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**\*\* 07hr\_CRule\_06-053\_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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State of Wisconsin  
**Department of Health and Family Services**

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Jim Doyle, Governor  
Kevin R. Hayden, Secretary

May 14, 2007

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

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

Re: Clearinghouse Rule 06-053  
HFS 132, relating to nursing homes

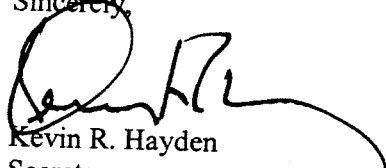
Gentlemen:

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 Otis Woods at 608-267-7185.

Sincerely,



Kevin R. Hayden  
Secretary

cc Gary Poulson, Assistant Revisor of Statutes  
Senator Robert Jauch, JCRAR  
Representative Daniel LeMahieu, JCRAR  
Otis Woods, DHFS-DQA  
Katie Plona, DHFS Secretary's Office

1 West Wilson Street • Post Office Box 7850 • Madison, WI 53707-7850 • Telephone (608) 266-9622 •  
dhfs.wisconsin.gov

*Protecting and promoting the health and safety of the people of Wisconsin*

**PROPOSED ORDER OF  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
TO ADOPT RULES**

The Wisconsin Department of Health and Family Services proposes to **repeal** HFS 132.13 (2), (6), (13), (14), (15), (19), and (33), 132.31 (1) (a) to (c), (e) to (o), (2), (3), (4) (c), (5) and (6) (a) (title), and (b) to (e), 132.32, 132.41 (3), 132.42 (2), 132.43, 132.44 (3), 132.45 (4) (a), (b), (d), (e), (f) 1. and 3., 132.52 (1), 132.53 (4) (c), 132.60 (1) (a) 2. and 3., (c)1., and (e), (2) (c), (4), (5) (a) 4., (b), (d) 3., 4., 6. and (e), (6) (a), (c), (d), (g) and (Note), (7), and (8) (a) 1., and 2., (b) (Note), and (d) and (Note), 132.61 (1) (c), (2) and (Note), 132.62 (1) (b), (2) (a) 2. b., (b) 2., and (c), and (3) (a) and (c) to (h), 132.63 (2) (c), (3), (4) (a) 1. to 3., and 5., (b) 2. and 3., (5) (a), (b), (d) to (f), (6), (7) (a), (b) (title), and 1. and (c), and (8), 132.64 (2) (a), 132.65 (3) and (6) (a) and (f) 1. and 2. (Note), 132.66, 132.67 (2) and (4), 132.68 (2) (b) and (4) (b), 132.69 (1) (a) and (b) and (2), 132.695 (3) (a) 1. a. and b., 2., and (b), (4) (a), (b) 2. a. to c., and (c) 1. (title), 2. and 3., 132.70 (2) (a) 1. b., (b), (3) (b) 2. to 9., (4) (a) and (b), (5) and (6), 132.71 (1) (a), (b) 5., (c) 1. and 3., (2) (b) and (3) to (6), 132.72 (2) (a) to (d), (4) (b), (5) and (Note), and (6) (a), 132.82 (3) (d) and (f) to (i), 132.83 (2), (3) (a) to (c), (5), (6), (7) (b), (c), (d) 2., (e), (f), (g) 1., (h) 1. to 4. and 5. a., and (j) 1. and 2. b., 132.84 (1) (b) 2. and 3., (c), (d), (e), (f), (j), (k), (2) (b) to (d), (e) 1. a. to d. and 2., (f) 1. to 3., 5., (g), (5), (6) (b) to (d), (7) to (14) and (16); **to renumber** HFS 132.31 (6) (a), 132.45 (4) (f) 4., and 5., 132.62 (1) (a), 132.63 (4) (a) 4., (b) 1., and (7) (b) 2. and (Note), 132.65 (6) (f) 2. and Note, 132.68 (2) (a), 132.695 (4) (c) 1. a. to d., 132.70 (2) (a) (intro.), 1. (intro.), 2. and 3., 132.72 (4) (a), 132.83 (7) (d) 1. and (g) 2.; **to renumber and amend** HFS 132.45 (4) (f) 2., 132.61 (1) (a) and (b), 132.62 (2) (a) 2. (intro.) and a., 132.62 (3) (intro.) and (b), 132.68 (4) (a), 132.69 (1), 132.695 (3) (a) (intro.) and 1. (intro.), 132.70 (2) (a) (intro.), 1. (intro.) and 3., 132.70 (3) (b) (intro.) and 1., 132.83 (7) (h) 5. (intro.) and b., 132.83 (7) (j) 2. (intro.) and a., 132.84 (1) (b) (intro.) and 1., 132.84 (2) (e) (intro.) and 1. (intro.), 132.84 (2) (f) (intro.) and 4.; **to amend** HFS 132.11, 132.12, 132.14 (4) (b) 2., 3., and 10., 132.31 (1) (intro.) and (4) (a), 132.45 (4) (g) 1., (5) (b) 3. and 5., (c) 4. g., and (6) (h), 132.53 (2) (b) 1., 132.60 (5) (a) 1., (6) (b), and (8) (a) (intro.), 132.70 (7) (a) 1., 132.84 (1) (a); and to **create** HFS 132.14 (3) (a) 5. and (bm), HFS 132.16, HFS 132.60 (8) (c) (Note), HFS 132.84 (6) (Note), rules relating to nursing homes and affecting small businesses.

**SUMMARY OF PROPOSED RULE**

**Statute interpreted:** Sections 49.498, 49.499, 50.02 (1), 50.03, 50.04, 50.05, 50.065, 50.07, 50.09, 50.095, 50.135, and 50.14, Stats.

**Statutory authority:** Sections 49.498 (14), 50.02 (1), (2) (a), (b) 2., (bm), (bn), (d), and (3) (a) to (d), 50.03 (4) (a) 1. a., 50.095 (3) (am), 50.098, and 227.11 (2) (a), Stats.

**Explanation of agency authority:**

The Department has general authority under s. 50.02, (1) Stats., to provide uniform, statewide, licensing, inspection and regulation of nursing homes. The Department is required under ss. 50.02 (2), (3), 50.04 (4), 50.095 (3) (am) and 50.098, Stats., to promulgate rules relating to standards for care, treatment, health, safety, rights, welfare and comfort of residents in nursing homes; for the construction, general hygiene, maintenance and operation of nursing homes; fee schedules for plan reviews; minimum hours of nursing care provided to residents; time periods and methods for nursing homes to provide the information required under s. 50.04 (2g), Stats., relating to resource centers under s. 47.283, Stats., and the family care benefit under s. 46.281, Stats.; waiver and variances of standards;

procedures for admission, evaluation and care of short-term care nursing home residents; qualifications and fitness of applicants for nursing home licensure; criteria for determining nursing staff and resident ratios; and appeals on transfers and discharges of residents from nursing homes.

Section 49.498 (14), Stats., requires the Department to promulgate rules relating to hearing appeals on transfers and discharges of residents from nursing facilities; specifying instruments for use in assessing the functional capacity of residents; establishing criteria for the denial of payment to a facility when a person admitted to a nursing facility after notice of violations of 42 USC 1396 to 1396s; and establishing the rate of interest on forfeitures that can be assessed facilities for violating s. 49.498, Stats., or any rules promulgated under s. 49.498, Stats.

**Related statute or rule:** Sections 49.498 (14), 50.02 (1), (2) (a), (b) 2., (bm), (bn), (d), and (3) (a) to (d), 50.03 (4) (a) 1. a., 50.095 (3) (am), 50.098, Stats., and chs. HFS 105, and Comm 61 to 65.

**Plain language analysis:**

Nursing homes are regulated by the Department under ch. HFS 132, ch. 50, Stats., and, if a nursing home participates as a provider in the Medicaid and Medicare programs, the nursing home is also regulated by the Department under 42 CFR 483. Nursing home construction and remodeling is regulated by the Department of Commerce under chs. Comm 61 to 65, the Commercial Building Code. Many of the provisions in ch. HFS 132 are outdated and overly prescriptive, or are duplicative of ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65. Through this rulemaking order the Department proposes to repeal or revise outdated or overly prescriptive rule provisions, and to repeal provisions that are duplicative of the requirements that are already stated in and monitored under ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65.

In addition, the Department also proposes to create rule provisions requiring applicants for nursing home licensure to disclose the qualifications of any person with authority to manage the nursing home; any occurrences that required closure of a residential or health care facility or that required moving its residents; and any financial difficulties that a person or business entity connected with the nursing home has had in operating a residential or health care facility. The Department further proposes to create a quality assurance and improvement committee to distribute funds as allowed under ss. 49.499 (2m), Stats., to nursing homes for innovative projects that improve the efficiency and cost effectiveness of operating a nursing home and that improve the quality of life of residents.

The Department believes that the proposed revisions to ch. HFS 132 will not have an adverse effect on the health, safety, and welfare of existing or future residents of nursing homes as provisions that the Department believes provide greater protection of the health, safety, and welfare of residents than either ch. 50, Stats., 42 CFR 483, or chs. Comm 65 to 66 are retained. The additional application requirements are not expected to result in any increase in costs and the proposed removal of outdated, prescriptive, and duplicative provisions from ch. HFS 132 will make it easier for nursing homes to achieve compliance and provide care to residents in a cost effective manner and ensure residents are protected from unanticipated closures due to financial instability of nursing home licensees and in fact lower costs. The proposed creation of the quality assurance committee and subsequent distribution of funds under s. 49.499 (2m), Stats., is expected to not only improve residents quality of life in nursing homes, but is expected to stimulate innovation and competition within and among nursing homes in a way that will result in the highest quality care to residents.

The proposed removal of duplicative provisions include provisions relating to residents rights, general medical records requirements, resident care planning, medical services, certain dietary standards related to sanitation, meal services and staff hygiene, pharmacy consultant, diagnostic services, emergency dental services, activity staffing requirements, certain active treatment requirements, requirements regarding short-term care admissions, general housekeeping and maintenance items, building requirements relative to corridor width, doors, locks, exit stairways, oxygen storage services, mechanical systems such as sewage, plumbing, telephone, lighting and ventilation, and certain design areas such as windows, bed capacity, grab bars, dining and activity areas, design of the food service area and ancillary areas. The proposed removal of overly prescriptive provisions includes provisions regarding social worker qualifications and standards for oxygen use. The Department proposed the removal of provisions relating to community organization access and telephones as the provisions are outdated and unnecessary.

The Department proposes to retain provisions that the Department believes provide greater protection of the health, safety, and welfare of residents than either ch. 50, Stats., 42 CFR 483, or chs. Comm 65 to 66 or those that are not addressed in other law or regulations, including provisions relating to the following:

- Rules requiring a facility to notify residents of basic services and fees, and practice nondiscriminatory treatment based on pay source were kept as these regulations afford residents greater protection that was not available in either ch. 50, Stats., or federal regulation.
- Rules pertaining to locked units. There are no other regulations that address this issue.
- Rules pertaining to the nursing home administrator. Although federal regulations address this requirement, ch. HFS 132 is more prescriptive requiring the administrator be full-time and requiring prompt notice to the Department when a vacancy occurs.
- Rules addressing admissions of residents who are developmentally disabled, under the age of eighteen and day care clients. There are no other rules that govern their care.
- Rules relating to involuntary discharge. In this area, ch. HFS 132 provides greater protection for residents.
- Rules requiring the provision of basic nursing care. These provisions reflect a basic standard of practice not found in other regulations.
- Rules relating to nurse staffing. There are no comparable federal standards. Chapter HFS 132 requires a registered nurse to be on duty based on the number of residents in need of skilled nursing care.
- Rules relating to pharmacy services. There is no federal counterpart.
- Rules for specific resident care equipment such as mattresses, pillows, linens, over bed tables, window coverings, etc., as the federal regulations are too broad.
- Rules requiring a disaster plan and training for staff. There is no federal counterpart.

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

Federal conditions of participation in Medicaid and Medicare for nursing homes are found in 42 CFR 483. These federal regulations and ch. HFS 132 address similar subject areas, including resident rights; quality of care; health, nursing, dietary, and pharmacy services; staffing; and physical environment. As stated under the "Plain Language Analysis" section, the Department is proposing to remove requirements from ch. HFS 132 that are duplicative of 42 CFR 483.

### **Comparison with rules in adjacent states:**

In general, the administrative rules for nursing homes in Minnesota, Iowa, Michigan and Illinois are substantially similar to ch. HFS 132 in that they address many of the same subject areas, including resident rights, quality of care; physician services, restorative care, activity programming, social services, dietary and pharmacy services; minimum nurse staffing, and physical environment. Many states have parallel rules because states often use 42 CFR 483 as the basis for their administrative code for nursing homes. Each of the four adjacent states has made some effort to include federal language in their administrative rules. However, the degree to which each state has done so varies greatly. Both Minnesota and Illinois adopted significant portions of the federal rules requiring the facility to provide care to enable residents to reach their highest level of well being and functional ability. Both rules expect the facility to provide services to ensure that a resident's abilities do not diminish unless circumstances of the resident's clinical condition demonstrate that diminution was unavoidable. Iowa and Michigan rules are similar to ch. HFS 132 in that these rules are quite detailed and prescriptive. Both rules require nursing homes to provide basic care to residents but do not adopt the federal language relative to level of well being and functional ability.

Illinois adopted federal language requiring facilities to provide care and services to enable residents to reach their highest level of physical, mental and psychological well-being. Restorative measures must be supervised by a licensed nurse who successfully completed training in restorative nursing. All nursing personnel must assist and encourage residents so that residents do not experience a reduction in range of motion, activities of daily living, pressure sores, bowel and bladder control unless the resident's clinical condition demonstrates that the reduction is unavoidable. Staffing must be based on the needs of the resident and determined by figuring the number of hours of nursing time on each shift of the day. Residents needing skilled care are to receive 2.5 hours of nursing personnel care each day, of which 20% must be licensed nurse time. At least 40% of the minimum required time must be on the day shift, at least 25% on the evening shift and 15% on the night shift.

The facility must also provide an ongoing program of activities to meet the interests and preferences of each resident. Activities must be coordinated to make use of community resources. The facility must have policies controlling the use of physical restraints. Restraints may not be used for the purpose of convenience or discipline. Chemical restraints are prohibited.

The Illinois nursing home code is 77 Ill Admin Code 300 Skilled and Intermediate Care Facilities code.

Michigan code states that residents must receive preventive, supportive, maintenance and rehabilitative nursing care directed to the physiologic and psychosocial needs and well-being of the resident. Nursing care and services must include grooming, oral hygiene, bathing, skin care and positioning. Restorative care must be provided and directed to restoring and maintaining a resident's optimal level of independence particularly in the area of activities of daily living.

Michigan requires facilities to provide 2.25 hours direct care staff averaged daily. Staff to resident ratios include one direct care staff to 8 residents on the day shift, 1 direct care staff to 12 residents on the evening shift and one direct care staff to 15 residents on the night shift.

The facility is required to provide an ongoing activities program that stimulates and promotes social interaction, communication and constructive living. Individual and group activities must be available 7 days a week and be suited to a resident's need, capabilities and interest.

The Michigan nursing home code is Public Health Code 325 Nursing Homes and Nursing Care Facilities.

Iowa requires facilities to provide restorative care to maintain good body alignment and proper positioning, range of motion exercise and encourage residents to achieve independence in activities of daily living by teaching self-care. Required services include bathing, oral hygiene, range of motion, bowel and bladder training programs, colostomy care, ambulation, grooming, nail care and meal time assistance.

Facilities are required to provide 2.0 hours of direct care staff for each resident averaged weekly, 20% must be licensed nurse time.

Facilities must provide a resident activity program for group and individual residents which includes evening and weekend programs. The program must be designed to meet the needs and interests of each resident and assist residents in continuing normal activities. The facility must also provide a variety of supplies and equipment to fit the needs and interests of residents.

Restraints may only be used on order of a physician and not for convenience or for a substitute for staff supervision or programming. The facility must provide staff orientation and ongoing education program in the proper use of restraints.

The Iowa nursing home code is Iowa Code Chapter 58 Nursing Facilities.

Minnesota adopted federal language requiring facilities to provide an active program of rehabilitative nursing care directed toward assisting each resident to achieve and maintain the highest level of physical, mental and psychosocial well-being. Residents who enter the facility with normal range of motion may not experience a reduction in range motion unless the decline is unavoidable. Resident must be given appropriate services to maintain or improve abilities in activities of daily living. A resident who enters the facility without pressure sores should not develop pressure sores unless the individual's clinical condition demonstrates and a physician authenticates that they were unavoidable.

In 2001, Minnesota repealed the hours of direct care staff per day with conversion to a Medicaid payment methodology based on the Minimum Data Set.

Activities must be provided that meet the interest, strengths and needs of the resident. The activity and recreation program must be provided with space both with in the facility out of doors. A nursing home may not charge a resident for any portion of the program.

Residents must be free from any physical or chemical restraints not required to treat a resident's medical symptoms. The decision to apply a restraint must be based on a comprehensive assessment. The least restrictive restraint must be used and incorporated into the plan of care.

The Minnesota nursing home code is Admin Rule Chapter 4658 Nursing Homes.

**Summary of factual data and analytical methodologies:**

The Department relied on all of the following sources to draft the proposed rules or to determine the impact on small businesses, specifically nursing homes:

- The Department formed an advisory committee consisting of Department staff, and staff from the University of Wisconsin Center for Health Systems Research to review existing state and federal regulations affecting nursing homes and potential administrative burdens on Wisconsin's health care, long-term care, and community service providers. The committee initiated the regulatory update assessment project to identify ways to modernize ch. HFS 132 to be consistent with promoting health and safety in a cost-effective manner. The committee's work was reviewed by representatives of the Wisconsin Board on Aging and Long Term Care, Disability Rights Wisconsin, the Wisconsin Association of Homes and Services for the Aging and the Wisconsin Health Care Association.
- The 2002 Economic Census – Wisconsin Geographic Series, which is compiled by the U.S. census bureau every 5 years for each year ending in "2" and "7" and contains the latest available economic data compiled on businesses located in Wisconsin.
- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or revenues are reduced by more than the prior year's consumer price index. For the purposes of this rulemaking, 2005 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2005 is 3.4 percent.
- DHFS databases including the Facilities Licensing and Certification information System (FL/CIS) that contain demographic, licensing, program, and compliance history of nursing homes in Wisconsin.
- The Wisconsin Department of Health and Family Services, Division of Public Health, Bureau of Health Information and Policy. *Wisconsin Nursing Homes and Residents, 2004* (PPH 5374-04). September 2005 which reports data obtained from the Department's 2004 annual survey of nursing homes. The Department examined whether nursing homes meet the definition of small business under s. 227.114 (1) (a), Stats., and whether the proposed rules have a significant economic impact on a substantial number of small businesses (nursing homes).
- Section 227.114 (1) (a), Stats., defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.

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



The Department licenses approximately 340 private and 60 government owned nursing homes to accept patients with specific categories of health care needs. Skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) provide primarily medical care to restore individuals to their rehabilitative potential. Institutions for mental diseases (IMDs) serve residents with psychotic and nonpsychotic mental illness. Ninety percent of these homes are skilled nursing facilities that generally have a permanent core staff of registered or licensed practical nurses and other staff who provide the elderly, and other individuals, with nursing and personal care services that include assistance with activities of daily living such as bathing, toilet use, eating and dressing, skin care, rehabilitative services for mental illness, and special treatment such as tracheostomy care, ostomy care, respiratory treatment, and tube feedings. Analysis of the data compiled in the Wisconsin Department of Health and Family Services, Division of Public Health, Bureau of Health Information and Policy *Wisconsin Nursing Homes and Residents, 2004* (PPH 5374-04) September 2005 suggests that at least 40% of all licensed facilities have 85 or fewer beds and average gross annual revenues below \$5 million assuming a 100% occupancy rate and annual per bed charges of \$56,000. Approximately 81% of these beds are in privately owned facilities. The department approximates, however, that only about 10% of the privately owned facilities meet the definition of small business because some of these facilities are part of large corporations owning several facilities and employing more than 25 employees.

Through this rulemaking order the Department proposes to do the following:

- Repeal or revise outdated or overly prescriptive rule provisions;
- Repeal provisions that are duplicative of the regulations that are already stated in and monitored under ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65;
- Create rule provisions requiring applicants for nursing home licensure to disclose, in the application, the qualifications of any person with authority to manage the nursing home; any occurrences requiring closure of a residential or health care facility and relocating its residents; and any financial difficulties that a person or business entity connected with the nursing home has had in operating a residential or health care facility; and
- Create a quality assurance and improvement committee to distribute funds as allowed under ss. 49.499 (2m), Stats., to nursing homes for innovative projects that improve the efficiency and cost effectiveness of operating a nursing home and that improve the quality of life of residents.

The Department does not expect the new application requirements to result in any increase in costs and believes that the proposed removal of outdated, prescriptive, and duplicative provisions from ch. HFS 132 will make it easier for nursing homes to achieve and maintain compliance, provide care to residents, and ensure that residents are protected from unanticipated closures due to financial instability of nursing home licensees. The proposed creation of the quality assurance committee and subsequent distribution of funds under s. 49.499 (2m), Stats., is expected to not only improve residents quality of life in nursing homes, but is expected to stimulate innovation and competition within and among nursing homes in a way that will result in cost effective, high quality care to residents.

**Effect on small business:**

Pursuant to criteria adopted by the Department, the proposed rule may affect a substantial number of small businesses because at least 10% of the nursing homes affected by the proposed rules may be considered small businesses. However, the proposed rules will not have a significant economic impact on these nursing homes because the proposed rules do not include increased reporting, design or operational standards, or capital requirements and none of the proposed changes are expected to increase operating expenditures, including annualized capital expenditures, or reduce revenues by

more than the 2005 consumer price index (CPI) of 3.4%. Any costs that may be associated with the additional application requirements most likely will not meet or exceed the 2005 CPI. The proposed removal of outdated, prescriptive, and duplicative provisions are expected to lower costs for all nursing homes.

Therefore, the Department concludes that the proposed rules may affect a substantial number of small businesses that are nursing homes, but the proposed rules will not have an adverse significant economic impact on those businesses.

**Agency contact person:**

Otis Woods, Director  
Department of Health and Family Services  
Division of Quality Assurance  
1 West Wilson, Room 1150  
P.O. Box 2969  
Madison, WI 53701-2969  
phone: (608) 267-7185, fax: (608) 267-0352  
e-mail: [Woodsol@dhfs.state.wi.us](mailto:Woodsol@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 and via the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> until 4:30 p.m. on August 1, 2006. Public hearings will be held in 5 locations across the state. All hearings will be held from 9:00 a.m. to 3:00 p.m. at each of the following locations and dates:

- July 24, 2006 - Southeastern Regional Office, 819 North 6<sup>th</sup> Street, Room 40, Milwaukee, WI;
- July 25, 2006 - Wilson Street State Office Building, 1 West Wilson Street, Room 751, Madison, WI;
- July 26, 2006 - Northeastern Regional Office, 200 North Jefferson Street, Room 152 A, Green Bay, WI;
- July 28, 2006 - Northern Regional Office, 2187 North Stevens Street, Large Conference Room, Rhinelander, WI;
- July 31, 2006 - Western Regional Office, 610 Gibson Street, Room 123, Eau Claire, WI.

The notice of public hearing is posted on the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

## TEXT OF PROPOSED RULE

SECTION 1. HFS 132.11 is amended to read:

**HFS 132.11 Statutory authority.** This chapter is promulgated under the authority of ~~s.~~ ss. 49.498 (14), 49.499 (2m), 50.02, 50.03, 50.095, and 50.098, Stats., to provide conditions of licensure for nursing homes.

SECTION 1m. HFS 132.12 is amended to read:

**HFS 132.12 Scope.** All nursing homes licensed under s. 50.03, Stats., are subject to all the provisions of this chapter, except for those provisions that apply only to particular licensure

categories, and except for those nursing homes regulated by ch. HFS 134. Nursing homes include those owned and operated by the state, counties, municipalities, or other public bodies. Nursing homes are also subject to the provisions in ch. 50, Stats., and chs. Comm 61 to 65, except s. 61.31 (3). Federally certified nursing homes are also subject to the provisions contained in 42 CFR 483.

SECTION 2. HFS 132.13 (2), (6), (13), (14), (15), (19), and (33) are repealed.

SECTION 3. HFS 132.14 (3) (a) 5. and (bm) are created to read:

HFS 132.14 (3) (a) 5. Disclosure of any financial failures directly or indirectly involving any person or business entity identified in the application concerning the operation of a residential or health care facility that resulted in any debt consolidation or restructuring, insolvency proceeding or mortgage foreclosure, or in the closing of a residential or health care facility or the moving of its residents. In this subdivision "Insolvency" means bankruptcies, receiverships, assignments for the benefit of creditors, and similar court-supervised proceedings.

(bm) The applicant shall provide information to demonstrate that any person having the authority to directly manage the operation of the facility has the education, training or experience to operate and manage a health care facility to provide for the health, safety, and welfare of its residents in substantial compliance with state and federal requirements.

SECTION 4. HFS 132.14 (4) (b) 2., 3., and 10. are amended to read:

HFS 132.14 (4) (b) 2. Any adverse action against the applicant or any person or business entity named in the application by the licensing agency of this state or any other state relating to the applicant's or any person or business entity named in the application's operation of a residential or health care facility. In this subdivision, "adverse action" means an action initiated by a state licensing agency which resulted in a conditional license, the placement of a monitor or the appointment of a receiver, or the denial, suspension or revocation of the license of a residential or health care facility operated by the applicant or any person or business entity named in the application;

3. Any adverse action against the applicant or any person or business entity named in the application based upon noncompliance with federal statutes or regulations in the applicant's or any person or business entity named in the application's operation of a residential or health care facility in this or any other state. In this subdivision, "adverse action" means an action by a state or federal agency which resulted in the imposition of Category 3 remedies pursuant to 42 CFR sec. 488.408 (e), placement of a state monitor or the appointment of a receiver, transfer of residents, or the denial, non-renewal, cancellation or termination of certification of a residential or health care facility operated by the applicant;

10. Any prior financial failures of the applicant and any person and related business entity identified in the application concerning the operation of a residential or health care facility that resulted in any debt consolidation or restructuring, insolvency proceeding or mortgage foreclosure bankruptcy or in the closing of an inpatienta residential or health care facility or the moving of its residents. "Insolvency" has the meaning provided in s. HFS 132.14 (3) (a) 5.

SECTION 5. HFS 132.16 is created to read:

**HFS 132.16 Quality assurance and improvement projects.** (1) FUNDS. Pursuant to s. 49.499 (2m), Stats., the department may, from the appropriation under s. 20.435 (6) (g), Stats., distribute funds for innovative projects designed to protect the property and the health, safety and welfare of residents in a facility and to improve the efficiency and cost effectiveness of the operation of a facility so as to improve the quality of life, care and treatment of its residents.

(2) QUALITY ASSURANCE AND IMPROVEMENT COMMITTEE. (a) The department shall establish and maintain a quality assurance and improvement committee to review proposals and award funds to facilities for innovative projects approved by the committee under sub. (3).

(b) 1. Committee members shall be appointed by the secretary for a term of up to 12 months and include, at the secretary's discretion, one or more representatives from the department, the board on aging and long term care, disability, aging and long term care advocates, facilities, and other persons with an interest or expertise in quality improvement or delivery of long term care services. Facility members shall comprise at least half of the committee membership.

2. A representative's term may be extended at the secretary's discretion.

(3) COMMITTEE RESPONSIBILITIES. The quality assurance and improvement committee shall do all of the following:

(a) Meet at least annually.

(b) Develop and propose for the secretary's approval criteria for review and approval of projects proposed under this section.

(c) Considering the criteria approved by the secretary under par. (b), review proposals submitted by facilities under this section and approve submitted proposals, defer a determination pending additional information, or deny approval of proposals submitted.

(e) Identify areas of need within a facility or corporation, the state or regions as projects to be addressed.

(f) Develop opportunities and strategies for general improvement concerning licensed facilities.

(g) Encourage proposals that develop innovative cost-effective methods for improving the operation and maintenance of facilities and that protect residents' rights, health, safety and welfare and improve residents' quality of life.

(h) Disseminate within the department and to facilities and other interested individuals and organizations the information learned from approved projects.

(i) Prepare an annual report to the secretary.

(4) A decision under sub. (3) (c) to defer or deny approval of or award funds for a proposal may not be appealed.

SECTION 6. HFS 132.31 (6) (a) is renumbered HFS 132.31 (6).

SECTION 7. HFS 132.31 (1) (a) to (c), (e) to (o), (2), (3), (4) (c), (5) and (6) (a) (title), and (b) to (e) are repealed.

SECTION 8. HFS 132.31 (1) (intro.) and (4) (a) are amended to read:

**HFS 132.31 Rights of residents.** (1) RESIDENTS' RIGHTS. Every resident shall, ~~except as provided in sub. (3),~~ have the right to all of the following:

(4) (a) *Serving notice.* ~~Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each prospective resident and his or her guardian, if any, and to each member of the facility's staff. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.~~

SECTION 9. HFS 132.32 is repealed.

SECTION 10. HFS 132.41 (3) is repealed.

SECTION 11. HFS 132.42 (2) is repealed.

SECTION 12. HFS 132.43 is repealed.

SECTION 13. HFS 132.44 (3) is repealed.

SECTION 14. HFS 132.45 (4) (a), (b) and (d), (e) and (f) 1. and 3. are repealed.

SECTION 15. HFS 132.45 (4) (f) 2., (g) 1., (5) (b) 3. and 5., (c) 4. g., and (6) (h) are amended to read:

HFS 132.45 (4) (g) *Records documentation.* 1. All entries in medical records shall be accurate, legible, permanently recorded, dated, and authenticated with the name and title of the person making the entry.

(5) MEDICAL RECORDS – Content. (b) *Physician's documentation.* 3. Physician progress notes following each visit as required by s. ~~HFS 132.61 (2) (b) 6.~~

5. Alternate visit schedule, and justification for such alternate visits as described in s. HFS 132.61 (2) (b).

(c) *Nursing service documentation.* 4. g. Summary of the use of physical and chemical restraints as required by s. ~~HFS 132.60 (6) (g).~~

(6) OTHER RECORDS. (h) Funds and property statement. The statement prepared upon a resident's discharge or transfer from the facility that accounts for all funds and property held by the facility for the resident, as required under s. ~~HFS 132.31 (1) (c) 3.~~; and.

SECTION 15m. HFS 132.45 (4) (f) 2., 4., and 5. are renumbered HFS 132.45 (4) (f) 1., 2., and 3., and HFS 132.45 (4) (f) 1., as renumbered, is amended to read:

HFS 132.45 (f) 1. An original medical record and legible copy or copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of this resident shall be retained for a period of at least 5 years following a resident's discharge or death when there is no requirement in state law. All other records required by this chapter shall be retained for a period of at least 2 years.

SECTION 16. HFS 132.52 (1) is repealed.

SECTION 17. HFS 132.53 (2) (b) 1. is amended to read:

**HFS 132.53 Transfers and discharges.** (2) CONDITIONS. (b) *Alternate placement*. 1. Except for transfers or discharges under par. (a) 2. and 6., for nonpayment or in a medical emergency, no resident may be involuntarily transferred or discharged unless an alternative placement is arranged for the resident pursuant to s. HFS 132.31 (1) (j). The resident shall be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except when there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

SECTION 18. HFS 132.53 (4) (c) is repealed.

SECTION 19. HFS 132.60 (1) (a) 2. and 3., (c)1., and (e), (2) (c), (4), (5) (a) 4., (b), (d) 3., 4., 6. and (e), (6) (a), (c), (d), (g) and (Note), (7), and (8) (a) 1., and 2., (b) (Note), and (d) and (Note) are repealed.

SECTION 20. HFS 132.60 (5) (a) 1., (6) (b), and (8) (a) (intro.) are amended to read:

HFS 132.60 (5) TREATMENT AND ORDERS. (a) *Orders*. 1. 'Restriction.' Medications, treatments and rehabilitative therapies shall be administered as ordered by an authorized prescriber subject to the resident's right to refuse them. No medication, treatment or changes in medication or treatment may be administered to a resident or a daycare client without an authorized prescriber's written order which shall be filed in the resident or daycare client's clinical record.

(6) PHYSICAL AND CHEMICAL RESTRAINTS. (b) *Orders required*. Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident's name, the reason for restraint, and the period during which the restraint is to be applied. ~~The use of restraints shall be consistent with the provisions under s. HFS 132.31 (1) (k).~~

SECTION 20m. HFS 132.60 (8) (c) Note is created to read:

HFS 132.60 (8) (c) Note: The department encourages and promotes the principles of resident self-determination and person directed care.

(8) RESIDENT CARE PLANNING. (a) *Development and content of care plans*. Except in the case of a person admitted for short-term care, within 4 weeks following admission a written care plan shall be developed, based on the resident's history and assessments from all appropriate disciplines and the physician's evaluation and orders, as required by s. HFS 132.52, ~~which shall include:~~

SECTION 21. HFS 132.61 (1) (c), (2) and (Note) are repealed.

SECTION 22. HFS 132.61 (1) (a) and (b) are consolidated, renumbered HFS 132.61, and amended to read:

**HFS 132.61 Medical Services.** ~~MEDICAL DIRECTION IN SKILLED CARE FACILITIES. (a) Medical director.~~ Every skilled care facility shall retain, pursuant to a written agreement, a physician to serve as medical director on a part-time or full-time basis as is appropriate for the needs of the residents and the facility. ~~If the facility has an organized medical staff, the medical director shall be designated by the medical staff with approval of the licensee. (b) Coordination of medical care.~~ Medical direction and coordination of medical care in the facility shall be provided by the medical director. ~~The medical director shall develop written rules and regulations which shall be approved by the licensee and include delineation of the responsibilities of attending physicians. If there is an organized medical staff, by laws also shall be developed by the medical director and approved by the licensee. Coordination of medical care shall include liaison with attending physicians to provide that physicians' orders are written promptly upon admission of a resident, that periodic evaluations of the adequacy and appropriateness of health professional and supportive staff and services are conducted, and that the medical needs of the residents are met.~~

SECTION 23. HFS 132.62 (1) (b), (2) (a) 2. b., (b) 2., and (c), and (3) (a) and, (c) to (h) are repealed.

SECTION 24. HFS 132.62 (1) (a) is renumbered HFS 132.62 (1).

SECTION 25. HFS 132.62 (2) (a) 2. (intro.) and a. are consolidated, renumbered HFS 132.62 (2) (a) 2. and amended to read:

HFS 132.62 (2) (a) 2. 'Qualifications.' The director of nursing services shall:—a. ~~Be~~ be a registered nurse; and,

SECTION. 26. HFS 132.62 (3) (intro.) and (b) are consolidated, renumbered HFS 132.62 (3) and amended to read:

HFS 132.62 (3) NURSE STAFFING. In addition to the requirements of sub. (2), ~~the following conditions shall be met: (b) Assignments.~~ There shall be adequate nursing service personnel assigned to care for the specific needs of each resident on each tour of duty. Those personnel shall be briefed on the condition and appropriate care of each resident.

SECTION 27. HFS 132.63 (2) (c), (3), (4) (a) 1. to 3., and 5., (b) 2. and 3., (5) (a), (b), (d) to (f), (6), (7) (a), (b) (title), and 1. and (c), and (8) are repealed.

SECTION 28. HFS 132.63 (4) (a) 4., (b) 1., and (7) (b) 2. and (Note) are renumbered HFS 132.63 (4) (a) and (b), (7) and (Note).

SECTION 29. HFS 132.64 (2) (a) is repealed.

SECTION 30. HFS 132.65 (3) and (6) (a) and (f) 1. and 2. (Note) are repealed.

SECTION 31. HFS 132.65 (6) (f) 2. is renumbered HFS 132.65 (6) (f).

SECTION 32. HFS 132.66 is repealed.

SECTION 33. HFS 132.67 (2) and (4) are repealed.

SECTION 34. HFS 132.68 (2) (b) and (4) (b) are repealed.

SECTION 35. HFS 132.68 (2) (a) and (4) (a) are renumbered HFS 132.68 (2) and (4) and HFS 132.68 (4), as renumbered, is amended to read:

HFS 132.68 (4) CARE PLANNING. A social services component of the plan of care, including ~~preparation potential~~ for discharge, if appropriate, shall be developed and included in the plan of care required by s. HFS 132.60 (8) (a).

SECTION 36. HFS 132.69 (1) is repealed and recreated to read:

**HFS 132.69 Activities.** Each facility shall have an activity program designed to meet the needs and interests of each resident.

SECTION 37. HFS 132.69 (2) is repealed.

SECTION 38. HFS 132.695 (3) (a) (intro.) and 1. (intro.) are consolidated, renumbered HFS 132.695 (3) and amended to read:

HFS 132.695 (3) ACTIVE TREATMENT PROGRAMMING. All residents who are developmentally disabled shall receive active treatment. Active treatment shall include: ~~1. The~~ the resident's regular participation, in accordance with the IPP, in professionally developed and supervised activities, experiences and therapies. ~~The resident's participation shall be directed toward:~~

SECTION 39. HFS 132.695 (3) (a) 1. a. and b., 2., and (b), (4) (a), (b) 2. a. to c., and (c) 1. (title), 2. and 3. are repealed.

SECTION 40. HFS 132.695 (4) (b) 2. d. and e. and (c) 1. a. to d. are renumbered HFS 132.695 (b) 2. a. and b. and (c) 1. to 4.

SECTION 41. HFS 132.70 (2) (a) 1. b., (b), (3) (b) 2. to 9. , (4) (a) and (b), (5) and (6) are repealed.

SECTION 42. HFS 132.70 (2) (a) (intro.), 1. (intro.), 2. and 3. are renumbered HFS 132.70 (2) (intro.) (a) (intro.), (b) and (c) and HFS 132.70 (2) (a) (intro.) and (b) as renumbered are amended to read:

HFS 132.70 (2) (a) A registered nurse or physician shall complete a comprehensive resident assessment of the person prior to or on the day of admission. This comprehensive assessment shall include evaluation of the person's medical, nursing, dietary, rehabilitative, pharmaceutical, dental, social and activity needs. The consulting or staff pharmacist shall participate in the comprehensive assessment ~~as provided under sub. (4) (a)~~. As part of the comprehensive assessment, when the registered nurse or physician has identified a need for a special service, staff from the discipline that provides the service shall, on referral from the registered nurse or physician, complete a history and assessment of the person's prior health and care in that discipline. The comprehensive resident assessment shall include:



(b) The registered nurse, with verbal agreement of the attending physician, shall develop a written plan of care for the person being admitted prior to or at the time of admission. The plan of care shall be based on the comprehensive resident assessment under ~~subd. 1 par. (a)~~, the physician's orders, and any special assessments under ~~subd. 1 par. (a)~~.

SECTION 43. HFS 132.70 (3) (b) (intro.) and 1. are consolidated, renumbered HFS 132.70 (3) (b) and amended to read

HFS 132.70 (3) (b) No person may be admitted to a facility for respite care or recuperative care without signing or the person's guardian or designated representative signing an acknowledgement of having received a statement before or on the day of admission ~~which contains at least the following information: 1. An indication of that indicates the expected length of stay, with a note that the~~ responsibility for care of the resident reverts to the resident or other responsible party following expiration of the designated length of stay;.

SECTION 44. HFS 132.70 (7) (a) 1. is amended to read:

HFS 132.70 (7) RECORDS (a) 1. The resident care plan prepared under ~~sub. (2) (a) 2. or (b) 5.;~~ sub. (2) (b).

SECTION 45. HFS 132.71 (1) (a), (b) 5., (c) 1. and 3., (2) (b) and (3) to (6) are repealed.

SECTION 46. HFS 132.72 (2) (a) to (d), (4) (b), (5) and (Note), and (6) (a) are repealed.

SECTION 47. HFS 132.72 (4) (a) is renumbered HFS 132.72 (4).

SECTION 48. HFS 132.82 (3) (d) and (f) to (i) are repealed.

SECTION 49. HFS 132.83 (2), (3) (a) to (c), (5), (6), (7) (b), (c), (d) 2., (e), (f), (g) 1., (h) 1. to 4. and 5. a., and (j) 1. and 2. b. are repealed.

SECTION 50. HFS 132.83 (7) (d) 1. and (g) 2. are renumbered (7) (d) and (g).

SECTION 51. HFS 132.83 (7) (h) 5. (intro.) and b. are consolidated, renumbered HFS 132.83 (7) (h) 5. and amended to read:

HFS 132.83 (h) 5. *Ventilation.* In period C facilities: ~~b. All~~ all rooms in which food is stored, prepared or served, or in which utensils are washed shall be well-ventilated. Refrigerated storage rooms need not be ventilated.

SECTION 52. HFS 132.83 (7) (j) 2. (intro.) and a. are consolidated, renumbered HFS 132.83 (j) 2. and amended to read:

HFS 132.83 (7) (j) 2. In period B and C facilities: ~~At~~ at least one duplex-type outlet shall be provided for every resident's bed; ~~and.~~

SECTION 53. HFS 132.84 (1) (a) is amended to read:

**HFS 132.84 Design.** (1) RESIDENTS' ROOMS. (a) *Assignment of residents.* Sexes shall be separated by means of separate wings, floors, or rooms, except in accordance with ~~s. HFS 132.31 (1) (f) 1s. 50.09 (1) (f) 1, Stats.~~

SECTION 54. HFS 132.84 (1) (b) 2. and 3., (c), (d), (e), (f), (j), (k), (2) (b) to (d), (e) 1. a. to d. and 2., (f) 1. to 3., 5., (g), (5), (6) (b) to (d), (7) to (14) and (16) are repealed.

SECTION 55. HFS 132.84 (1) (b) (intro.) and 1. are consolidated, renumbered HFS 132.84 (1) (b) and amended to read:

HFS 132.84 (1) (b) *Location.* No bedroom housing a resident shall: ~~1. Open~~open directly to a kitchen or laundry;

SECTION 56. HFS 132.84 (2) (e) (intro.) and 1. (intro. ) are consolidated, renumbered HFS 132.84 (2) (e) and amended to read:

HFS 132.84 (2) (e) *Period A and B.* In period A and B facilities: ~~1. Separate~~ separate toilet and bath facilities shall be provided for male and female residents ~~in at least following number:~~

SECTION 57. HFS 132.84 (2) (f) (intro.) and 4. are consolidated, renumbered HFS 132.84 (2) (f) and amended to read:

HFS 132.84 (2) (f) *Period C.* In period C facilities: ~~4. Every~~ every tub, shower, or toilet shall be separated in such a manner that it can be used independently and afford privacy.

SECTION 57m. HFS 132.84 (6) Note is created to read:

HFS 132.84 (6) Note: The department encourages and supports gerontological design principles that promote innovation and a diversity of approaches.

SECTION 58. EFFECTIVE DATE: The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and Family Services

Dated:

SEAL:

Kevin R. Hayden, Department Secretary

**ADMINISTRATIVE RULES  
REPORT TO LEGISLATURE  
CLEARINGHOUSE RULE 06-053**

By the Department of Health and Family Services relating to ch. HFS 132 relating to nursing homes, and affecting small businesses.

**Basis and Purpose of Proposed Rule**

The Department has general authority under s. 50.02, (1) Stats., to provide uniform, statewide, licensing, inspection and regulation of nursing homes. The Department is required under ss. 50.02 (2), (3), 50.04, 50.095 (3) (am) and 50.098, Stats., to promulgate rules relating to standards for care, treatment, health, safety, rights, welfare and comfort of residents in nursing homes. Through this rule the Department proposes to repeal or revise outdated or overly prescriptive rule provisions and to repeal provisions that are duplicative of the requirements that are already stated in and monitored under ch. 50, Stats., 42 CFR 483, or chs. Comm 61 to 65. In addition, the Department proposes to create rule provisions requiring applicants for nursing home licensure to disclose the qualification of any person with authority to manage the nursing home; any occurrences that required closure of a residential or health care facility or that required moving its resident; and any financial difficulties that a person or business entity connected with the nursing home has had in operating a residential or health care facility. The Department further proposes to create a quality assurance and improvement committee to distribute funds as allowed under ss. 49.499 (2m), Stats., to nursing homes for innovative projects that improve the effectiveness of operating a nursing home and that improve the quality of life of residents.

**Responses to Legislative Council Rules 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**

Pursuant to criteria adopted by the Department, the proposed rule may affect a substantial number of small businesses because at least 10% of the nursing homes affected by the proposed rules may be considered small businesses. However, the proposed rules will not have a significant economic impact on these nursing homes because the proposed rules do not include increased reporting, design or operational standards, or capital requirements and none of the proposed changes are expected to increase operating expenditures, including annualized capital expenditures, or reduce revenues by more than the 2005 consumer price index (CPI) of 3.4%. Any costs that may be associated with the additional application requirements most likely will not meet or exceed the 2005 CPI. The proposed removal of outdated, prescriptive, and duplicative provisions are expected to lower costs for all nursing homes.

Therefore, the Department concludes that the proposed rules may affect a substantial number of small businesses that are nursing homes, but the proposed rules will not have an adverse significant economic impact on those businesses.

## Changes to the Analysis or Fiscal Estimate

### Analysis

The Department made grammatical changes to the rule's analysis.

### Fiscal Estimate

No changes were made to the fiscal estimate.

## Public Hearing Summary

The Department began accepting public comments on the proposed rule on May 18, 2006. Public hearings were held in Milwaukee on July 24; Madison on July 25; Green Bay on July 26; Rhinelander on July 28 and in Eau Claire on July 31. Hearings were held from 9:00 a.m. to 3:00 p.m. Ten people attended the public hearings. Staff in attendance included Paul Peshek, Pat Benesh, Bob Huncosky and Joseph Bronner. The hearing record remained open for public comments until 4:30 p.m. on August 1, 2006.

## List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted comments on the proposed rule, the position taken by the commenter and whether or not the individual provided written or oral comments.

Name and Address	Position Taken (Support or Opposed)	Action (Oral or Written)
1. Catherine Hackney Sunrise Care Center, Inc. 3540 South 43 <sup>rd</sup> Street Milwaukee, WI 53220	None taken	Oral
2. Walter Vine Sunrise Care Center, Inc. 3540 South 43 <sup>rd</sup> Street Milwaukee, WI 53220	Support	Oral
3. Julie Jolitz LindenGrove - Waukesha 425 North University Drive Waukesha, WI 53188	None taken	Oral
4. Ann Moore St. John's on the Lake 1840 North Prospect Avenue Milwaukee, WI 53202	Support, in part	Oral
5. John George St. John's on the Lake 1840 North Prospect Avenue Milwaukee, WI 53202	None taken	Oral
6. Russell McLaughlin Society for the Advancement of Gerontological Environments-SAGE	None taken	Oral and Written

	3260 North Cambridge Avenue Milwaukee, WI 53211		
7	George Potaracke Board on Aging and Long Term Care 1404 Pankratz, Room 111 Madison, WI 53704	Support	Oral
8.	Susan Torgrude Society for the Advancement of Gerontological Environments-SAGE 7 North Pinckney Street, Suite 110 Madison, WI 53703	None taken	Oral and Written
9.	Bill Bender Society for the Advancement of Gerontological Environments-SAGE 3401 Maple Grove Drive Madison, WI 53719	None taken	Oral and Written
10.	Michael Steinhauer Society for the Advancement of Gerontological Environments-SAGE 2913 Pelham Road Madison, WI 53713	None taken	Oral and Written
11.	David Rothmann Society for the Advancement of Gerontological Environments-SAGE 3300 West Brewster Street Appleton, WI 54914	None taken	Written
12.	David Green Society for the Advancement of Gerontological Environments-SAGE 1670 Arlington Drive Oshkosh, WI 54904	None taken	Written
13.	Cheryl Becker Wisconsin Health Information Management Association 2350 South Avenue, Suite 107 La Crosse, WI 54601	None taken	Written
14	Victoria Wolf "vwolf"<volf@powerweb.net>	None taken	Written
15.	Norma Matejka St. Anne's Home for the Elderly 3800 North 92 <sup>nd</sup> Street Milwaukee, WI 53222 "Tom Matejka"<tmatejka@wi.rr.com>	None taken	Written
16.	Charlotte Lefert Wisconsin Health Information Management Association 2895 Forest Down Madison, WI 53711	None taken	Written
17.	Jean Curtis	Support	Written

	Wisconsin Representatives of Activity Professionals P. O. Box 1073 Eau Claire, WI 54702		
18.	Mary Ellen O'Connell Wisconsin Representatives of Activity Professionals P. O. Box 1073 Eau Claire, WI 54702	Support	Written

19	Larry Schneider Chairman SAGE WI 8055 Chardon Road Kirtland, OH 44094	None taken	Written
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### Public Comments and Department Responses

The number(s) following each comment corresponds to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

Rule Provision	Public Comment	Department Response
General	Add spirituality to the code. Encourage facilities to provide person centered care and implement culture change. Use people or person first language that reflects person-centered care. Use words like neighborhood, loved ones, facilities or neighborhoods that provide skilled health care and eliminate words like ward clerk, residents and nursing homes. Use language that conveys choice. Instead of saying the resident has the right to refuse care or treatment say the resident has the right to decline care or treatment. 1,2,4,5	The Department has added a Note at s. HFS 132.60 that encourages and promotes the principles of resident self-determination and person directed care. The proposed rule does not preclude a facility from implementing any of the concepts of culture change or person directed care.
General	Cross reference ch. 50, Stats., chs. Comm 61 to 65 and 42 CFR 483. to HFS 132 to ensure nursing homes are aware they need to meet these standards as well. 4,7	The Department has revised s. HFS 132.12 to include language that is consistent with the comment.
HFS 132.16 (3) (a)	The Quality Assurance and Improvement Committee should meet more frequently than annually. The Committee should meet as least quarterly. 4	The proposed rule requires the Quality Assurance and Improvement Committee to meet at least annually. This is a minimum standard. The committee may meet more frequently if the Committee chooses.
HFS 132.45 (3)	Require each nursing home to retain on staff or as a consultant, a person who is at least a graduate of a health information technology program and is accredited by the American Health Information Management Association. 14	The proposed rule requires the administrator to provide qualified personnel to assure the health, safety and welfare of residents (HFS 132.41 (1)). Facilities are expected to have the number and type of staff necessary to meet the needs of their residents. To require nursing homes to employ staff they may not need would increase the cost of health care with little or no benefit.

HFS 132.45 (4) (a) and (b)	Reword these codes to be consistent with federal regulation to ensure nursing homes maintain accurate, organized and accessible clinical records that include sufficient information about the resident assessments, the plan of care, services provided and progress notes. 13,14,15,16	The Department proposes to repeal s. HFS 132.45 (4) (a) and (b) because the provision duplicates federal rules that require facilities to maintain an easily accessible, organized records system. Section HFS 132.45 (4) continues to require facilities to maintain accurate records that include resident assessments, care plans, services provided and progress notes. Section HFS 132.45 (4) is not inconsistent with the federal regulations.
HFS 132.45 (4) (f)	Reword this code to require nursing homes to maintain the clinical record for 5 years after discharge and safeguard the record against loss, destruction and unauthorized use. 13,14,15,16	Section HFS 132.45 (4) (f) as proposed requires nursing homes to retain the clinical record for 5 years following death or discharge of the resident, when a facility closes and when a facility changes ownership. The remaining provisions relative to safeguarding the record against loss, etc., will not be retained as the requirements are contained in federal regulation.
HFS 132.45 (4) (g)	This code states that all entries into the clinical record must be authenticated with the name and title of the person making the entry. The code should state name and licensure initials instead of title. 4	Many staff making entries into the clinical record are not licensed, such as certified nursing assistants. The word "title" is used in the proposed rule to denote a person's position or job description. Staff who are licensed use their name and licensure initials to authenticate their entry in the clinical record. This is acceptable practice.



HFS 132.45 (5) (L)	Amend this code to require nursing homes to prepare transfer and discharge information only at the time of an anticipated discharge, and not for unanticipated discharges such as an emergency discharge to a hospital. This will eliminate the need to prepare information when it is not necessary for continuity of care. This will also make the code similar to the federal regulation. 13,14,15,16	When an unanticipated transfer occurs it is important for the hospital to have information such as diagnosis, current medication, allergies, swallowing capability, etc., to be able to safely meet the needs of their patient. In this case, the proposed rule sets a higher standard than the comparable federal regulation and should be retained.
HFS 132.60	Add code to require the nursing home to encourage and promote the principles of resident self determination through education, availability of choices and a process for the expression of self-determination. 6,8,9,10,11,12,19	<p>Federal regulations require residents to have access to persons and services inside and outside of the nursing home and to participate in all aspects of their care and treatment including choosing treatment options, decisions in care planning and the right to refuse treatment. Because concepts of self-determination and choice are already contained in federal regulation it would be duplicative to also list these rights in state rule. Additionally, none of the provisions contained in the proposed rule preclude a facility from implementing any of the concepts of culture change or person directed care.</p> <p>The Department has added a Note at s. HFS 132.60 to encourage the use of principles related to resident self-determination and person directed care.</p>
HFS 132.63 (5) (a)	This code states that there must no more that a 15 hour time span between a substantial evening meal and breakfast. Some facilities may not allow residents to sleep later in the morning as they would not be in compliance with the regulations. 5	Section HFS 132.63 (5) (a), relating to meals is being repealed in the proposed rule.
HFS 132.69	Recommend including the professional qualifications for activity, recreation, art or music therapist which are recognized in the federal regulation. 17,18	The professional qualifications for these staff are already contained in federal regulation.

HFS 132.70 (2) (a)	Recommend that the rule allow additional time to complete the activity assessment. HSS 132.70 (4) (a) requires facilities to complete a comprehensive assessment before or on the day of admission. This does not allow adequate time to assess an individual's true leisure and social needs and lifestyle preferences. 17,18	Section HFS 132.70 (2) (a) applies only to residents admitted for short-term care. Short-term care includes respite care for less than 28 days or restorative care for less than 90 days. This covers a very small number of residents. Since their stay is relatively brief, and in the case of restorative care, focusing on restorative therapy, the time allowed to complete the assessment is brief. For all other admissions the code allows up to 14 days following admission to complete a comprehensive assessment of a resident's needs including activity pursuit.
HFS 132.812 (2)	The proposed rule omits the reference to the 45 day approval time for the department to complete their review of building plans. It is necessary that this standard remain to aid parties in planning, construction and financing. 6,19	The proposed rule does not omit s. HFS 132.812 (2). Section HFS 132.812 (2) allows the Department 45 working days from receipt of an application to complete a plan review.
HFS 132.84 (1)	Add code to require the nursing home to demonstrate that design plans considered incorporation of evidence-based gerontological design principles and use the potential of all aspects of the environment including physical, social and organizational. 6,8,9,10,11,12,19	The Department has added a Note at s. HFS 132.84 to encourage and support gerontological design principles that promote innovation and diversity of approaches. Additionally, a facility is not precluded from implementing concepts of culture change or person directed care.
HFS 132.84 (1) (c)	The code should allow resident bedrooms with the window looking into a greenhouse instead of outside exposure as required by the code. 5	Section HFS 132 84 (1) (c) requires residents' bedrooms to have direct access to a corridor and outside exposure with the floor at or above grade level for the health, safety and welfare of residents. A facility may request a waiver under s. HFS 132.21 from any requirement contained in the rule as long as resident health, safety or welfare is not adversely affected.

HFS 132.84 (3) (a)	This code requires nursing homes to have a nursing station centrally located to meet the needs of residents. In the past, a facility was required to bolt a desk in the hallway that was visible to resident rooms. 5	Neither the existing rule nor the proposed rule requires a centrally located nurses' station. Facilities are required have a staff work station located in an area that allows staff to provide services to all living areas, bedrooms, and resident use spaces. Facilities have the flexibility to place work stations in areas best designed to meet the needs residents.
HFS 132.84 (4) (b)	This code requires nursing homes to have a call system that is visible in all resident rooms and the nursing station. A facility may want to use an advanced system that is soundless and there is concern that this language will prohibit use of this product. 5	Section HFS 132.84 (4) allows the use of advanced technologies which permit facility – wide communication between residents and staff using radio signals. The department will work with providers on a case by case basis to review the use of advanced systems that do not jeopardize the health, safety or welfare of residents.

### ADMINISTRATIVE RULES – FISCAL ESTIMATE

#### DHFS

Original       Updated       Corrected       Supplemental

Administrative Rule Number

HFS 132

Subject

Nursing Homes

#### Fiscal Effect

##### State:

No State Fiscal Effect

Indeterminate

Increase Existing Appropriation       Increase Existing Revenues

Increase Costs – May be possible to absorb within agency's budget.

Decrease Existing Appropriation       Decrease Existing Revenues

Yes       No

Create New Appropriation

Decrease Costs

##### Local:

No Local Government Costs

Indeterminate

1.  Increase Costs

Permissive       Mandatory

3.  Increase Costs

Permissive       Mandatory

5. Types of Local Government Units Affected:

Towns       Villages       Cities

2.  Decrease Costs

Permissive       Mandatory

4.  Decrease Costs

Permissive       Mandatory

Counties       Others:

School Districts       WTCS Districts

Fund Sources Affected

GPR       FED       PRO       PRS       SEG       SEG-S

Affected Chapter 20 Appropriations

##### Private:

No Anticipated Significant Fiscal Effect on the Private Sector

Anticipated Significant Fiscal Effect on the Private Sector

Industry Sector Affected

Health Care and Social Assistance (Sector 62)

Administrative and Support and

Retail Trade (Sector 44 – 45)

Waste Management and Remediation Services (Sector 56)

Arts, Entertainment and Recreation (Sector 71)

Other Services (Sector 81)

Accommodation and Food Services (Sector 72)

Other Specify Sector

Name - Prepared by

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Date

March 21, 2006

Name – OSF Analyst Reviewer

Catherine Lorence

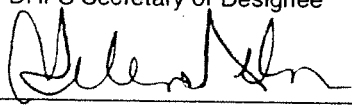
Telephone Number

(608) 266-0128

Date

May 15, 2006

**SIGNATURE** – DHFS Secretary or Designee



Date

May 17, 2006





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
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### CLEARINGHOUSE REPORT TO AGENCY

[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 **06-053**

AN ORDER to ..., relating to nursing homes and affecting small businesses.

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

05-19-2006 RECEIVED BY LEGISLATIVE COUNCIL.

06-16-2006 REPORT SENT TO AGENCY.

RS:LR

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 06-053

#### 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 January 2005.]

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

- a. In SECTIONS 36 and 37 of the rule, the proper treatment of s. HFS 132.69 appears to be a repeal and recreate rather than the treatment that is in the rule.
- b. In SECTION 39 of the rule, s. HFS 132.695 (4) (b) 2. d. and e. appear to be left untreated by the rule, perhaps they should be renumbered.

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

- a. In s. HFS 132.11, the word “and” should be inserted before the number “50.098.”
- b. In s. HFS 132.14 (3) (a) 5., the term “insolvency” should be preceded by “in this subdivision.”
- c. In s. HFS 132.14 (4) (b) 10., the notation “HFS” should be inserted after the notation “s.”

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the plain language analysis, it would be helpful to indicate which of the repealed provisions fall into category of “outdated,” “overly prescriptive,” or “duplicative.” Some of the items that are repealed, such as resident rights, are controversial if repealed unless they appear in some other provision of law.



b. In the plain language analysis, on page 3, in the list of provisions retained, ensure that the syntax is consistent with each bulleted item.

c. In the first paragraph on page 4 of the preface to the rule, insert semicolons after the phrase "resident rights" and the word "staffing."

d. In the first paragraph of the description of the Minnesota rules, change the word "avoidable" to "unavoidable." In the third paragraph, "with in" should be one word.

e. In the summary of factual data and analytical methodologies, second bullet point, delete the word "and" in the second line of the reference to the 2002 economic census.

f. In the summary of factual data and analytical methodologies, third bullet point, the word "reduces" revenues in the seventh line should be replaced by the phrase "revenues are reduced." In the fourth bullet point, the word "contains" should be "contain." In the fifth bullet point, the second sentence should read "the department examined" instead of "the department used."

g. In s. HFS 132.14 (3) (a) 5., there should be a comma after the word "foreclosure."

h. In s. HFS 132.16 (2) (b) 2., should the word "representatives" be "members"?

i. In s. HFS 132.695 (3), the word "wit" should be "with."