

**WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT EMERGENCY RULES**

The Wisconsin Department of Health Services proposes an order to amend DHS 110.50 (3) (a) and to repeal DHS 110.50 (1) (d) 1., 3., and 4., DHS 110.50 (3) (b).

FINDING OF EMERGENCY

Preservation of the public peace, health, safety, or welfare necessitates adoption of an emergency rule because some emergency medical services (EMS) providers have reduced staff and/or volunteer availability due to practitioners with high-risk characteristics such as age and other health issues who have either removed themselves or have been removed from clinical rotations. Flexibility in staffing requirements will allow providers to maximize the use of available staff to respond to calls for service without delay or interruption.

RULE SUMMARY

Statute interpreted

Chapter 256, Stats.

Statutory authority

Section 227.11 (2) (a), Stats.: Rule-making authority is expressly conferred on an agency as follows:

(a) 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:

1. 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.
2. 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.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer rule-making 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.

Section 256.15 (13), Stats.:

- (a) The department may promulgate rules necessary for administration of this section.
- (b) The department shall promulgate rules under subs. (8) (b), (c) and (e) and (8m).
- (c) The department shall promulgate rules that specify actions that emergency medical services practitioners may undertake after December 31, 1995, including rules that specify the required involvement of physicians in actions undertaken by emergency medical services practitioners.

Section 227.24 (1) (a), Stats.: An agency may, except as provided in s. 227.136 (1), promulgate rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Section 252.02 (4) and (6) Stats.:

(4) . . . [T]he department may promulgate and enforce rules or issue orders for guarding against the introduction of any communicable disease into the state, for the control or suppression of communicable diseases, for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by a communicable disease.

. . . (6) The department may authorize and implement all emergency measures necessary to control communicable diseases.

Explanation of agency authority

The department is directed by s. 256.15 (13), Stats., (4)(g) to promulgate any rules necessary to administer s. 256.15, Stats. with respect to certification, and specify actions that emergency medical services practitioners may undertake to provide emergency medical services.

Furthermore, s. 252.02 (4) and (6) permit the department to promulgate rules to help guard against the introduction or spread of communicable disease, and to introduce all emergency measures necessary to control communicable disease. *See also Wisconsin Legislature v. Palm*, 2020 WI 42, ¶¶29–31, 391 Wis. 2d 497, 942 N.W.2d 900 (finding that any act or order of the department issued under s. 252.02, Stats., constitutes a “rule” as defined in s. 227.01 (12) (a)–(zz), and that such a rule may be promulgated as a emergency rule when an exigency demands such promulgation).

Related statute or rule

None.

Plain language analysis

The department proposes to temporarily suspend or revise provisions of ch. DHS 110 due to extraordinary circumstances created by the COVID-19 pandemic.

Many EMS providers are currently short-staffed due to staff members who are at higher risk of contracting COVID-19 due to age or pre-existing conditions. Under the certification and staffing requirements in ch. DHS 110, it is likely that EMS providers will continue to struggle to respond to these staffing shortages due to expiring certifications or insufficient staff to comply with the numbers requirements in s. DHS 110.50. Temporarily suspending these requirements will allow EMS providers to continue to promptly respond to emergency service calls without delay due to staffing shortages, and will further encourage social distancing practices—thereby helping prevent the spread of COVID-19—amongst staff who are more susceptible to COVID-19 due to age or pre-existing conditions.

Additionally, ss. DHS 110.07 (1) (d) and 110.13 (5) establish, respectively, preconditions for renewal of EMS licensure or certification (such as completing required CPR classes), and requirements that an EMT-intermediate or EMT-paramedic maintain current certification in advanced cardiac life support. Availability of these recertification classes is limited due to closures at technical colleges and other facilities that provide CPR and ACLS classes to comply with these requirements. Temporary suspension of these rule provisions will allow practitioners who are otherwise qualified except for these requirements to continue to provide necessary and potentially life-saving services to Wisconsinites..

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

There do not appear to be existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

Comparison with rules in adjacent states

Illinois:

Illinois statute confers upon the Illinois Department of Public Health (IDPH) the authority and responsibility to oversee and regulate emergency medical services in the state. The IDPH EMS Division is the responsible agency and handles a number of their rules similarly to Wisconsin. Their licensure period is four years compared to our current two year and proposed three year time frames. They do not provide for flexible staffing nor do they require two paramedics on an advanced life support ambulance, leaving staffing decisions to the locality. They are in a transition phase now on several rules including accreditation of paramedic training centers, community EMS, and providing emergency care to domestic animals. Applicable law and administrative rule are found in 210 ILCS 50 and 77 Ill. Adm. Code 515.

In April 2020, Governor J.B. Pritzker issued Executive Order 2020-26, which suspended provisions of the state's EMS Systems Act, 210 ILCS 50/1 et seq., and corresponding regulations in Title 77, Part 515 of the Illinois Administrative Code to provide greater flexibility to EMS personnel and service providers.

Iowa:

Iowa statute designates the Iowa Department of Public Health as the lead agency for coordinating and implementing the provision of emergency medical services in the state. The Bureau of Emergency and Trauma Services is the responsible agency. There are several differences between Iowa and Wisconsin – Iowa does not require two paramedics on an advanced life support ambulance, nor do they require agency operational plans, utilize special events plans, require a specific patient care reporting system or have community EMS programs. Iowa utilizes a different licensure period than Wisconsin does and they have a form of flexible staffing as well as accredited paramedic training centers. Applicable law and administrative rule are found in Iowa Code § 147A and Iowa Adm. Code 641.

Michigan:

Michigan Public Health Code 333.20910 authorizes the Michigan Department of Health and Human Services to develop, coordinate, and administer a statewide emergency medical services system. Michigan has a three-year licensure period and paramedic training programs must be accredited. In addition, the state provides the patient care reporting system at no charge while also allowing agencies to choose their own report format as long as it is National Emergency Medical Services Information System (NEMSIS) compliant. Michigan does not yet have community EMS and are in the midst of their rule-writing process on several issues. Applicable law and administrative rule are found in Michigan Public Health Code § 333.20910 and Mich. Admin. Code R 325.

In April 2020, Governor Gretchen Whitmer issued an executive order suspending EMS licensing and regulation requirements contained in Mich. Admin. Code R 325. Specifically, the order reduced staffing and licensing requirements for ambulances and extended the expiration dates for all EMS personnel licenses

Minnesota:

Minnesota statute authorizes the emergency medical services regulatory board to administer and enforce both statute and administrative rule regarding emergency medical services through the executive director and appointed staff. Minnesota did not respond to requests for information for this comparison. Staff have determined that Minnesota has a two-year licensure period for individuals and services although services utilize eight separate licensure periods based on date and geographic location. It is unclear what Minnesota uses for patient care reporting but they do require National Emergency Medical Services Information System (NEMSIS) compliant data submission. Minnesota currently

has a community paramedic program under statute. Applicable law and administrative rule are found in Minnesota State Statute Chapter 144E and Minnesota Administrative Rule Chapter 4690.

Governor Tim Walz issued Emergency Executive Order 20-23 on March 27, 2020. The Governor's order authorized Minnesota's Emergency Medical Services Regulatory Board to modify and relax EMS licensing, continuing education, and personnel requirements due to the COVID-19 pandemic. On July 13, 2020, Governor Walz extended Emergency Executive Order 20-23 until August 12, 2020.

Summary of factual data and analytical methodologies

The department relied upon the requirements under s. 227.24, Stats. and information provided to the department by the legislative reference bureau. Additionally, the department relied on factual accounts from EMS providers throughout the state with regard to staffing concerns due to the COVID-19 pandemic.

Analysis and supporting documents used to determine effect on small business

The proposed emergency rule is in consistent with the work done on the permanent DHS 110 rule revision project currently underway. That work was completed by an advisory committee which included representatives of stakeholder organizations.

Furthermore, the Wisconsin State Fire Chiefs Association, Professional Fire Fighters of Wisconsin, the Wisconsin EMS Association, and the Professional Ambulance Association of Wisconsin were all aware of the emergency order and given the opportunity to provide comments.

Effect on small business

The emergency rule is anticipated to have little to no economic impact on small businesses.

Agency contact person

Chris Gjestson
Administrative Rules Coordinator
Division of Public Health
1 W. Wilson St.
Madison, WI 53701
Christopher.Gjestson@dhs.wisconsin.gov
608-266-0472

Statement on quality of agency data

The data sources referenced and used to draft the rules and analyses are objective, accurate, and reliable as discussed in the "Summary of Factual Data and Analytical Methodologies."

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 110.50 (1) (d) 1., 3. & 4 are repealed.

SECTION 2. DHS 110.50 (3) (a) is amended to read:

DHS 110.50 (3) (a) - An ambulance service provider may staff and operate reserve ambulances at a lower service level appropriate to the licensure level of the available staff ~~if it obtains approval from the department.~~ The reserve or back-up ambulance shall be stocked and equipped appropriately for the level of service provided. ~~The ambulance service provider shall request approval through submission of an operational plan amendment.~~

SECTION 5. DHS 110.50 (3) (b) is repealed.

SECTION 6. EFFECTIVE DATE: The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper and will remain in effect as provided in s. 227.24.

Wisconsin Department of Health Services

Dated: _____

Andrea Palm, Secretary-designee

SEAL: