is a finding by the county long-term support agency in accordance with Department rules that in-home services are "infeasible". This order creates those rules as s. HSS 73.11.**

**The rulemaking order also deletes the the specific 25% limit on spending for services to program participants who live in CBRFs since Act 27 deleted that limit from the program statutes.**

**These changes to ch. HSS 73 are being made to implement statutory changes. They will not affect the funds available to pay for services. They will not increase or decrease spending for services.**

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name

DHFS/Janice Smith, 266-7872

Authorized Signature / Telephone No.

John Kiesow, 266-9622

*John Kiesow*

Date

2-29-00

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING AND CREATING RULES

To amend HSS 73.01 and 73.10 (1) and to create HSS 73.11, relating to criteria for county agency determination under the long-term support community options (COP) and community integration (CIP) programs that in-home services are infeasible, as a condition for use of program funds to pay for services to persons who reside in community-based residential facilities (CBRFs).

Analysis Prepared by the Department of Health and Family Services

Under the Community Options Program (COP) and related home and community-based medical assistance (MA) waivers, federal and state funds are provided to implement care plans for eligible individuals to enable them to live in community-based settings rather than nursing homes despite disabilities or functional limitations.

Statutory language was added by 1997 Wisconsin Act 27 to restrict the use of Community Options and certain MA Waiver funds (COP-W and CIP II) to paying for services for persons living in their own homes, except under certain circumstances. One of the exceptions permits the use of these funds to pay for services for a person residing in a community-based residential facility (CBRF) if additional conditions are met. One of those conditions is if the county long term support agency documents that the option of in-home services has been discussed with the person, is thoroughly evaluated and is found to be "infeasible" as determined by the county agency in accordance with rules promulgated by the Department. Of the five conditions, this is the only one that is required to be determined in accordance with rules.

This rulemaking order establishes criteria for a county agency to make a determination that home care is not possible for a program participant. Upon meeting the criteria in the rules, along with the four criteria in the statutes, the county agency is permitted to use COP, COP-W or CIP II funds to pay for services for the program participant in a CBRF.

The rulemaking order also amends s. HFS 73.10 to delete the 25% limit on spending for services to program participants who live in CBRFs. Act 27 deleted that limit from the program statutes.

Section 46.289, Stats., allows the Department of Health and Family Services to waive in Family Care pilot counties the restrictions on paying for persons residing in CBRFs under ss. 46.27 and 46.277, Stats., and this rulemaking order.

*yes* The Department's authority to create these rules is found in ss. 46.27 (2) (h) 2., (7) (cj) 3. b. and (11) (c) 5n. b. and 46.277 (5) (d) 1n. b. and (5r), Stats., as created by 1997 Wisconsin Act 27. The rules interpret ss. 46.27 (3) (f), (7) (cj) and (11) (c) 5n. and 46.277 (3) (c) and (5) (d) 1n., Stats., as affected by 1997 Wisconsin Act 27. *no*

*not necessary* *MSPE*



SECTION 1. HSS 73.01 is amended to read:

**HSS 73.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 46.27 (2) (h) 2., (7) (cj) 3. b., (11) (c) 5n. b. and (12), 46.277 (5) (d) 1n. b. and (5r) and 227.11 (2) (a), Stats., to establish certain standards and procedures related to assessments, case plans, service agreements, participant payment of service providers and verification that services have been received for county administration of the community options program under s. 46.27, Stats., and county administration of home and community-based services waivers from medical assistance requirements that the department receives from the secretary of the U.S. department of health and human services under 42 USC 1396n (c), and to establish conditions of hardship under which the department may grant exceptions in individual cases to limits on spending by counties for care provided in CBRFs and to establish criteria for county agency determination of the infeasibility of in-home services as a condition for paying for services provided to a program participant residing in a CBRF.

SECTION 2. HSS 73.10 (1) is amended to read:

**HSS 73.10 (1) LIMITATION ON FUNDING.** Each county shall annually establish limits, ~~not to exceed 25%~~, on spending for services for persons who reside in CBRFs from the allocations received under ss. 46.27 (7) and (11) and 46.277 (5), Stats., for community long-term support services. A county department shall include those limits in the county plan for participation in COP under s. 46.27 (4) (c), Stats.

SECTION 3. HSS 73.11 is created to read:

**HSS 73.11 Criteria for determination of the infeasibility of in-home services.** A county may use long-term support funds under s. 46.27 or 46.277, Stats., to provide services to a person residing in a CBRF if the county department or aging unit has determined that all 5 conditions under s. 46.27 (7) (cj) 3., s. 46.27 (11) (c) 5n., or s. 46.277 (5) (d) 1n., Stats., have been met. These five conditions include: determination of the infeasibility of home care; determination that the CBRF is the person's preferred residence; determination that the CBRF provides a quality environment and quality care services; and determination that the CBRF is cost-effective when compared to other residential options.

The county department or aging unit must document its finding, based on all of the following criteria, that the option of in-home services is infeasible:

(1) A change has occurred in the individual's condition, functioning, living situation or supports so that arrangements that were in place and adequate to maintain the individual's health, safety and well-being are no longer sufficient to provide or ensure the provision of what the individual needs.

**Note:** Examples include, but are not limited to, when a spouse or other family member who has been a major caregiver dies or for some other reason can no longer provide care, or when there is a major change in the medical condition of a program participant such as a stroke or heart attack and there is need for more care and

*criteria ok*  
*unnecessary or explain*  
*not all must be met*

*was the person's preferred residence?*  
*was the person's preferred residence?*  
*was the person's preferred residence?*

support but the additional funds or needed caregivers are for some reason not available.

(2) Options for supporting the individual in his or her own home and community have been explored or attempted but have either failed or been found to be unavailable or not possible.

**Note:** Examples of efforts include, but are not limited to, other relatives, friends, neighbors or volunteers have been contacted; professional workers from a home health agency have been recruited and have attempted unsuccessfully to work with the individual in his or her home; and other options such as modifying the home and providing adaptations and aids to enable the individual to be more independent or obtaining nutritional services, adult day care and transportation are not available, feasible or cost-effective.

(3) The documentation suggests why the efforts made or resources sought under sub. (2) were unsuccessful or failed.

**Note:** Examples of explanations include, but are not limited to, the fact that several people were hired and actually worked in the home but could not or would not continue, funds were not available to modify the home or adult day care or transportation to necessary services were not available.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and  
Family Services

Dated:

By: \_\_\_\_\_  
Joseph Leean  
Secretary

SEAL: