

Carol Roessler
STATE SENATOR

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care

From: Senator Carol Roessler, Chair

Date: April 23, 2003

Re: Clearinghouse Rules Referred to the Committee

CR 02-125, CR 03-001, and CR 03-019 have been referred to the Senate Health, Children, Families, Aging and Long Term Care Committee.

CR 02-125 reflects changes made as a result of 2001 Wisconsin Act 80, specifically music, art and dance therapists who practice psychotherapy. The changes reflect the creation of definitions, the Department of Regulations and Licensing's new authority to issue licenses to registrants to practice psychotherapy, and sets out the requirements for the issuance of a license to practice psychotherapy by reciprocity. The clearinghouse is enclosed for your review.

CR 03-001 relates to the telecommunications assistance program for deaf, deafblind and severely hard of hearing persons' purchase of telecommunications equipment. The changes reflect a decrease in voucher dollar amounts to be used to conserve limited resources, the elimination of financial assistance for the installation of telecommunications equipment and update the terminology used to refer to deaf and severely hard of hearing persons.

CR 03-019 relates to the abatement of lead-contaminated soil and the standards defining lead-based paint hazards. The changes reflect compliance with the most recent and final federal regulations.

The committee has jurisdiction over CR 02-125 until Sunday, May 18, 2003 and CR 03-001 and CR 03-019 until May 23, 2003. If you would like the committee to hold a hearing on CR 2-125, 03-001, or CR 03-019, please contact Sara Jermstad in my office at 266-5300.

In addition the committee received the annual report for the Community Options Program and the Home and Community-Based Waivers.

Copies of the report and the above mentioned rules are attached for your review.

AGENCY REPORT TO THE LEGISLATURE ON CLEARINGHOUSE RULE 03-001

Need for Rules

Under Wisconsin statute at ss. 196.218 and 46.297, Stats., and pursuant to administrative rules under s. PSC 160.071 and Ch. HFS 78, respectively, Wisconsin operates two programs persons with hearing loss may use to obtain financial assistance for purchasing telecommunications equipment. The Public Service Commission (PSC) administers one program, known as the Telecommunications Equipment Purchase Program (TEPP) and the Department of Health and Family Services administers the other, known as the Telecommunication Assistance Program (TAP.) Both programs receive periodic legislative appropriations from which the financial assistance is provided to approved applicants. The PSC's TEPP program's funding is substantially larger than that available for the Department's TAP program. Moreover, the PSC's TEPP program requires applicants to pay \$100 towards the purchase of telecommunications equipment. To both conserve the limited TAP program funds and to better integrate the TAP program with the PSC TEPP program, with certain exceptions, the Department proposes reducing the existing assistance limit of \$600 per voucher to a maximum of \$100 per voucher, to be used in meeting the copayment requirement of the TEPP program. By so doing, the TAP program's more limited resources may be conserved, thereby extending the TAP program benefits to a greater number of potential recipients. To also make ch. HFS 78 more consistent with s. PSC 160.071, the Department proposes reducing the waiting period for subsequent applications from four years to three.

The current rules also limit TAP program financial assistance to one person per household. That constraint has prevented other household members with otherwise qualifying needs from receiving TAP program assistance. Moreover, the current household limitation is narrower than that used by PSC for the TEPP program. To better unify the eligibility criteria between the two programs, the Department proposes to modify the rule to eliminate the one person per household constraint and to expand the eligibility for financial assistance by loosening the definition of who shares a household with a deaf or severely hard of hearing person. The Department proposes to eliminate financial assistance for the installation of telecommunications equipment. Finally, the Department also proposes to update the terminology used to refer to deaf and severely hard of hearing persons.

Responses to Clearinghouse Recommendations

The Department accepted all of the Legislative Council's Rules Clearinghouse suggestions and offers the explanations for the following Clearinghouse comments:

3. Comment: There appears to be some conflict between the use of the term "hard of hearing" in the proposed rule and in s. PSC 160.071. Section HFS 78.05 (1) states that a person is eligible for TAP assistance if certified as "deaf, deafblind or **hard of hearing**" (emphasis added). However, the department's rule would use TAP assistance only to pay copayments under the TEPP (Telecommunication Equipment Purchase Program) program, unless an exception is made for a compounding physical or visual disability under s. HFS 78.07 (1) (b). If the compounding exception did not apply, an applicant falling under the "hard of hearing" disability category in the TEPP program would not make a copayment, unlike those falling under the "severely hard of hearing" and "deaf" disability categories, and therefore, such an applicant could **not** use TAP assistance. [See s. PSC 160.071 (1) (b) and (c).]

Response: The Department has amended s. HFS 78.04 (2) (f) and added a par. (g) to reflect an applicant's inability to obtain a TAP voucher for the purposes specified in s. PSC 160.071 (1) (b) 1.

4.a. Comment: The fifth sentence of the plain language analysis states that the PSC's TEPP program requires applicants to pay \$100 towards the purchase of telecommunications equipment, and s. HFS 78.04 (2) (f) includes the phrase: "\$100 copayment requirement of the telecommunications equipment purchase program administered by the public service commission for *all* eligible applicants." (Emphasis added.) That sentence appears to be inaccurate with respect to "hard of hearing" applicants falling under the TEPP program's "hard of hearing" disability category, since such applicants are not required to make a copayment under s. PSC 160.071 (1) (c).

Response: The Department has amended the plain language analysis and s. HFS 78.04 (2) (f) and added a par. (g) to reflect an applicant's inability to obtain a TAP voucher for the purposes specified in s. PSC 160.071 (1) (b) 1.

4.c. Comment: The reference to forms in s. HFS 78.04 (1) appears inadequate. Whereas s. HFS 78.04 (1) states that the applicant shall submit a "completed department TAP application form" to the department, it appears from the note following s. HFS 78.04 (1) that the applicant actually submits a "TEPP application form" instead, and to the PSC instead of the department (the Note states that the TEPP application form should be sent to the address or fax number given on the form, which is presumably at the PSC since it is a PSC form). If a conflict exists between the rule and the note, the conflict should be resolved.

Response: The Department has modified s. HFS 78.04 (1) to reflect the Department's use of the TEPP application for the TAP program.

5.a. Comment: The relating clause uses the term "severely hearing impaired," whereas the proposed rule uses the term "hard of hearing" (see comment below). Should the relating clause be changed? Or, should the entire rule make use of the statutory term "severely hearing impaired"?

Response: The Department prefers not to use the term "severely hearing impaired," but has changed the term to "severely hard of hearing" throughout the chapter and, in doing so, makes the chapter consistent with the TEPP application form.

5.d. Comment: According to the next-to-last sentence of the first paragraph of the analysis, reducing the maximum voucher benefit from \$600 to \$100 and requiring the voucher to be used to meet the copayment requirement of the TEPP program extends "the TAP program benefits to a greater number of potential recipients." Given that applicants falling under TEPP's "hard of hearing" disability category would generally be excluded from TAP program benefits, because no copayment is required from them, is this statement true?

Response: It is true that under s. PSC 160.071 (1) (c) a person who is hard of hearing can receive up to \$200 under the TEPP program without being required to make a copayment, thereby not needing the \$100 TAP financial assistance. However, ch. HFS 78 applies to persons who are deaf, deafblind or **severely** hard of hearing. If a person declares himself or herself as severely hard of hearing, that person generally would need additional equipment to supplement telecommunication capabilities, and thus would qualify for the TEPP voucher of \$800 plus the \$100 TAP assistance, if eligible. The Department's statement in the analysis section of the rulemaking order correctly points out that, through the proposed changes in this rule, the TAP program benefits will be extended to a greater number of potential recipients.

5.L. Comment: In general, under s. HFS 78.07 (1) (c), it is unclear whether, for example, a deaf-blind recipient of a \$7,200 TEPP voucher under s. PSC 160.071 (1) (b) 6. can also receive a TAP voucher for a lesser amount that nevertheless exceeds the \$100 copayment requirement--since apparently from the note following s. HFS 78.04 (1) the TEPP application is used to apply for a TAP and TEPP voucher. If so, it would appear that the recipient of a TAP voucher could pay for charges exceeding the TAP voucher amount with a TEPP voucher under s. HFS 78.07 (1) (c) 2. Whether that is the case should be clarified in this provision.

Response: The Department has decided to limit all TAP vouchers to \$100 and has revised s. HFS 78.07 (1) accordingly.

Final Regulatory Flexibility Analysis

The rule changes will not affect small businesses as defined in s. 227.114 (1) (a), Stats.

Public Review

Pursuant to s. 227.16 (2) (e), Stats., the Department published the proposed rule and fiscal estimate in the notice section of the Wisconsin Administrative Register, No. 568 on March 15, 2003. The notice stated that the proposed rule would be promulgated without a public hearing unless the Department received a petition to do so within 30 days after publication of the notice. The Department did not subsequently receive any request for a hearing.

PROPOSED ORDER
OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING AND RECREATING RULES

To repeal and recreate chapter HFS 78, relating to the telecommunications assistance program for deaf, deafblind and severely hard of hearing persons' purchase of telecommunications equipment.

Analysis Prepared by the Department of Health and Family Services

Under Wisconsin statute at ss. 196.218 and 46.297, Stats., and pursuant to administrative rules under s. PSC 160.071 and Ch. HFS 78, respectively, Wisconsin operates two programs persons with hearing loss may use to obtain financial assistance for purchasing telecommunications equipment. The Public Service Commission (PSC) administers one program, known as the Telecommunications Equipment Purchase Program (TEPP) and the Department of Health and Family Services administers the other, known as the Telecommunication Assistance Program (TAP.) Both programs receive periodic legislative appropriations from which the financial assistance is provided to approved applicants. The PSC's TEPP program's funding is substantially larger than that available for the Department's TAP program. Moreover, except as specified under s. PSC 160.071 (1) (c), the PSC's TEPP program requires applicants to pay \$100 towards the purchase of telecommunications equipment. To both conserve the limited TAP program funds and to better integrate the TAP program with the PSC TEPP program, the Department proposes reducing the existing assistance limit of \$600 per voucher to a maximum of \$100 per voucher, to be used in meeting the copayment requirement of the TEPP program. By so doing, the TAP program's more limited resources may be conserved, thereby extending the TAP program benefits to a greater number of potential recipients. To also make ch. HFS 78 more consistent with s. PSC 160.071, the Department proposes reducing the waiting period for subsequent applications from four years to three.

The current rules also limit TAP program financial assistance to one person per household. That constraint has prevented other household members with otherwise qualifying needs from receiving TAP program assistance. Moreover, the current household limitation is narrower than that used by PSC for the TEPP program. To better unify the eligibility criteria between the two programs, the Department proposes to modify the rule to eliminate the one person per household constraint and to expand the eligibility for financial assistance by loosening the definition of who shares a household with a deaf or severely hard of hearing person. The Department proposes to eliminate financial assistance for the installation of telecommunications equipment. Finally, the Department also proposes to update the terminology used to refer to deaf and severely hard of hearing persons.

The Department's authority to repeal and recreate these rules is found in s. 46.297 (4) (a), Stats. The rules interpret s. 46.297, Stats.

SECTION 1. Chapter HFS 78 is repealed and recreated to read:

Chapter HFS 78

TELECOMMUNICATION ASSISTANCE FOR DEAF, DEAFBLIND AND SEVERELY HARD OF HEARING PERSONS

| | |
|-----------|--|
| HFS 78.01 | Authority and purpose. |
| HFS 78.02 | Applicability. |
| HFS 78.03 | Definitions. |
| HFS 78.04 | Application procedure. |
| HFS 78.05 | Eligibility requirements. |
| HFS 78.06 | TAP assistance restrictions. |
| HFS 78.07 | Purchase and care of telecommunications devices. |

HFS 78.01 Authority and purpose. This chapter is promulgated under the authority of s. 46.297 (4), Stats., for the purpose of implementing the telecommunication assistance program (TAP) for persons who are deaf, deafblind or severely hard of hearing. The chapter sets forth eligibility requirements, uniform application procedures, criteria for granting assistance and policies relating to the purchase and maintenance of the telecommunications equipment.

HFS 78.02 Applicability. This chapter applies to the department and to all deaf, deafblind and severely hard of hearing persons who apply to the department for program funding for the purchase of telecommunication equipment for their homes.

HFS 78.03 Definitions. In this chapter:

(1) "Deaf, deafblind or severely hard of hearing" means a hearing loss significant enough to prevent the individual from using the telephone system without technological adaptations that facilitate effective communication in a visual or audible mode.

(2) "Department" means the Wisconsin department of health and family services.

(3) "Household" means a residence unit whose members share a common living arrangement.

(4) "Public service commission" or "PSC" means the Wisconsin public service commission.

(5) "TAP manager" means the department's staff member responsible for developing and implementing TAP.

(6) "Telecommunication assistance program" or "TAP" means a financial assistance program created by s. 46.297, Stats., for the purpose of making telecommunication devices available to deaf, deafblind and severely hard of hearing persons who do not have the means to afford these devices.

(7) "Telecommunication device" or "device" means any technology needed by a deaf, deafblind or severely hard of hearing person to facilitate his or her use of a telephone.

(8) "Telecommunication Equipment Purchase Program" or "TEPP" means the financial assistance program under s. 196.218, Stats., and administered by the public service commission under s. PSC 160.071 to provide financial assistance to customers with a disability who have

special needs certification in the purchase of equipment needed to personally access and use essential services of the telecommunications network.

(9) "Wisconsin adjusted gross income" has the meaning prescribed in s. 71.01 (13), Stats.

HFS 78.04 Application procedure. (1) APPLICATION FORM AND HEARING LOSS DOCUMENTATION. To apply for assistance from TAP, the applicant shall submit the following materials to the department as an application package:

(a) A completed PSC TEPP application form; and

(b) A completed department certification of hearing loss form or an audiogram from a certified audiologist.

Note: The Department TAP Program uses the PSC TEPP application form, Telecommunication Equipment Purchase Program Application. Both the TEPP application form and the Department certification of hearing loss form, Hearing Loss Certification, may be requested from the TAP Manager, Bureau for the Deaf and Hard of Hearing, Division of Supportive Living, P.O. Box 7851, Madison, Wisconsin 53707-7851. The forms are also available for downloading at: <http://www.dhfs.state.wi.us/sensory/TAP/TAP.html>. Upon completing the Telecommunication Equipment Purchase Program Application, applicants should send or fax the form to the address or fax number given on the form. Upon completing the hearing loss certification form, applicants should send or fax the form to the TAP Manager at the address given above.

(2) PROCESSING TAP APPLICATIONS. The department shall process applications for TAP services in the following manner:

(a) The department shall accept an application at any time except as provided in s. HFS 78.06 (3).

(b) The department shall review applications in the order they are received to determine whether the application is complete and includes all required attachments.

(c) When the department finds an application to be complete, the TAP manager shall date and sign the application.

(d) The department shall send the applicant written notification of the department's decision on his or her application within 30 calendar days after the department determines the application complete.

(e) If the department denies assistance to the applicant, the applicant may reapply if, due to a change in conditions, the applicant meets eligibility requirements under s. HFS 78.05.

(f) Except as provided under par. (g), if the department approves issuing a TAP voucher to the applicant, the applicant shall apply the voucher to the \$100 co-payment requirement of the telecommunications equipment purchase program administered by the public service commission for all eligible applicants.

(g) A voucher recipient under s. PSC 160.071 (1) (b) 1. who is not required to make a copayment under s. PSC 160.071 (1) (c) is not eligible for a TAP voucher.

HFS 78.05 Eligibility requirements. An applicant shall meet the following requirements to be eligible for TAP assistance:

(1) **CERTIFICATION OF HEARING LOSS.** The applicant shall be certified as deaf, deafblind or severely hard of hearing by a licensed physician, an audiologist who is certified by the American speech and hearing association or a coordinator of deaf and hard of hearing services who is employed by the department's division of supportive living.

(2) **RESIDENCY.** An applicant shall be either a Wisconsin resident or a tax dependent of a Wisconsin resident.

(3) **INCOME ELIGIBILITY.** (a) The Wisconsin adjusted gross income of the applicant's family as reported for Wisconsin income tax purposes for the most recent annual tax reporting period shall be equal to or less than 200% of the poverty line established under 42 USC 9902 (2) as updated annually or more often by the secretary of the U.S. department of health and human services.

(b) If an applicant is claimed as a dependent for income tax purposes, the adjusted gross income of the person or persons claiming the applicant as a dependent shall be listed on the application form and shall be used to determine income eligibility.

(4) **TELEPHONE SERVICE.** The applicant shall have telephone service at home, except that if the applicant does not have telephone service in the home at the time of application for TAP assistance, the applicant shall submit a copy of the telephone service installation bill before the department issues a voucher to the applicant.

(5) **RESIDENTS IN NURSING HOMES OR INSTITUTIONS.** An applicant living in a nursing home or institution may be considered for TAP assistance only if the applicant has personal telephone service. In this subsection, "personal telephone service" means that the telephone is located in the applicant's assigned bedroom and the telephone is registered on behalf and for the use of the applicant.

(6) **PERSONS ELIGIBLE FOR OR RECEIVING SERVICES FROM THE DEPARTMENT OF WORKFORCE DEVELOPMENT.** A person eligible for or receiving services from the department of workforce development's division of vocational rehabilitation shall first be evaluated by that division to determine if the person is eligible for a telecommunication device under the vocational rehabilitation program, and if denied, may apply for assistance from TAP.

HFS 78.06 TAP assistance restrictions. The following restrictions apply to the provision of TAP assistance:

(1) Eligible applicants shall be granted TAP assistance on a first-come, first-served basis subject to availability of funds.

(2) Any person who is deaf, deafblind or severely hard of hearing and shares a household with other persons who are deaf, deafblind or severely hard of hearing may be a recipient of TAP assistance.

(3) A recipient of TAP assistance may not reapply for assistance more often than once every 3 years.

HFS 78.07 Purchase and care of telecommunication devices. (1) PURCHASE OF DEVICES. If the department approves the issuance of a TAP voucher to an eligible applicant, the voucher may not exceed \$100.

(2) WARRANTY AND MAINTENANCE OF DEVICES. (a) The recipient may purchase only a device that is warranted by the manufacturer or distributor for a period of not less than one year.

(b) Recipients shall maintain the device when the warranty expires.

(c) Recipients shall purchase batteries, paper for the printer, and other general supplies necessary for operation of the device.

(3) OWNERSHIP OF DEVICES. Any telecommunication device purchased through TAP shall be the property of the recipient.

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 and
Family Services

Dated:

By: _____
Helene Nelson
Secretary

SEAL:

Fiscal Estimate – 2001 Session

Original Updated
 Corrected Supplemental

| | |
|-------------|--------------------------------------|
| LRB Number | Amendment Number if Applicable |
| Bill Number | Administrative Rule Number HFS 78 |

Subject
 Telecommunications Assistance Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or effects 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 Costs
 Permissive Mandatory
4. Decrease Costs
 Permissive Mandatory

5. Types of Local Government Units Affected:

Towns Villages Cities
 Counties Others:
 School Districts WCTS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations


Assumptions Used in Arriving at Fiscal Estimate

The proposed rule makes the following changes to the TAP program:

1. Reduce the waiting period for subsequent applications from 4 years to 3 years to be compatible with the PSC's TEPP program.
2. Remove the limit on the number of eligible applicants per household.
3. Reduce the existing assistance limit of \$600 per voucher to a maximum of \$100 per voucher, to be used in meeting the \$100 copayment requirement of the TEPP program.
4. Eliminate financial assistance for the installation of telecommunications equipment.

The TAP program has a sum-certain budget of \$80,000 GPR. While the rule changes may affect the number of people served in the program and the amount paid to each client, the changes will not increase or decrease total expenditures for the program.

Long Range Fiscal Implications

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|--|------------------------------|-----------------------------|
| Prepared By: Karen Dishno | Telephone Number 266-3118 | Agency DSL/BDHH |
| Authorized Signature  | Telephone Number | Date (mm/dd/ccyy) 1-2-03 |