

Report From Agency

ADMINISTRATIVE RULES REPORT TO LEGISLATURE CLEARINGHOUSE RULE 07-115

By the Department of Health and Family Services relating to ch. HFS 149, The Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

Basis and Purpose of Proposed Rule: Sections 46.016, 227.11 (2) (a), and 253.06 Stats., provide the Department's statutory authority to promulgate rules for the WIC Program. This order repeals and recreates ch. HFS 149, the Department's rules for authorizing and monitoring vendors participating in the WIC Program, established under 42 USC 1786. The WIC Program in Wisconsin is administered by the Department and local agencies that contract with the Department to provide services such as eligibility determination, nutrition counseling, and food benefit issuance for participants. The existing administrative rules are being repealed and recreated through this rulemaking order to reflect changes in Wisconsin statutes and federal regulations.

Effective July 1, 2008, under 2007 Act 20, s. 253.06, Stats., is renumbered s. 49.17, Stats. In addition, the Department of Health and Family Services is renamed Department of Health Services and the statutory authority to promulgate and operate ch. HFS 149 is transferred from the Department of Health Services to the Department of Children and Families. Under an interagency agreement between the Department of Health Services and the Department of Children and Families, the WIC program will be operated by the Department of Health Services. Where appropriate, the rules reflect the changes necessitated by 2007 Act 20.

Responses to Legislative Council Rules Clearinghouse Recommendations: The Department accepted all the comments made by the Legislative Council Rules Clearinghouse and modified the proposed rule where suggested except the following.

Comment 4.t.: "In s. HFS 149.12 (1), it may be more appropriate to provide that the WIC office may impose a civil money penalty in lieu of disqualification instead of requiring it".

Response: The Department has revised s. HFS 149.12 (1) to more clearly state the circumstances under which it may and may not use its discretion concerning civil money penalties.

Final Regulatory Flexibility Analysis: The proposed rules will affect 439 small grocery stores; however, the proposed rules will not have a significant economic impact on these small businesses. Small stores that do not currently maintain regular established hours of operation may have to increase the time open to at least five days a week for a minimum of two four-hour blocks of time. This requirement may result in an increase in sales that would off-set any increase in costs.

Changes to the Analysis or Fiscal Estimate

Analysis: No changes were made 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 via the Wisconsin Administrative Rule Website on December 20, 2007, and accepted comments through February 14, 2008. Five public hearings were held around the state between January 30, 2008 and February 7, 2008. No person attended the public hearings or submitted comments on the proposed rule.