

**CR 13-028**

**ORDER OF  
DEPARTMENT OF HEALTH SERVICES  
TO ADOPT PERMANENT RULES**

The Department received the Governor's written approval of the Final Proposed Rules and Legislative Report on July 18, 2013.

The Wisconsin Department of Health Services proposes an order to amend s. DHS 132.16 (1), relating to the establishment of rules to guide the actions of the quality assurance and improvement committee to review proposals and award moneys for innovative projects in regards to nursing homes.

**RULE SUMMARY**

**Statute interpreted**

Sections 50.02 (2) (a), 50.04 (8), and 227.11 (2) (a), Stats.

**Statutory authority**

Sections 50.02 (2) (a), 50.04 (8), and 227.11 (2) (a), Stats.

**Explanation of agency authority**

Section 50.02 (2) (a), Stats. The department, by rule, shall develop, establish, and enforce regulations and standards for: 1) the care, treatment, health, safety, rights, welfare, and comfort of residents in community-based residential facilities and nursing homes; and 2) the construction, general hygiene, maintenance, and operation of those facilities which, in the light of advancing knowledge, will promote safe and adequate accommodation, care, and treatment of residents in those facilities. The department, by rule, shall also promulgate and enforce rules consistent with this section. Such standards and rules shall provide that intermediate care facilities, which have 16 or fewer beds may, if exempted from meeting certain physical plant, staffing and other requirements of the federal regulations, be exempted from meeting the corresponding provisions of the department's standards and rules. The department shall consult with the department of safety and professional services when developing exemptions relating to physical plant requirements.

Section 50.04 (8), Stats. The department may distribute moneys from the appropriation account under s. 20.435 (6) (g) for innovative projects designed to protect the property and the health, safety, and welfare of residents in nursing homes and to improve the efficiency and cost effectiveness of the operation of facilities so as to improve the quality of life, care, and treatment of residents.

The department shall establish and maintain a quality assurance and improvement committee to review proposals and award moneys for innovative projects, as described in par. (a), that are approved by the committee. The department shall promulgate rules to guide the actions of the quality assurance and improvement committee.

Section 227.11 (2) (a), Stats. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

#### **Related statute or rule**

Sections 20.435 (6) (g) and 49.499 (2m), Stats.

#### **Plain language analysis**

Section 50.04 (8), Stats., as created by 2011 Wisconsin Act 70, authorizes the department to: 1) distribute moneys from the appropriation account under s. 20.435 (6) (g), Stats., for innovative projects designed to protect the property and the health, safety, and welfare of residents in nursing homes and to improve the efficiency and cost effectiveness of the operation of facilities so as to improve the quality of life, care, and treatment of residents; 2) establish and maintain a quality assurance and improvement committee (committee) to review proposals and award moneys for innovative projects that are approved by the committee; and 3) promulgate rules to guide the actions of the committee.

Effective September 1, 2007, the department under the authority in ss. 50.02 (2) (a) and s. 227.11 (2), Stats. (2007-2008) and interpreting, s. 49.499, Stats., created s. DHS 132.16 to direct the establishment of a quality assurance and improvement committee and to guide the actions of the committee. The department believes that s. DHS 132.16 (1) and the committee established thereunder meet the purpose of s. 50.04 (8), Stats., as created by 2011 Wisconsin Act 70.

Accordingly, the department proposes only to amend s. DHS 132.16 (1) to insert a cross-reference to s. 50.04 (8) Stats., as indication of the department's explicit authority to establish and maintain a committee to review proposals and award moneys for projects, and to promulgate rules to guide the actions of the committee.

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

A federal agency's authority to promulgate and implement administrative rules is derived from congress, and such authority may be conferred or explicit. It's possible that each federal agency may

vary on whether their promulgated rules reference the statutory authority to promulgate and implement the rules.

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

A state agency's authority to promulgate and implement administrative rules in Minnesota, Illinois, Iowa, Michigan, and Wisconsin is derived from the states' respective legislatures and such authority may be conferred or explicit. It's possible that each state and each state agency may vary on whether their promulgated rules reference the authority to promulgate and implement the rules.

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

The department reviewed s. DHS 132.16 and determined that the rule meets the requirements of s. 50.04 (8), Stats.

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

The proposed rule change will have no effect on businesses.

### **Effect on small business**

The proposed rule change will have no effect on businesses.

### **Agency contact person**

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### **Statement on quality of agency data**

To prepare the text and analysis of the proposed rules, the department relied on the language in ss. 49.499 (2m) and 50.04 (8), Stats., and s. DHS 132.16 (1).

### **Place where comments are to be submitted and deadline for submission**

The department will not hold a public hearing or formally accept public comments on the proposed rule as permitted under s. 227.16 (2) (b), Stats.

**RULE TEXT**

SECTION 1. DHS 132.16 (1) is amended to read:

DHS 132.16 [http://docs.legis.wisconsin.gov/document/administrativecode/DHS\\_132.16\(1\)\(1\) FUNDS](http://docs.legis.wisconsin.gov/document/administrativecode/DHS_132.16(1)(1)FUNDS). Pursuant to ~~s. ss.~~ ss. 49.499 (2m) and 50.04 (8), 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.

SECTION 2. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health Services

Dated: October 17, 2013

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Kitty Rhoades, Secretary

SEAL: