



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 198
[2013 Assembly Bill 448]

**Drug Disposal Programs and the
Disposal of Prescription Drugs**

2013 Wisconsin Act 198 (hereinafter, “the Act”), relates to the authority to operate a drug disposal program and the authority to dispose of prescription drugs.

Drug Disposal Programs

The Act provides that no person may receive a “household pharmaceutical item” pursuant to a drug disposal program unless the person is either authorized to do so by the Department of Justice (DOJ); a political subdivision (county, town, village, or city); or federal law. The Act does not apply to sharps collection stations that are operated in compliance with Department of Natural Resources (DNR) rules. Under the Act, a “household pharmaceutical item” is defined to mean:

- Any of the following, if lawfully possessed by an individual for the individual’s own use, for the use of a member of the individual’s household, or for the use of an animal owned by the individual or a member of the individual’s household:
 - A drug, prescription drug, or a controlled substance or controlled substance analog if it is located in or comes from a place where the individual, a member of the individual’s household, an in-home hospice service, or an adult family home serving fewer than five adult members manages the use of the drug, prescription drug, or controlled substance or controlled substance analog.
 - A device as defined in s. 450.01 (6), Stats.,¹ or an object used for administering a drug if the device or object is located in or comes from a place where the

¹ Section 450.01 (6), Stats., defines a device as “an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which does not achieve any of its principal intended purposes through chemical action within or on the body of a person or other animal, is

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

individual, a member of the individual's household, an in-home hospice service, or an adult family home serving fewer than five adult members manages the use of the device or object.

- A "household pharmaceutical item" does not include either of the following:
 - any item that may be contaminated with antineoplastic chemotherapy drugs, including objects used to administer drugs, gloves, and other items that have come into contact with chemotherapy drugs.
 - any item containing elemental mercury.

Programs Approved by DOJ

The Act authorizes DOJ to grant, without a hearing, written authorization to a person to operate a drug disposal program if all of the following conditions apply:

- The person adopts written policies and procedures that comply with the following requirements:
 - The person that operates a drug disposal program, except a program that is authorized under federal law, establishes and promptly updates as appropriate, written policies and procedures that do all of the following:
 - Describes in detail the manner in which the program operates, including identification of the kinds of household pharmaceutical items that may be received under the program, whether the program may receive controlled substances and controlled substance analogs, whether the household pharmaceutical items will be transferred by mail under the program, and the locations at which the household pharmaceutical items may be transferred in person under the program.
 - Lists the name, address, telephone number, and 24-hour contact information for one or more persons in this state who are responsible for the operation of the program.
 - Ensures compliance with current law related to Wisconsin's Pharmacy Examining Board and Uniform Controlled Substances Act; any current law relating to medical waste, solid waste, or hazardous waste; and with any other applicable federal or state law.
 - The operation of a drug disposal program, including a drug disposal program that is authorized under federal law, shall immediately cease if a law enforcement officer, a federal law enforcement officer, DOJ, or another federal or state agency notifies a designated contact person for the program that the

not dependent upon being metabolized for the achievement of any of its principal intended purposes, and is: (a) recognized by the U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States, or any supplement to either of them; (b) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals; or (c) intended to affect the structure or any function of the body of persons or other animals."

program is in violation of any federal or state law that is enforceable by that officer, DOJ, or other agency. The program may resume operation only upon the program's receipt of written notice from the officer, DOJ, or other agency that the program is no longer in violation of the federal or state law.

- Each person that operates a drug disposal program in this state must, within 30 days after the drug disposal program begins operation, notify and provide all of the following information to DNR:
 - The location and hours of operation of the drug disposal program.
 - The name, address, telephone number, and 24-hour contact information for one or more persons in Wisconsin who are responsible for the operation of the program.
 - A description of the household pharmaceutical items the drug disposal program may receive.
- If the drug disposal program will receive household pharmaceutical items in any manner other than an in-person transfer, the person demonstrates to DOJ's satisfaction that the transfers will comply with any federal or state law applicable to the transportation and delivery of pharmaceutical items.

The Act also requires DOJ to approve the policies and procedures if they do not violate the requirements of the Act or any other applicable federal or state law. If DOJ disapproves the policies and procedures, it shall state the reasons in writing and at any time, the person may resubmit revised policies and procedures to DOJ for its review and approval. Also, a person may not revise policies and procedures already approved by DOJ unless DOJ approves the revisions. The Act provides that any determination by DOJ is not subject to judicial review.

Programs Approved by a Political Subdivision

In order for a political subdivision to operate a drug disposal program, or grant written authorization to another person to do so, the Act requires that all of the following apply:

- The political subdivision or authorized person operates the drug disposal program only within the boundaries of the political subdivision, with one exception. A drug disposal program may operate within more than one political subdivision if DOJ authorizes the program, as described above; all of the political subdivisions within which the drug disposal program operates also authorize the program; or the program is authorized under federal law.
- The person adopts written policies and procedures that comply with the requirements listed above.
- The legal counsel for the political subdivision, or at the discretion of the political subdivision, DOJ, if the legal counsel is **not** an employee of the political subdivision, reviews and approves of the policies and procedures for the drug disposal program and any changes to them.

- The drug disposal program receives pharmaceutical items only by means of delivery in person by a person that lawfully possesses the pharmaceutical item, unless the drug disposal program is authorized under federal law to receive it by other means or DOJ also approves the program.

The Act provides that when legal counsel, or DOJ if appropriate, reviews the policies and procedures, it must approve them in writing, if they do not violate the requirements of the Act and do not violate any other applicable federal or state law. The political subdivision must also provide DOJ with a copy of the approval and a copy of the policies and procedures, or changes thereto. Also, the Act provides that any determination by DOJ is not subject to judicial review.

Authorization to Dispose of Prescription Drugs

The Act provides that a person who lawfully possesses a prescription drug may destroy the prescription drug at a drug disposal program. The Act also provides that a person who lawfully possesses a prescription drug, or his or her guardian, trustee, or personal representative, may grant written authorization to another person for purposes of disposing of the prescription as follows:

- A competent adult may grant written authorization to his or her domestic partner, or relative by blood, marriage, or adoption within the third degree of kinship.
- A person's guardian may grant written authorization to an adult who is related to the guardian's ward by blood, marriage, or adoption within the third degree of kinship, or to a domestic partner of the ward.
- A personal representative or a trustee may grant written authorization to an adult beneficiary of the estate or trust.
- To be valid, the written authorization must satisfy all of the following conditions:
- The authorization describes with reasonable specificity each prescription drug that is to be disposed of.
- The authorization is in the physical possession of the person authorized to dispose of the prescription drug and each prescription drug described in the authorization is, within 24 hours after the authorization is signed by the person granting the authorization, transferred to a drug disposal program or otherwise lawfully disposed of.
- The authorization and each prescription drug to be disposed of were obtained without consideration.

Effective date: This Act takes effect on July 1, 2015.

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