

**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 Through this rule the Department proposes to repeal or revise outdated or overly prescriptive rule provisions and to repeal provisions that are duplicative of the requirements that are already stated in and monitored under ch. 50,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; Rhineland 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 rd Street Milwaukee, WI 53220	None taken	Oral
2.	Walter Vine Sunrise Care Center, Inc. 3540 South 43 rd 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"<volff@powerweb.net>	None taken	Written
15.	Norma Matejka St. Anne's Home for the Elderly 3800 North 92 nd 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.

<p>HFS 132.45 (4) (a) and (b)</p>	<p>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</p>	<p>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.</p>
<p>HFS 132.45 (4) (f)</p>	<p>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</p>	<p>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.</p>
<p>HFS 132.45 (4) (g)</p>	<p>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</p>	<p>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.</p>

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	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. 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.
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 or 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.