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**** 07hr_CRule_05-052_SC-PHSILTCP_pt01**

WISCONSIN STATE
LEGISLATURE ...
PUBLIC HEARING
COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on
Public Health, Senior
Issues, Long Term
Care and Privacy

(SC-PHSILTCP)

(FORM UPDATED: 07/02/2010)

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Name:

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**

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State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

February 28, 2007

The Honorable Fred Risser, President
Wisconsin State Senate
Room 220 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Michael Huebsch, Speaker
Wisconsin State Assembly
Room 211 West
State Capitol
P.O. Box 8952
Madison 53708

Re: Clearinghouse Rule 05-052
HFS 107, relating to private duty nursing and respiratory care service benefits covered by the Wisconsin medical assistance program

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Al Matano at 608-267-6848.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin R. Hayden'.

Kevin R. Hayden
Secretary

cc Gary Poulson, Assistant Revisor of Statutes
Senator Robert Jauch, JCRAR
Representative Daniel LaMahieu, JCRAR
Al Matano, DHFS-DHCF

**ADMINISTRATIVE RULES
REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 05-052**

By the Department of Health and Family Services relating to ch. HFS 107, Medicaid coverage for private duty nursing and respiratory care service benefits covered under the Medicaid program.

Basis and Purpose of Proposed Rule:

Section 49.45 (10), Stats., authorizes the Department to promulgate rules consistent with its duties in administering Medicaid, including its duties relating to reimbursement for private duty nursing services by certified providers. The Department proposes to revise ss. HFS 107.113 (5) and 107.12 (2) to (4) relating to the number of hours a nurse may provide private duty nursing services, including care to ventilator-dependent recipients, for reimbursement by Medicaid. Specifically, the proposed revisions will become more flexible to facilitate scheduling but restrict the total number of hours a nurse may work and still receive Medicaid reimbursement for such services.

Responses to Clearinghouse Recommendations

The Department accepted the comments made by the Legislative Council Rules Clearinghouse and modified the proposed rule where suggested.

Final Regulatory Flexibility Analysis:

The proposed rules will not have a significant economic impact on small businesses.

Changes to the Analysis or Fiscal Estimate

Analysis:

The “Analysis and supporting documents used to determine effect on small business” section of the rule’s analysis was revised to include information on Medicaid certification of home health agencies and private duty nursing, and additional information that support the limitation in the proposed and existing rules on reimbursement of nurse’s beyond 12 hours of service.

Fiscal Estimate:

No changes were made to the fiscal estimate.

Public Hearing Summary

The Department began accepting public comments on the proposed rule via the Wisconsin Administrative Rules website on July 14, 2005. Two public hearings were held, on July 27, 2005 in Wausau and on July 28, 2005 in Waukesha. The hearing record closed on August 12, 2005. A total of 12 people attended the two hearings.

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted written comments on the proposed rule, the position taken by the commenter and whether or not the individual testified or provided written comments. The number preceding the name corresponds to the specific comment made in the "Public Comments and Department Responses Summarized" section.

Name and Address	Position Taken (Support or Opposed)	Action (Oral or Written)
1. Shanda Hubertus 3016 N. 13th Street, Wausau, WI	Opposed	Oral
2. Carolyn K. Casper N68 W23916 Donna Drive, Sussex, WI 53089	Opposed	Oral and Written
3. Ginger D. Braam 570 W20099 Adrian Drive, Muskego, WI 53150	Opposed	Oral and Written
4. Richard Braam 570 W20099 Adrian Drive, Muskego, WI 53150	Opposed	Written
5. Nancy A. Zaccanti, RN 351 S. Wisconsin St. #10, Whitewater, WI 53190	Opposed	Oral
6. Pam Maffison, RN 252 Glenmont Blvd., River Falls, WI 54022	Opposed	Oral and Written
7. Frances K. Meyer 8256 N. 52nd St., Brown Deer, WI 53222	Opposed	Oral and Written
8. Deborah Joan Muckerheide, RN, BSN 4221 South 6th St. #D35, Milwaukee, WI 53221	Opposed	Oral and Written
9. Kathi Papa, RN W347 S4850 Waterville Road, Dousman, WI 53118	Opposed	Oral and Written
10. Peggy J. Troller, RN N9278 130th St., Downing, WI 54734	Opposed	Oral
11. Lorie Jensen 1606 County Road X, Glenwood City, WI 54013	Opposed	Oral
12. Eric Nielsen 500 College Ave., Racine, WI 53403	Opposed	Oral
13. Brenda Prochnow 3747 80th St., Franksville, WI 53126	Opposed	Written
14. Kim Greiveldinger ms_kimann@yahoo.com Surface mail address not provided.	Support	Written

Public Comments and Department Responses Summarized

Rule Provision	Public Comment	Department Response
General	<p>The proposed rule should not be promulgated because it conflicts with the nursing license requirements and the related rules of practice.</p> <p align="right">7</p>	<p>Neither the proposed or existing rule is in conflict with ch. 441, Stats., nor the regulations on nursing set forth by the Board on Nursing in chs. N1 to N7. The proposed and relevant existing rules provide only the parameters within which the Department will allow Medicaid reimbursement for private duty nursing services provided to Medicaid recipients.</p>
<p>HFS 107.113 (5) (d) 1. a. and 2. and HFS 107.12 (4) (f) 1.a. and 2.</p>	<p>Nurses should be allowed to work shifts of up to 14 hours (in emergency or unforeseen life situations) without approval by the state. The rule leaves gaps in services, is not family/recipient friendly, and is not conducive to quality patient care.</p> <p align="center">1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13</p>	<p>The Department's goal is patient safety and high quality care for recipients. The Department agrees that a nurse should be allowed to work up to 14 hours in the case of unforeseen life circumstances or emergencies. The proposed rule allows Medicaid reimbursement for services provided by a nurse for longer than 12 hours (up to 14 hours) without prior approval if unforeseen circumstances occur which prevent the nurse from leaving the care of the recipient, and if failure to provide those services would jeopardize the recipient's health. In these situations, the Department will determine reimbursement after the fact on a case-by-case basis. The Department revised ss. HFS 106.113 (5) (d) 2. a. and (g) 2. a. and 107.12 (4) (f) 2. a., to clarify that prior approval to exceed the hours specified is not a requirement.</p>
HFS 107.113 (5) (d) 1.	The restriction of shifts worked by nurses	It is in the best interest of the

<p>a. and 2. and HFS 107.12 (4) (f) 1.a. and 2.</p>	<p>to 12 hours is in the best interests of the client. The exception for exceeding 12 hours in the event that there was no one else to care for the client is reasonable. The Department should avoid allowing the exception to the 12 hour limit to be used on a regular basis.</p> <p style="text-align: center;">14</p>	<p>client to restrict the length of a nurse's shift to 12 hours, and to allow the nurse to go over this length of time only if unusual circumstances exist.</p>
<p>HFS 107.113 (5) (g) 1. and 107.12 (4) (g) 1.</p>	<p>During nursing shortages in facilities such as hospitals, nurses work back-to-back 12 hour shifts in order to provide a continuum of needed services. Home care recipients should be afforded the same continuum of care within their prior authorization approval. Disruption of services under the present rule could jeopardize a recipient's ability to remain in their home (or least restrictive environment) and impede maximizing his/her fullest independent potential afforded them through the Americans with Disabilities Act. The commenters cited the need for the Department to comply with <i>Olmstead v. L. C.</i> 527 U.S. 581 (1999). The <i>Olmstead</i> decision requires that a recipient be allowed to live in the least restrictive environment possible.</p> <p style="text-align: center;">1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13</p>	<p>The Department is committed to ensuring that people are cared for in their homes and the proposed rules will not prevent a recipient from receiving needed services in their home. However, there are essential differences between care provided in a hospital and care provided in the home. There are more staff available in the hospital for observation and back-up and additional processes to ensure that patients are cared for safely. A nurse who works back-to-back 12 hour shifts cannot provide an adequate level of care to a recipient who needs constant supervision.</p>
<p>HFS 107.113 (5) (g) 1. and 107.12 (4) (g) 1.</p>	<p>Requiring nurses to have 8 hours off from any kind of work is beyond the Department's authority. The Department should not be telling people what to do in their time off.</p> <p style="text-align: center;">1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13</p>	<p>The Department is within its statutory authority to promulgate the standards under which Medicaid reimbursement is allowable for services provided to Medicaid recipients. As part of that authority, the Department has a responsibility to ensure that the Medicaid recipients receive safe and quality health care. To ensure that recipients receive safe and quality health care, providers must have adequate rest. The Department chooses not to</p>

		<p>reimburse nurse providers for nursing services provided beyond what is reported, recognized and accepted as safe, except under limited conditions. See the American Nurses Association's <i>"Nursing's Legislative and Regulatory Initiatives for the 109th Congress"</i> (Spring 2005) citing a study commissioned by the Agency for Health Care Research and Quality, titled "The Working Hours of Hospital Staff Nurses and Patient Safety" which states in part that "...[T]he risk of making an error greatly increased when nurses worked shifts that were longer than 12 hours, when they worked significant overtime, or when they worked more than 40 hours per week. The study found that the likelihood of making an error was three times higher when nurses worked shifts lasting more than 12.5 hours."</p>
<p>HFS 107.113 (5) (d) 1. a. and b. and 107.12 (4) (f) 1. a. and b.</p>	<p>The rule should define the words "day" and "week." Specifically, the rule should state that a calendar day begins at 12:00 a.m. and ends at 11:59 p.m. A week begins on Sunday at 12:00 a.m. and ends at 11:59 on Saturday. This will clarify what is meant by the restriction that nurses work no more than 12 hours per day or 60 hours per week.</p> <p style="text-align: center;">1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13</p>	<p>The proposed rule uses the phrases "calendar day" and "calendar week". The modifier "calendar" defines the terms as commonly understood. The Department agrees that the commonly understood definition of a calendar day is the time period starting at 12:00 a.m. and ending at 11:59 p.m. and that the commonly understood definition of a week is the time period that begins at 12:00 a.m. on a Sunday and ends at 11:59 on the following Saturday.</p>
<p>HFS 107.113 (5) (d) and (g) and</p>	<p>The measure of a nurse's shift, both time at work and amount of time off, should be</p>	<p>The allowable reimbursement period for a single nurse</p>

107.12 (4) (f) and (g)	on a calendar day rather than a rolling 24 hour period. 7, 13	provider for work time is measured on a calendar day. However, to ensure that requirements for the minimum 8 hours of continuous time off are measured accurately, it is necessary to use the rolling 24-hour period.
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PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, REPEALING AND RECREATING, AND CREATING RULES

To repeal s. HFS 107.12 (2) (b) and (3) (d); to repeal and recreate s. HFS 107.113 (5) (d); and to create s. HFS 107.113 (5) (g) and 107.12 (4) (f) and (g), relating to private duty nursing and respiratory care service benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

RULE SUMMARY

Statute interpreted: Section 49.46 (2) (a) 4. d. and (b) 6. g. and m., Stats.

Statutory authority: Section 49.45 (10) and 49.46 (2) (b) 6. g., Stats.

Explanation of agency authority:

Section 49.45 (10), Stats., authorizes the Department to promulgate rules consistent with its duties in administering Medical Assistance, including its duties relating to reimbursement for private duty nursing services by certified providers.

Related statutes or rules

The Department believes that the following statutory provisions are related to these proposed rule changes:

- Section 49.43 (4), Stats., which defines the term "home health agency." Nurses employed by home health agencies are affected by this proposed rule;
- Section 49.45 (8), Stats., addresses per-visit limits on home health services reimbursement;
- Section 49.45 (8m), Stats., addresses reimbursement rates for respiratory care services;

Plain language analysis:

The Department proposes to revise ss. HFS 107.113 (5) and 107.12 (2) to (4) relating to the number of hours a nurse may provide private duty nursing services, including care to ventilator-dependent recipients, for reimbursement by Medicaid. Specifically, the proposed revisions will become more flexible to facilitate scheduling but restrict the total number of hours a nurse may work and still receive Medicaid reimbursement for such services.

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

42 CFR pt. 440.70 provides the regulatory authority to provide home health services under the Medicaid program. The federal regulation is less detailed than the proposed rule. The Department believes that its proposed administrative rule changes are necessary to ensure the quality of care private duty nursing provided to Medicaid recipients and the judicious use of the Medical Assistance funds the Department is responsible for managing.

Comparison with rules in adjacent states:

To compare Wisconsin's existing program, and the proposed rule changes, to those of adjoining states, one must consider two aspects: the breadth and scope of services provided, and the restrictions placed on those services.

- Services Provided

Only Wisconsin and Minnesota offer private duty nursing services (PDN) to a broad array of recipients. Wisconsin covers PDN (including services to ventilator-dependent recipients) as an optional benefit to all that qualify regardless of age. Wisconsin reimburses registered nurses (RNs) and licensed practical nurses (LPNs) as well as home health agencies for PDN. At this time, nurses in independent practice provide most PDN services. Minnesota covers PDN (including to ventilator-dependent recipients) as a Medicaid fee-for-service benefit to all who qualify and receive prior authorization. Minnesota also distinguishes complex from regular PDN. Minnesota reimburses home health agencies, RNs and LPNs with a Class A license. An LPN must renew this license annually to continue to provide services without the direct, on-site supervision of an RN.

The PDN benefit is more limited in Illinois, Iowa, and Michigan. Illinois does not offer private duty nursing services as a fee-for-service optional benefit. However, it does offer private duty nursing services through the waiver programs only to those that qualify and are under age 21. Home health agencies provide most of the private duty nursing services and, with a few exceptions (by request), Illinois does allow RNs in independent practice as PDN providers. Illinois does not grant exceptions to LPNs to provide private duty nursing. Adults who require more continuous care than can be provided in a skilled nursing visit, may be authorized for Illinois fee-for-service personal care services that are delivered by a home health agency certified nursing assistant (CNA). Iowa covers PDN under fee-for-service only for those who qualify and are under age 21. Iowa Medicaid reimburses both RNs and LPNs for private duty nursing services. Unlike Wisconsin, Iowa does not cover private duty nursing services (including services to ventilator dependent recipients) for those who are 21 and older. Michigan covers private duty nursing under fee-for-service for its residents under the age of 21. When PDN is provided to beneficiaries 21 and older, it is a waiver service. PDN may be provided by qualifying agency staff or by independent RNs or LPNs.

- Restrictions Placed on the Delivery of PDN Services

Wisconsin proposes to restrict the number of hours a caregiver may work, to prevent a fatigued caregiver from providing services. Wisconsin recipients who are served by home health agencies may report complaints about the quality of care provided to the Bureau of Quality Assurance. However, nurses in independent practice serve most individuals receiving PDN services. There is no official mechanism for recipients to report complaints about the quality of care provided by nurses in independent practice.

Minnesota does not have a stated limit to the number of hours a nurse may provide PDN for any given time period. The limitation for covered service is based on the recipient's needs and by cost. Expenditures on home health services, including PDN, must be less than a fixed dollar amount that is adjusted annually for inflation. The total payment for a month of home health services is less than the total monthly statewide average rate for the case mix classification most appropriate to the recipient. In addition, services may be provided for a ventilator dependent recipient if the screening team determines the recipient's health care needs can be provided in the recipient's residence and the cost of home health services is less than the projected monthly cost of services provided by the least expensive hospital in the recipient's local trade area that is staffed and equipped to provide the recipient's necessary care. Minnesota requires all home care providers to

give a written copy of the home care bill of rights to each client or each client's responsible person. The notice includes specific contact information and a statement offering information about how to file a complaint about the care provided, either to the Office of Health Facility Complaints, in the Minnesota Department of Health, or to the Ombudsman for Older Minnesotans. Since Minnesota Medicaid recipients have a mechanism for reporting complaints about all home care providers, including working for extended periods without sufficient time to rest, abuses of this nature are likelier to be detected than they are in any of the other four states being reviewed in this document. This reporting mechanism is not available to Wisconsin Medicaid recipients.

In Illinois, Iowa and Michigan the case manager for the waiver provides oversight of the service as well as a point of contact for the recipient. Illinois does not limit in code the number of hours a nurse may provide private duty nursing to a recipient. However, those hours that are prior authorized are done on a case-by-case basis.

Iowa limits authorized private duty nursing to 16 hours in a day. The term "day" is not defined. However, limiting authorized hours to 16 per day and only to children (most of whom are likely to have parental oversight) does, to some extent, limit a recipient's exposure to nurses working without adequate rest.

Michigan requires that there be a primary caregiver (i.e., parent, guardian, significant other adult) who resides with a beneficiary under the age of 18 and the caregiver must provide a monthly average of a minimum of eight hours of care during a typical 24-hour period. The caregiver has the flexibility to use the monthly-authorized hours as needed during the month. Michigan does not limit the number of hours a provider may claim Medicaid reimbursement in any time period. Instead, limitations are placed on the primary caregivers of those who receive services.

- Summary of comparison of Wisconsin benefits, requirements, and proposed revisions

Wisconsin has more generous benefits than three of the four adjoining states. Minnesota offers a similar array of benefits. In three of the adjoining states, the restrictions placed on the number of hours of home health benefits are at least as restrictive as those proposed by Wisconsin. The fourth state, Minnesota, makes it easy for recipients to report abuses, with the likely result of averting the error-producing fatigue Wisconsin is trying to prevent.

Summary of factual data and analytical methodologies:

The Home Care Consumer Advisory Committee and the Home Care Advisory Committee advise the Department on issues relating to home health care and have requested the rule changes the Department is proposing in this order.

Recent studies on the effect of longer working hours on patient safety have prompted numerous policies and professional health care organizations as well as federal and other state's legislators to propose limiting the number of hours nurses may work. Two prominent and often-cited reports, — the Institute of Medicine report, *Keeping Patients Safe: Transforming the Work Environment of Nurses* and the report *The Working Hours of Hospital Staff Nurses and Patient Safety* published in the *Health Affairs* journal — suggest that overtime hours have a direct and measurable affect on quality of care and patient safety.

In a November 2003 letter to constituent member associations, the American Nurses Association (ANA) urges state regulatory bodies to prohibit nursing staff from providing patient care in any combination of scheduled shifts that involves mandatory or voluntary overtime in excess of 12 hours in any given 24-hour period or in excess of 60 hours per 7-day period. In its "Nursing's

Legislative and Regulatory Initiatives for the 109th Congress” (Spring 2005), the ANA states as follows: “A 2003 report from the Institute of Medicine (*Keeping Patients Safe: Transforming the Work Environment of Nurses*) noted that long work hours pose one of the most difficult threats to patient safety. The IOM noted that fatigue slows reaction time, decreases energy, diminishes attention and otherwise contributes to medical errors. The study concluded that elimination of mandatory overtime is essential to safe patient care and healthier nurses. A report commissioned by the Agency for Health Care Research and Quality, and published in the July/August *Health Affairs* reconfirms the link between overtime and medical errors. This report, “The Working Hours of Hospital Staff Nurses and Patient Safety,” found that the risk of making an error greatly increased when nurses worked shifts that were longer than 12 hours, when they worked significant overtime, or when they worked more than 40 hours per week. The study found that the likelihood of making an error was three times higher when nurses worked shifts lasting more than 12.5 hours.”

Essentially, the ANA recommendation is the current Medicaid language which consumers and providers have asked the Department to simplify in order to ease scheduling. Nurse fatigue is a critical issue in home care where, unlike institutions, nurses practice alone without support and back up provided by other medical professionals. The risk of long work hours on patient safety is not exclusive to those hours reimbursed by Medicaid. The Department does not propose changing the current policy that limits the cumulative hours of patient care regardless of payer. To protect Medicaid recipients from nurses choosing to work multiple jobs, the Department recommends continuing to limit coverage to those hours each nurse works that do not exceed the recommended daily and weekly limits. All nursing care provided, regardless of payer, are counted toward the daily and weekly limits.

In the event of unforeseeable events, the proposed rules preserve the Department's authority to continue to reimburse providers for services provided in excess of the limitations.

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

For Wisconsin Medicaid certification to provide private duty nursing (PDN), a home health agency must also meet Medicare conditions of participation. The Bureau of Quality Assurance oversees the licensing of home health agencies (HHAs) and it investigates and responds to recipient complaints. To be certified PDN by Wisconsin Medicaid, nurses in independent practice (NIP) must be either a Wisconsin Licensed Practical Nurse (LPN) or a Wisconsin Registered Nurse (RN). There is neither quality assurance oversight of NIP nor is there an entity that is directly responsible for investigating and responding to recipient complaints about the nursing services they receive from NIP.

Both HHAs and NIP can be certified to provide PDN to recipients of Wisconsin Medicaid fee-for-service, but HHAs are discontinuing the service as the number of certified NIP continues to grow. No governmental HHAs bill for PDN. In current year 2006 only 26 of the 152 Wisconsin Medicaid certified HHAs billed for PDN services. The amount billed by HHAs in state fiscal year 2006 was 22% of the \$40.1 million billed for PDN. As of July 2006 the number of NIP certified by Wisconsin Medicaid to bill for PDN is at 1,536, up from 1,224 in July 2005.

While the new rule will make scheduling easier, it will also continue to support the nurses' need for off-duty time. Preserving the off-duty time to obtain the rest required is important not only to minimize medical errors, but also to maintain the health and well-being of the nurses.

The Home Care Consumer Advisory Committee and the Home Care Advisory Committee advise the Department on issues relating to home health care and have requested the rule changes the Department is proposing in this order.

Effect on small business:

The proposed changes will have a beneficial effect on home health care agencies and nurses in independent private duty nursing practice that offer private duty nursing services, by providing these entities and their consumers with better scheduling flexibility.

Agency contact person:

Al Matano
Division of Health Care Financing
P.O. Box 309
Madison, WI 53702
608-267-6848
matana@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 given 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.

RULE TEXT

SECTION 1. HFS 107.113 (5) (d) is repealed and recreated to read:

HFS 107.113 (5) (d) 1. Except as provided in subd. 2., services provided by an individual nurse under this section that, when combined with services provided to all recipients and other patients under the nurse's care, exceed either of the following limitations:

- a. A total of 12 hours in a calendar day.
- b. A total of 60 hours in a calendar week.

2. Services may exceed the limitations in subd. 1. when both of the following conditions are met:

a. The services are approved by the department on a case-by-case basis for circumstances that could not reasonably have been predicted.

b. Failure to provide skilled nursing services likely would result in serious impairment of the recipient's health.

SECTION 2. HFS 107.113 (5) (g) is created to read:

HFS 107.113 (5) (g) 1. Except as provided in subd. 2., services provided during any 24-hour period during which the nurse who performs the services has less than 8 continuous and uninterrupted hours off duty.

2. Services may exceed the limitations in subd. 1. when both of the following conditions are met:

a. The services are approved by the department on a case-by-case basis for circumstances that could not reasonably have been predicted.

b. Failure to provide skilled nursing services likely would result in serious impairment of the recipient's health.

SECTION 3. HFS 107.12 (2) (b) and (3) (d) are repealed.

SECTION 4. HFS 107.12 (4) (f) and (g) are created to read:

HFS 107.12 (4) (f) 1. Except as provided in subd. 2., services provided by an individual nurse under this section that, when combined with services provided to all recipients and other patients under the nurse's care, exceed either of the following limitations:

a. A total of 12 hours in a calendar day.

b. A total of 60 hours in a calendar week.

2. Services may exceed the limitations in subd. 1. when both of the following conditions are met:

a. The services are approved by the department on a case-by-case basis for circumstances that could not reasonably have been predicted.

b. Failure to provide skilled nursing services likely would result in serious impairment of the recipient's health.

(g) 1. Except as provided in subd. 2., services provided during any 24-hour period during which the nurse who performs the services has less than 8 continuous and uninterrupted hours off duty.

2. Services may exceed the limitations in subd. 1. when both of the following conditions are met:

a. The services are approved by the department on a case-by-case basis for circumstances that could not reasonably have been predicted.

b. Failure to provide skilled nursing services likely would result in serious impairment of the recipient's health.

SECTION 5. EFFECTIVE DATE: This rule takes 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: _____

Kevin R. Hayden
Secretary

SEAL:

FISCAL ESTIMATE FOR ADMINISTRATIVE RULES

- Original
- Updated
- Corrected
- Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number HFS 107

Subject
Home health services under the Wisconsin Medical 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.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs – May be possible to absorb within agency's budget. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		

Local: No Local Government Costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others: <input type="checkbox"/> School Districts <input type="checkbox"/> WCTS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Private: No Anticipated Significant Fiscal Effect on the Private Sector

- Possible Incurred Costs Anticipated Costs
- Types of Private Entities Affected

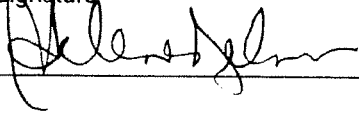
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations Section 20.435 (4) (b), (gp), (o) and (w), Stats.
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Assumptions Used in Arriving at Fiscal Estimate
The Department is updating and clarifying some requirements in its Medical Assistance rules. Chapter HFS 107 specifies the Wisconsin Medical Assistance (MA) covered services and reimbursement requirements for providers. As currently written, ch. HFS 107 limits the amount of time a nurse may provide direct private duty nursing (PDN) or respiratory care services (RCS). In particular, s. HFS 107.113 (5) (d), governing RCS, currently provides that "[s]ervices provided by one individual in excess of 12 continuous hours per day or 60 hours per week" are not covered services. The PDN rule has a similar limitation. That rule, s. HFS 107.12 (2) (b), states that PDN "is limited to 12 continuous hours in each 24 hour period and no more than 60 hours in a calendar week," and that "[a] prior authorization request for 2 consecutive 12-hour periods shall not be approved."

The Department has determined that strict adherence to the preceding requirements that are currently expressed in its administrative rules sometimes unnecessarily constrains the provision of needed personal care services and may therefore constitute an unjustified burden to both consumers and providers. Consequently, the Department is proposing to amend the rules to reduce these restrictions. Specifically, the Department is promulgating changes in the number of hours that private duty nurses and respiratory care nurses may work in a 24-hour period. The Department is further defining the 24-hour work period as a calendar day. For the purpose of scheduling breaks, it will retain the reference to any 24-hour period.

Under this revision to the rule, the total number of hours authorized for private duty nursing through the prior authorization process will not change. The rule change will help to simplify the scheduling of private duty nursing services. The Department does not expect any fiscal effect as a result of these changes.

Long Range Fiscal Implications

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