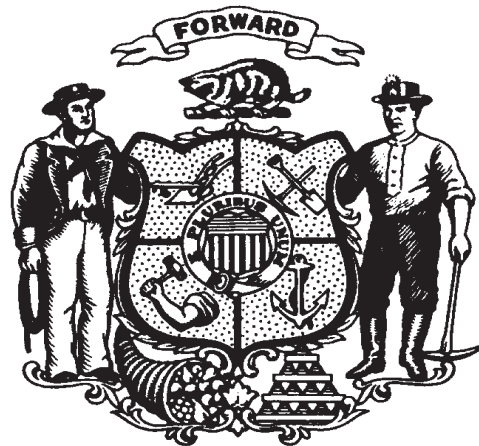


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Table of contents

Emergency rules now in effect.	Pages 4 to 9
Agriculture, Trade and Consumer Protection:	Rules relating to chronic wasting disease in cervids.
Commerce:	<u>Financial Resources for Businesses & Communities, Chs. Comm 105–128</u> Rules relating to the use of rapid response funds in economically depressed areas of Wisconsin.
Employee Trust Funds:	Rules relating to the date as of which annual post-retirement annuity adjustments will occur.
Health and Family Services:	<u>Medical Assistance, Chs. HFS 100—</u> Rules relating to the Medicaid Family Planning Demonstration Project. <u>Health, Chs. HFS 110—</u> Rules relating to licensing of EMTs and certification of first responders, incorporating responding to acts of terrorism as a training component. Rules relating to certification for the identification, removal and reduction of lead-based paint hazards. Rules relating to critical access hospitals.
Higher Educational Aids Board:	Rules relating to the Talent Incentive Program Grant.
Natural Resources:	<u>Fish, Game, etc., Chs. NR 1—</u> Rules relating to the control and management of chronic wasting disease. Rules relating to the closure of carp fishing on Cedar Lake and connected waters in Polk and St. Croix counties. Rules relating to captive wildlife. Rules relating to the control and management of chronic wasting disease.
Nursing:	Rules relating to malpractice insurance coverage for nurse-midwives.
Workforce Development:	<u>Public Works Construction Contracts, Chs. DWD 290–294</u> Rules relating to the annual adjustment of thresholds for application of prevailing wage rates.
Scope statements.	Page 10
Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:	Rules relating to the contents of applications for licensure.
Agriculture, Trade and Consumer Protection:	Rules relating to technical rule changes.

Medical Examining Board:	Rules relating to the regulation of occupational therapists in Wisconsin.
Regulation and Licensing:	Rules relating to the regulation of licensed and certified appraisers.
Submittal of rules to the legislative council clearinghouse.	Pages 11 to 13
Financial Institutions – Banking:	Relating to ch. DFI–Bkg 73, adjustment service companies.
Health and Family Services:	Relating to ch. HFS 124, critical access hospitals. Relating to ch. HFS 196, the certification of food managers.
Natural Resources:	Relating to ch. NR 45, use regulations on DNR lands. Relating to ch. NR 46, the administration of forest crop law and the managed forest law. Relating to chs. NR 204, 214, 219 and 518, land application of materials containing PCBs. Relating to chs. NR 460, 465 and 484, national emission standards for hazardous air pollutants for facilities that apply surface coatings to large appliances.
Tax Appeals Commission:	Relating to petitions for review.
Rule–making notices.	Pages 14 to 27
Financial Institutions – Banking:	Hearing to consider repeal of s. DFI–Bkg 73.03 (8), relating to adjustment service companies.
Health and Family Services:	<u>Community Services, Chs. HFS 30–</u> <u>Medical Asst., Chs. HFS 100–</u> <u>Health, Chs. HFS 110–</u> Proposed non–substantive rule revision in various chapters. <u>Health, Chs. HFS 110–</u> Hearing to consider revision of ch. HFS 196, relating to certification of food managers.
Tobacco Control Board:	See Notice under Health and Family Services.
Submittal of proposed rules to the legislature.	Page 28
Accounting Examining Board:	(CR 02–149) – Ch. Accy 3
Administration:	(CR 03–002) – Ch. Adm 19
Health and Family Services:	(CR 03–001) – Ch. HFS 78 (CR 03–019) – Ch. HFS 163
Higher Educational Aids Board:	(CR 02–148) – Ch. HEA 5
Natural Resources:	(CR 02–097) – Chs. NR 406 and 445 (CR 02–144) – Ch. NR 25 (CR 03–016) – Chs. NR 10, 12 and 45 (CR 03–017) – Chs. NR 10 and 19
Regulation and Licensing:	(CR 02–125) – Chs. RL 140 to 142

Veterans Affairs: (CR 03-024) – Ch. VA 2

Rule orders filed with the revisor of statutes bureau. Page 29

Architects, Landscape Architects, Professional Engineers,
Designers and Land Surveyors: (CR 02-111) – Ch. A-E 3

Natural Resources: (CR 02-061) – Ch. NR 109
(CR 02-114) – Ch. NR 169
(CR 02-122) – Ch. NR 191
(CR 02-134) – Chs. NR 140 and 811
(CR 02-142) – Ch. NR 20

Public Service Commission: (CR 01-077) – Ch. PSC 130
(CR 02-115) – Ch. PSC 114

Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection

Rules adopted revising **chs. ATCP 10 and 11** relating to chronic wasting disease in cervids.

Finding of emergency

(1) Chronic wasting disease is a contagious disease known to affect several species of the cervid family, including elk, white-tailed deer, black-tailed deer, red deer and mule deer. The disease is always fatal. At the present time, there is no scientific evidence to suggest that chronic wasting disease is transmitted to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(2) The cause of chronic wasting disease is not fully understood. The disease appears to be related to aberrant protein molecules called prions. By an unknown mechanism, prions apparently cause other protein molecules in the cervid brain to take aberrant forms. The disease causes microscopic vacuoles (holes) in the brain. Diseased cervids become emaciated, display abnormal behavior patterns, and experience loss of bodily functions.

(3) Science does not understand how chronic wasting disease is spread. It is thought that infected cervids can transmit the disease to other cervids, either directly or by contaminating their environment. It appears that cervid-to-cervid contact facilitates the spread of the disease.

(4) On February 27, 2002, the national veterinary services laboratory informed Wisconsin that it had confirmed chronic wasting disease for the first time in this state. The laboratory confirmed the disease in test samples collected from 3 free-ranging white-tailed deer killed by hunters during the

November 2001 gun deer season. The Wisconsin Department of Natural Resources (DNR) collected these samples as part of a statewide disease surveillance program. With the voluntary cooperation of hunters, DNR collected test samples from deer killed and registered by hunters at selected hunting registration sites around the state. DNR collected a total of 345 samples statewide, including 82 samples at the Mt. Horeb registration station. The 3 deer that tested positive for chronic wasting disease were all registered at the Mt. Horeb station. The 3 deer were shot in close proximity to each other in Vermont Township in Dane County. We do not know how the 3 deer were exposed to chronic wasting disease, nor do we know the extent of infection in the free-ranging herd.

(5) We do not know whether any captive cervids in Wisconsin are infected with chronic wasting disease (there are no findings to date). If captive cervids are infected, the close proximity of cervids within a captive herd may facilitate the spread of disease within the herd. The movement of infected cervids between herds may spread the disease to other herds. Contact between free-ranging and captive cervids may also spread the disease.

(6) Persons importing captive cervids to Wisconsin must obtain an import permit from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Importers must identify the herd of origin and the herd of destination. A veterinarian must certify that the cervids appear to be in good health, and that they have been tested for tuberculosis and brucellosis. There is no chronic wasting disease testing requirement, because there is no way to test live cervids for the disease.

(7) Since 1995, a total of 2,604 captive cervids have been legally imported into Wisconsin. This includes 2,020 elk, 191 whitetail deer, 12 mule deer and 387 other cervids. Chronic wasting disease has been found in free-ranging herds or in some captive herds in Colorado, Nebraska, Oklahoma, Kansas, Montana, South Dakota, and Wyoming. Since 1995, a total of 410 captive cervids have been legally imported to Wisconsin from these states. Most other states lack active chronic wasting disease surveillance programs, so the full extent of the disease is not known with certainty.

(8) DATCP currently registers captive cervid herds, other than white-tail deer herds. DNR currently licenses captive white-tail deer herds. Since 1998, DATCP has sponsored a voluntary program to monitor for chronic wasting disease among the captive herds that it registers. Approximately 50 herd owners currently participate in this program.

(9) Since chronic wasting disease was confirmed in this state, there has been widespread public concern about the disease. The public has expressed concern about the health of free-ranging deer and elk, and about potential threats to humans, livestock and deer-related businesses. Hunters and consumers have expressed food safety concerns. There is currently no scientific evidence to suggest that chronic wasting disease is transmissible to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

(10) In order to protect the public peace, health, safety and welfare, it is necessary to take immediate steps to prevent and control the spread of chronic wasting disease in this state. Among other things, it is necessary to impose further controls on the import and movement of captive cervids and to implement a mandatory monitoring program. DATCP may adopt rules to implement these measures.

(11) Normal rulemaking procedures require up to a year or more to complete. A temporary emergency rule is needed to protect the public peace, health, safety and welfare, pending the adoption of longer-term rules. This emergency rule will implement essential prevention and control measures on an immediate, interim basis.

Publication Date: April 9, 2002
Effective Date: April 9, 2002
Expiration Date: September 6, 2002
Hearing Date: May 22, 2002
Extension Through: May 31, 2003

Commerce (Financial Resources for Bus. and Communities, Chs. Comm 105–128)

Rules were adopted revising **ch. Comm 108**, relating to the use of rapid response funds in economically depressed areas of Wisconsin to preserve economic development.

Finding of emergency

The Department of Commerce finds that an emergency exists and that the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare.

Analysis of Rules

Statutory Authority: ss. 560.02 (4) and 560.04, Stats.

Statute Interpreted: s. 560.04, Stats.

Pursuant to s. 560.04, Stats., the Department of Commerce (Commerce), as a part of its comprehensive duties involving community development and economic development, administers federal funds in the form of grants to eligible communities related to economic development. Under current rules, the maximum amount of funds that may be awarded to a community is \$1 million per calendar year and the maximum amount that a business may borrow from a local government under the economic development program is also \$1 million during any 5-year period. The timing and dollar limitations specified in the rules are barriers to providing a comprehensive and rapid response to changing economic conditions in a community.

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal community development block grant funds to positively impact local economies. Under the rules, as currently structured, Commerce's ability to respond rapidly to actual or potential plant closings or relocations in a specific geographical region is limited. The following emergency rule will allow Commerce to respond more rapidly to changing economic conditions.

This rule provides Commerce, working collaboratively with local communities, the ability to quickly respond to changing economic conditions due to potential plant closings, business relocations, layoffs, and other economic factors that could negatively affect the economic conditions in the community and state.

Publication Date: March 22, 2003
Effective Date: March 22, 2003
Expiration Date: August 19, 2003

Employee Trust Funds

Rules adopted amending **s. ETF 20.25 (1) (a) and (2)** regarding the date as of which annual post-retirement annuity

adjustments under ss. 40.27 (2) and 40.28 (2), Stats., will occur.

Finding of emergency

The Department of Employee Trust Funds, Employee Trust Fund Board, Teachers Retirement Board and Wisconsin Retirement Board find that an emergency exists and that an administrative rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Without emergency rule-making it will not be possible to avoid short-term harm to individual WRS annuitants who will already bear the effects of the market downturn though a zero percent fixed annuity dividend and a double-digit negative variable change.

The first annuity dividends actually affected by the 2002 rule-making (CR #02-049) are the dividends otherwise payable on March 1, 2003. Projections indicate that the fixed division dividend will likely be 0%, largely because of the effect of three years of market declines. The annual change to variable division annuities, which is more volatile because it reflects only the past year's market performance, will be negative and in the range of -26% to -30%. This means that the portion of an annuitant's annuity payable from the fixed division will not increase during 2003, while, if the annuitant receives a portion of his or her annuity from the variable annuity division, that portion of the annuity will be markedly reduced. Annuitants are concerned about the short-term effect of cuts to their annuities being made effective a month earlier this year than was the case in previous years.

The change from April 1 to March 1 was initiated with the best of intentions, primarily to get the additional money from dividend increases into the hands of annuitants as quickly as possible. In retrospect, the timing is unfortunate. When drafting of the rule began in early 2002, the year-end market earnings were unknown and a third consecutive year of market losses could not be predicted. The continued deterioration of investment returns in the latter part of 2002 has magnified the adverse, short-term effect of this change in the timing of dividends; that is, the size of the negative variable adjustment is larger.

Publication Date: February 27, 2003
Effective Date: February 28, 2003
Expiration Date: July 28, 2003

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child-bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child-bearing age whose income does not exceed 185% of the federal poverty line will

be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: January 31, 2003
Effective Date: January 31, 2003*
Expiration Date: June 30, 2003
Hearing Dates: April 25 & 28, 2003

* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

Health and Family Services (3) (Health, Chs. HFS 110—)

1. Rules adopted amending **chs. HFS 110 to 113**, relating to licensing of EMT's and certification of first responders, incorporating responding to acts of terrorism as a training component.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

2001 Wisconsin Act 109 amended s. 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department must revise the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and EMTs–Basic IV (found in ch. HFS 110), EMTs– Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.)

The required rule changes will remove any question of whether the department had the authority to require persons to receive training for acts of terrorism. Such training is needed to promote the public's health and safety and due to the statutory effective date of January 1, 2003, the department is promulgating these rule changes through an emergency order. The department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: December 31, 2002
Effective Date: December 31, 2002
Expiration Date: May 30, 2003
Hearing Date: February 17, 2003

2. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead–based paint hazards.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead–based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead–based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under ch. HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead–free and lead–safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206–1239), the EPA published regulations that established standards for lead–based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment and the EPA standards for lead–based paint hazards would affect the lead–safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead–based paint hazards before revising the rule to reflect the new EPA standards. If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 by February 3, 2003 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

If the Department does not make these changes to ch. HFS 163, Wisconsin could lose some or all of its Federal lead grant funding and EPA's authorization for the Department's lead program. Since the federal regulation provides the first measurable definition of a lead-based paint hazard, the Department needs to adopt this definition in order to protect the state's citizens.

The most significant modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 through this order will mean that persons removing lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the rule changes should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is making through this order, the most significant are the following:

1. Prior to this order, s. HFS 163.14 (5) (c) 8. required that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal regulations, the Department is reducing the permissible threshold to 400 micrograms per square foot.

2. Prior to this order, s. HFS 163.15 (2) specified that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations, the Department is reducing the permissible threshold to that specified by the EPA.

3. The Department is adding standards, as s. HFS 163.15 (3), for determining when a lead-based paint hazard exists.

4. The Department is modifying s. HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

5. The Department is revising its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

6. Finally, the Department is revising s. HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

Publication Date: January 3, 2003
Effective Date: January 3, 2003
Expiration Date: June 2, 2003
Hearing Date: April 2, 2003

3. Rules adopted revising **ch. HFS 124**, relating to critical access hospitals.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost-based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of ch. HFS 124 governs the Department's designation and regulation of CAHs. Designation as a CAH and receipt of cost-based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost-based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7-8 million and it employs the equivalent of about 160 persons full-time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in ch. HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, through this rulemaking order, the Department is modifying provisions in subchapter VI of ch. HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital.

Publication Date: March 21, 2003
Effective Date: March 21, 2003
Expiration Date: August 18, 2003
Hearing Date: June 20, 2003

Higher Educational Aids Board

Rules adopted amending **s. HEA 5.05 (2)**, relating to the eligibility of those on active duty military service.

Finding of emergency

The Wisconsin Higher Educational Aids Board finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

The 1989 Wisconsin Act 31 created s. 39.435 which provides for Talent Incentive Program Grants to Wisconsin residents who meet criteria established by the statute and administrative code. The Wisconsin Higher Educational Aids Board (HEAB) administers this program under s. 39.435 and

under ch. HEA 5. According to the administrative rules, a student must be continuously enrolled from semester to semester and year to year to continue to receive this grant after their initial year. Under current rules, exceptions to this requirement may only be made for medical reasons.

Recently, students who have returned from active duty military service and resumed enrollment at a college or university have begun to request exceptions to the continuous enrollment requirement. This situation is not addressed in the current administrative rules, because the break in these students' enrollment was not due to medical reasons.

Unless the Board changes its rules, participating students who have been called up to active duty military service will permanently lose their eligibility in this program. Because this grant targets the most financially–needy and educationally–disadvantaged students, the loss of eligibility will cause a hardship to those students who rely most heavily on financial assistance.

The emergency rule procedure is being used to ensure that students who have returned from active duty military service and resumed enrollment during the current academic year, 2002–2003, will not permanently lose their eligibility in this program.

Publication Date: April 4, 2003
Effective Date: April 4, 2003
Expiration Date: September 1, 2003

Natural Resources (4) (Fish, Game, etc., Chs. NR 1–)

1. Rules adopted revising chs. NR 10 and 45, relating to the control and management of chronic wasting disease.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule–making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses.

Publication Date: July 3, 2002
Effective Date: July 3, 2002
Expiration Date: November 30, 2002
Hearing Date: August 12, 2002
Extension Through: April 30, 2003 (part)
September 1, 2003 (part)

2. Rules adopted repealing and recreating s. NR 20.20 (49) (d) and (61) (c), relating to the closure of carp fishing on Cedar Lake and connected Lake waters in Polk and St. Croix counties.

Finding of emergency

The Department of Natural Resources finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Spring viremia of carp virus is of international animal health concern. The virus effects fishes in the minnow family in nature. Minnows are extremely important forage fish for many important sport fishes in Wisconsin and are also important to the bait and aquaculture industries. Assuring the

health of minnow populations and preventing the spread to other waters is important in preserving the welfare of Wisconsin citizens by protecting popular and economically valuable sport and bait fisheries. Little is currently known about the extent of the virus and until we can increase our knowledge, this closure will limit the potential spread from transport of fish and/or their parts and fluids.

Publication Date: October 3, 2002
Effective Date: October 3, 2002
Expiration Date: March 2, 2003
Hearing Date: November 11, 2002
Extension Through: April 30, 2003

3. Rules adopted revising chs. NR 16 and 19 and creating ch. NR 14, relating to captive wildlife.

Finding of emergency

2001 Wis. Act 56 was not enacted until April of 2002. It required standards for captive animals held under licenses issued under ch. 169, Stats., to be in place by January 1, 2003, the effective date of the change from licensing under ch. 29, Stats., to ch. 169, Stats. As the use of the permanent rule process would not allow these standards to be in place by January 1, 2003, the Department had no choice but to use the emergency rule procedures. Failure to have standards in place would result in the lack of humane care standards for wild animals held in captivity and the lack of pen standards necessary to prevent the interactions between captive and wild animals.

Publication Date: December 20, 2002
Effective Date: January 1, 2003
Expiration Date: May 31, 2003
Hearing Date: January 16, 2003

4. Rules adopted revising ss. NR 10.07 (2), 12.06 and 19.60, relating to the control and management of chronic wasting disease.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. This rule is needed to reduce the deer herd in the CWD eradication zone further than accomplished through the hunting seasons to help prevent the spread of CWD.

Initial Applicability. This emergency rule repeals and recreates portions of the original CWD emergency rule order (WM–32–02 (E)) which was adopted by the Natural Resources Board in June 2002. The effective period of this emergency rule will coincide with the effective period of the original CWD emergency rule order which has been extended by the Legislative Joint Committee on the Review of Administrative Rules until April 1, 2003, pursuant to 2001, Wisconsin Act 108.

Publication Date: January 11, 2003
Effective Date: January 11, 2003
Expiration Date: April 1, 2003
Hearing Date: February 11, 2003
Extension Through: April 30, 2003 (part)
September 1, 2003 (part)

Nursing

Rules adopted creating s. N 4.10, relating to malpractice insurance coverage for nurse-midwives.

Exemption from finding of emergency

Under Section 13 of 2001 Wisconsin Act 52, the Board of Nursing is directed to use the procedure under s. 227.24, Stats., in promulgating the rules required under s. 441.15 (5) (b) of the statutes. Under that procedure, the Board of Nursing may promulgate this rule for the period before permanent rules become effective. The Board of Nursing need not provide evidence of the necessity of preservation of the public peace, health, safety, or welfare in promulgating this rule.

Analysis prepared by the Department of Regulation

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 441.15 (2) (c), 441.15 (3) (a) 3. and 441.15 (5), as created by 2001 Wisconsin Act 52, and s. 441.15 (3) (bm), as amended by 2001 Wisconsin Act 52.

Statutes interpreted: s. 441.15 (2) (c), 441.15 (3) (a) 3., 441.15 (3) (bm) and 441.15 (5) (b), Stats.

2001 Wisconsin Act 52 makes a number of changes to the provisions affecting nurse-midwives, including that licensed nurse-midwives carry malpractice insurance in an amount determined by rules to be promulgated by the Board of Nursing. This rule establishes those requirements relating to malpractice coverage for nurse-midwives.

Using the procedure under s. 227.24, Stats., the Board of Nursing will promulgate the rules as created by 2001 Wisconsin Act 52, for the period before permanent rules become effective.

Publication Date: November 5, 2002
Effective Date: November 5, 2002
Expiration Date: April 4, 2003
Hearing Date: March 7, 2003
Extension Through: June 2, 2003

Workforce Development

(Public Works Const. Contracts, Chs. DWD 290-294)

Rules adopted amending s. DWD 290.155 (1), relating to the annual adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to annually adjust thresholds for the application of prevailing wage laws on public works projects. The thresholds are adjusted in accordance with any change in construction costs since the last adjustment. The last adjustment was initially by emergency rule in January 2002 based on changes in the construction cost index in 2001. The Department uses the construction cost index in the December issue of the *Engineering News-Record*, a national construction trade publication, to determine the change in construction costs over the previous year. The current construction cost index indicates a 2.7% increase in construction costs in 2002. This increase in construction costs results in an increase in the threshold for application of the prevailing wage laws from \$36,000 to \$37,000 for single-trade projects and from \$175,000 to \$180,000 for multi-trade projects.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately 7 months, until the conclusion of the permanent rule-making process. Between January 1, 2003, and August 1, 2003, a single-trade project with a minimum estimated project cost of more than \$36,000 but less than \$37,000 or a multi-trade project with an estimated cost of more than \$175,000 but less than \$180,000 would not be exempt from the prevailing wage laws, as they would be if the emergency rule were promulgated. The threshold adjustments for application of the prevailing wage laws are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The Department is proceeding with this emergency rule to avoid imposing an additional administrative burden on local governments and state agencies.

Publication Date: December 27, 2002
Effective Date: January 1, 2003
Expiration Date: May 31, 2003
Hearing Date: February 27, 2003

Scope statements

Agriculture, Trade and Consumer Protection

Subject

The Department of Agriculture, Trade and Consumer Protection gives notice, pursuant to s. 227.135, Stats., that it proposes to modify administrative rules as follows:

Technical rule changes.

Objective of Proposed Rule. Make minor technical changes and updates to a variety of current rules. Changes will not involve major policy issues.

Policy analysis

The department proposes to make a number of technical changes including the following:

- Update technical standards incorporated by reference in current rules (new editions of technical references cited in current rules).
- Correct erroneous and obsolete citations and cross-references .
- Correct typographical errors.
- Make non–substantive organizational and drafting changes.
- Make other minor changes to current rules.

This rule does not involve any significant policy issues.

Staff time required

The department estimates that it will use less than .1 FTE staff time to modify this rule. This includes research, drafting, preparing related documents, holding public hearings, and communicative with affected persons and groups. The department will use existing staff to develop this rule.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Subject

Current rules define contents of applications for licensure. Section A–E 4.09 provides that applications for licensure will include specific information and documentation that will verify the applicants, education, experience and training. The current rules require that an application for licensure include the following:

- Transcripts verifying education and training.
- Personal and professional references.
- Employment history.
- Additional data, as needed.

Objective of Proposed Rule. To specify application documentation for applicants by comity and applicants for initial licensure.

Policy analysis

The rules do not provide specific application requirements for different types of applicants. For example, applications for original licensure now require the same documentation as applications by comity. Because applicants by comity are

already licensed and practicing in another state, the documentation needed by the board to determine their eligibility for licensure in Wisconsin, is not the same as that needed for an applicant for initial licensure.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 443.10, Stats.

Staff time required

100 hours.

Medical Examining Board

Subject

Effective June 2, 2000, 1999 Wisconsin Act 180 created the Occupational Therapists Affiliated Credentialing Board and made numerous substantive changes to the regulation of occupational therapists in Wisconsin. The board thereafter promulgated administrative rules required by the new law, which became effective January 1, 2003, and which may be found at chapters OT 1 to 5. The administrative rules found at ch. Med 19, which governed the licensure of occupational therapists before creation of the new board, were not, through oversight, repealed.

Objective of Proposed Rule. To repeal ch. Med 19 of the administrative rules.

Policy analysis

Failure to repeal the old rules governing licensure of occupational therapists may lead to confusion by licensees and the public as to which rules apply.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 448.965, Stats.

Staff time required

5 hours.

Regulation and Licensing

Subject

Revisions to administrative rules relating to the regulation of licensed and certified appraisers.

Objective of Proposed Rule. To repeal and recreate Ch. RL 87, Appendix I, which contains the Uniform Standards of Professional Appraisal Practice (USPAP), to incorporate by reference the revisions to the Standards that will be included in the 2004 edition of USPAP. [Note: The Uniform Standards of Professional Appraisal Practice (USPAP) is published by the Appraisal Standards Board of the Appraisal Foundation.]

Policy analysis

These rules will adopt revisions that will be contained in the 2004 edition of the Uniform Standards of Professional Appraisal Practice.

Statutory authority

Sections 227.11 (2), 458.03, 458.05 and 458.24, Wis. Stats.

Staff time required

20 hours.

Submittal of rules to legislative council clearinghouse

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Financial Institutions – Banking

Rule Submittal Date

On April 29, 2003, the Department of Financial Institutions, Division of Banking submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The subject matter of the proposed rule relates to adjustment service companies conducting business by mail.

Statutory Authority

Section 218.02 (9), Stats.

Agency Procedure for Promulgation

A hearing on this rule is required. The organizational unit primarily responsible for the promulgation of this rule is the Department of Financial Institutions, Division of Banking.

Contact

Michael Mach
Deputy Administrator
(608) 266–0451

Health and Family Services

Rule Submittal Date

On April 25, 2003, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule relates to ch. HFS 124, Critical Access Hospitals.

Statutory Authority

Section 50.36 (1), Stats.

Analysis: Reason for Rules, Intended Effects, Requirements

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost–based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of ch. HFS 124 governs the Department’s designation and regulation of CAHs. Designation as a CAH and receipt of cost–based reimbursement promotes the hospital’s continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary’s Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost–based reimbursement. The closure of St. Mary’s would reduce Douglas County residents’ accessibility to acute care. Moreover, the loss of the facility would have a significant

detrimental effect on the county because St. Mary’s annual payroll is between \$7–8 million and it employs the equivalent of about 160 persons full–time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in ch. HFS 124 preclude St. Mary’s from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary’s Hospital meets “necessary provider” status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, the Department is proposing to modify provisions in subchapter VI of ch. HFS 124 to permit St. Mary’s Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital. To permit St. Mary’s to initiate its transition to a critical access hospital, the Department issued a similar emergency order that became effective on March 21, 2003. Through this proposed permanent order, the Department is also modifying several other provisions in subch. VI of ch. HFS 124 to more closely reflect current federal regulations, the October 2001 Wisconsin Rural Hospital Flexibility Program Implementation Plan and to change the name of the federal Health Care Financing Administration to the Centers for Medicare and Medicaid Services.

Agency Procedure for Promulgation

A public hearing will be held on June 20, 2003.

Contact

Cheryl Bell–Marek, 267–5150

Health and Family Services

Rule Submittal Date

On April 25, 2003, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule relates to ch. HFS 196 Appendix, commonly known as the Wisconsin Food Code (WFC), relating to the certification of food managers.

Statutory Authority

Sections 227.11 (2), 254.74 (1) and 254.71 (6), Stats.

Analysis: Reason for Rules, Intended Effects, Requirements

Chapter 12 of HFS 196 Appendix, establishes the requirements for certification of food managers. Section 254.71, Stats., and HFS 196 Appendix, commonly known as the Wisconsin Food Code, require an operator or at least one manager of a food establishment to have achieved a minimum proficiency in food safety through classroom training and examination. The classroom session and examination are administered by independent organizations such as the Tavern League of Wisconsin and the Wisconsin Restaurant Association, or

by technical colleges utilizing an examination approved by the Department. In order for an individual to be certified, proof of passing the examination is required to be submitted to the Department along with a \$10 certification fee. The certificate may be renewed, within 6 months of the expiration date, by completing a Department-approved recertification training course and payment of a \$10 recertification fee. Certification and recertification is valid for a period of 5 years.

The Department proposes to amend ch. 12, of HFS 196 Appendix, to do all of the following:

1. Increase the certification fee and the recertification fee from \$10 for 5 years to \$25 for 5 years, with an additional increase to \$30 for 5 years effective July 1, 2004.

2. Revise the recertification requirements to be equal to the requirements of the initial certification.

3. Grant automatic approval to create and administer written examinations on food protection practices to testing service organizations that are accredited by the National Conference for Food Protection (NCFP), the recognized authority for setting national standards in food safety.

Justification:

1. **Fee Increase:** The current fee of \$10 for certification and the current fees of \$10 for recertification was established at the conception of the certified food manager program in 1994. The cost of maintaining and verifying the registry of certified food managers has increased since then. Health inspectors and certificate holders frequently contact the Department to check on the status of a misplaced certificate, to request duplicates, or to determine when renewal is due. The Department estimates that central office support staff spend 46 hours per week on the certification program. Additional costs related to the program are incurred at each annual inspection. The Department estimates that a 5-year certificate issued for \$10 costs the state more than \$70 over its 5-year life. The additional revenue generated from these fee increases will enable the Department to maintain the current registry, and to respond in a timely manner to information requests regarding CFMs. Neighboring states currently charge up to \$35 for 5-year certificates or renewals.

2. **Recertification Requirements:** The current recertification requirement is 3 hours of classroom instruction and an examination on the information presented. There are no requirements concerning the content of the examination, nor are individuals required to achieve a passing grade on the examination. The Department believes that recertification requirements that are at least as stringent as the initial certification requirements will increase the level of food safety in each food service operation by reminding the CFM of processes or procedures that may have been forgotten, as well as addressing new trends and problems.

3. **Change in Examination Approval:** The Department believes it is more appropriate for course materials and examinations to be approved by the NCFP. The NCFP has more expertise and knowledge in this field. Additionally many states are moving in this direction, resulting in improved consistency and uniformity from one jurisdiction to another.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS

Secretary; and legislative standing committee review under s. 227.19, Stats.

Contacts

For questions concerning the subject of the proposed rule contact:

Greg Pallaske
608-266-8351

For questions concerning the Department's administrative rule promulgation process contact:

Rosie Greer
608-266-1279

Natural Resources

Rule Submittal Date

On April 1, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule relates to ch. NR 45, relating to use regulations on DNR lands.

Agency Procedure for Promulgation

It is undecided whether to hold public hearings.

Contact

Kate Fitzgerald
Bureau of Facilities and Lands
608-266-0429

Natural Resources

Rule Submittal Date

On April 1, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule relates to ch. NR 46, relating to the administration of forest crop law and the managed forest law.

Agency Procedure for Promulgation

It is undecided whether to hold public hearings.

Contact

Linda DePaul
Bureau of Forestry
608-266-3545

Natural Resources

Rule Submittal Date

On April 1, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule relates to chs. NR 204, 214, 219 and 518, relating to land application of materials containing PCBs.

Agency Procedure for Promulgation

It is undecided whether to hold public hearings.

Contact

Kevin Kessler
Division of Air and Waste
608-266-5207

Natural Resources**Rule Submittal Date**

On April 1, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule relates to chs. NR 460, 465 and 484, relating to national emission standards for hazardous air pollutants for facilities that apply surface coatings to large appliances.

Agency Procedure for Promulgation

It is undecided whether to hold public hearings.

Contact

Kate Fitzgerald
Bureau of Facilities and Lands
608-266-0429

Tax Appeals Commission**Rule Submittal Date**

On April 15, 2003, the Tax Appeals Commission submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

The proposed rule creates s. TA 1.15 (2m), relating to petitions for review.

Agency Procedure for Promulgation

The Commission intends to adopt this rule without public hearing, under s. 227.16, Stats.

Contact

Thomas M. Boykoff
(608) 266-1391

Rule-making notices

Notice of Hearing

Financial Institutions – Banking [CR 03–043]

Pursuant to s. 227.17, Stats., notice is hereby given that the Department of Financial Institutions, Division of Banking, will hold a public hearing at the time and place indicated below to consider a rule relating to adjustment service companies conducting business by mail.

Date, Time and Place of Hearing

Tuesday, June 3, 2003 at 1:00 p.m.

Tommy G. Thompson Conference Room
5th Floor

Department of Financial Institutions
345 West Washington Avenue
Madison, WI 53703

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call Mark Schlei at (608) 267–1705 or TTY (608) 266–8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

Written comments in lieu of public hearing testimony must be received not later than the hearing date and should be addressed to Michael J. Mach, Deputy Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707–7876.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

An order to repeal s. DFI—Bkg 73.03 (8) relating to adjustment service companies conducting business by mail. Analysis: Statutes interpreted: ss. 218.02 (9) and 227.11 (2), Stats. Summary: The objective of the rule is to end a prohibition that a licensee shall not conduct a business by mail outside of the State of Wisconsin. This current section is out-of-date. At the time the section was promulgated, all adjustment service companies doing business in Wisconsin were located in Wisconsin. As the adjustment service industry has evolved since the promulgation of this section, almost one-half of all licensees are now located outside of Wisconsin, and almost one-half of all debtor funds are handled by licensees located outside of Wisconsin. The existence of this section serves no regulatory purpose and may have a negative impact on the regulated entity.

Statutory Authority:

Sections 218.02 (9) and 227.11 (2), Stats.

Fiscal Estimate

There is no state fiscal effect, and there are no local government costs. No funding sources or ch. 20 appropriations are affected. There are no long-range fiscal implications.

Initial Regulatory Flexibility Analysis:

The proposed rule will not have an effect on small businesses.

Contact Person

A copy of the full text of the proposed rules and fiscal estimate may be obtained through the following:

Mark Schlei, Deputy General Counsel
Department of Financial Institutions
Office of the Secretary
P.O. Box 8861
Madison, WI 53708–8861
Tel. (608) 267–1705
TTY (608) 266–8818

A copy of the full text of the proposed rule may also be obtained at the Department of Financial Institutions' website, www.wdfi.org.

Notice of Proposed Rules

Health and Family Services (Community Services, Chs. HFS 30— Medical Asst., Chs. HFS 100— Health, Chs. HFS 110—) Tobacco Control Board [CR 03–033]

Notice is hereby given that pursuant to s. 46.297, Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Health and Family Services will repeal, renumber, renumber and amend, amend, repeal and create and create provisions in a variety of Wisc. Admin. Code chapters administered by the Department, as herein proposed, without public hearing, unless the Department receives a petition for a hearing within 30 days after the publication of this notice on **May 15, 2003**. A petition for a hearing will be accepted if signed by any of the following who will be affected by the proposed rule: 25 persons; the representative of an association that represents a farm, labor, business or professional group; or a municipality.

Contact

If you have any questions about these proposed rule changes or about filing a written petition for a hearing, contact Larry Hartzke, Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707–7850, 608–267–2943 or via email at hartzlr@dhfs.state.wi.us.

Analysis Prepared by the Department of Health and Family Services

This proposed rulemaking order contains a variety of minor revisions to the Department's administrative rules. These revisions have little substantive effect on those regulated by the rules. The Department is issuing these changes in a single order to conserve limited agency resources while making necessary updates and improvements in the Department's body of administrative code.

Changes to the following provisions are being proposed for the following purposes:

- HFS 56.02 (2) [Foster Home Care for Children] in Section 1 to give licensing agencies the ability to grant an exception to the requirements in s. HFS 56.04 (4) (a) 3., 56.05 (4) (a) and 56.07 (4) (d);
- HFS 83.05 (1) (c) in Section 2 to fix a spelling error;
- HFS 90.05 (4) (a) [Early Intervention Services for Children From Birth to Age 3 With Developmental Needs] in

Section 3 to add language limiting the time within which complaints that administrative procedures were violated can be submitted and to make the provision consistent with recently revised federal regulations;

- HFS 90.05 (4) (c) 1. in Section 3 to remove a requirement that the Department must provide notice that a complainant or agency may request review of a Department decision by the Secretary of the U.S. Dept. of Education, because the requirement was removed from federal regulations;

- HFS 90.06 (2) (m) in Section 4 to repeal a provision requiring that a county administrative agency ensure that an impartial decision–maker be appointed to resolve complaints of parents under s. HFS 90.12 (5) because the Department now appoints the hearing officer;

- HFS 90.08 (3) (b) 3. in Section 5 to reflect the fact that occupational therapists are now licensed instead of certified;

- HFS 90.08 (3) (b) 11. in Section 5 to amend references from “educators” to “teachers;”

- HFS 90.10 (2) (b) (intro) in Section 6 to change the reference from an “eligible” child to simply a “child” because at that point in the provision, a child has not yet been found eligible;

- HFS 90.11 (1) (b) 7. in Section 7 to correct an erroneous cross reference;

- HFS 90.11 (3) (b) in Section 7 to change what a third party may be billed for from “early intervention core services” to “evaluation and assessment activities” because the core services in s. HFS 90.11 (3) (a) include services that are not billed to third parties or do not require consent to bill;

- HFS 90.11 (6) (a) 4. in Section 7 to reflect the fact that occupational therapists are now licensed instead of certified;

- HFS 90.11 (6) (a) 10. in Section 7 to remove the requirement that RNs have a bachelor’s degree within 5 years after July 1, 1992;

- HFS 90.11 (6) (a) 11. in Section 7 to remove reference to rehabilitation counselors employed by the Department’s division of vocational rehabilitation because such positions no longer exist in the Department;

- HFS 90.11 (6) (a) 14. in Section 7 to amend references from “educators” to “teachers” and from “licensed under ch. 115, Stats., and ch. PI 3” to “licensed through the department of public instruction;”

- HFS 90.12 (6) (e) in Section 8 to remove the reference to the inapplicability of sections 227.52 to 227.58, Stats., to actions under par. (e) and create a new paragraph that states such inapplicability to actions under the entire section of HFS 90.12 so the language parallels that used by the Department of Public Instruction and recommended by the Division of Hearings and Appeals;

- HFS 101.03 (49) [Medicaid Introduction and Definitions] in Section 9 to amend the definition of the term “Drug index” to exclude medical supplies because the drug index is a list of covered legend and non–legend drugs covered by the Department and it does not include a list of supplies;

- HFS 105.01 (3) (intro) [Medicaid Provider Certification] in Section 10 to promote truthful and accurate reporting of information;

- HFS 105.39 (4) (b) 2. and 3. in Sections 11 and 12 to delete an outdated grandfather clause;

- HFS 105.41 (title) and (intro) in Section 13 to update requirements to reflect current terminology and eliminate ambiguities, to reflect a changed statutory cross reference, and to recognize certification of hearing specialists;

- HFS 105.52 (1) (L) and 105.52 (2) (a) 1., 6., 7. and 8. in Section 14 to update language to reflect current terminology and to correct errors;

- HFS 105.53 (3) (a) 3. and 4., (c) 1. and (6) (b) in Section 15 to update language to reflect current terminology and changes in interpretation of law by the federal Centers for Medicare and Medicaid Services;

- HFS 106.03 (2) (c) [Medicaid Provider rights and Responsibilities] in Section 16 to add a phrase the Department inadvertently omitted at the time of the rule’s original promulgation;

- HFS 106.06 (8) and (25) in Section 17 to improve language to increase viability of enforcement actions;

- HFS 107.02 (2m) (a) 10. in Section 18, 107.10 (1) and (Note) [Medicaid Covered Services] in Section 19, 107.11 (6) (b) 5. in Section 24 and 107.12 (1) (e) in Section 25 to recognize the legal status of advanced practice nurse prescribers;

- HFS 107.02 (2m) (c) in Section 18 to clarify the intent of the provision that prescriptions for recipients not declared legally blind or permanently disabled must specify the length of time specialized transportation is required and to provide a useful cross reference.

- HFS 107.10 (2) (a) in Section 20 to eliminate an outdated reference to schedule II stimulant drugs;

- HFS 107.10 (2) (d) in section 21 to clarify the Department’s ability to decide which drugs require prior authorization;

- HFS 107.10 (3) (b) to (d) in section 21 to clarify the terms “legend” and “generic” drugs and the 34–day supply requirement;

- HFS 107.10 (3) (h) (intro) in Section 21 and 107.10 (3) (h) 8. in Section 22 to clarify requirements for nursing homes to provide drugs and when non–legend drugs may be covered;

- HFS 107.10 (3) (i), (4) (L) and (5) (a) in Section 23 to clarify the meaning and use of the term “innovator multiple source drug;”

- HFS 107.24 (2) (a), (3) (h) 1. (intro) and 2. and (5) (j) in Section 26 to change terminology from “hearing aid dealer” to “hearing instrument specialist;”

- HFS 107.36 (1) (a) 4., (b) to (i), (2) (a) and (b) 2. in Section 27 to delete the use of the abbreviation “IFSP,” to change requirements for physician prescription for therapy services, change requirements for licensing of providers to accurately cross reference the appropriate Wisconsin requirements, to clarify and update a provision related to transportation services, clarify when durable medical equipment is a covered service under school–based services, and to clarify the age range of eligible recipients;

- HFS 111.03 (36) [Licensing of Emergency Medical Technicians–Intermediate and Approval of Emergency Medical Technician–Intermediate Operational Plans] in Section 28 to correct (and extend) the date after which temporary licenses will no longer be issued;

- HFS 120.02 [Health Care Information] in Section 29 to correct a spelling error;

- HFS 120.03 (4m) in Section 30 to define the term “claims data;”

- HFS 120.03 (7) (Note) in Section 31 to correct the web address;

- HFS 120.03 (13) in Section 31 and 120.12 (6) (a) in Section 38 to change the reference from the federal “health care financing administration” to “centers for medicare and medicaid;”

- HFS 120.03 (20) and (36) in Section 31 to update the reference pertaining to billing forms to reflect that the

Department's collection of physician office visit data is consistent with electronic data exchange standards required for the federal Health Insurance Portability and Accountability Act, effective in the fall, 2003;

- HFS 120.03 (28) in Section 31 to add "physician office visit data" to the types of data that do not allow the identification of an individual from the elements released in the data files;
- HFS 120.03 (29) in Section 31 to clarify the definition of a "qualified vendor;"
- HFS 120.03 (30) (Note) in Section 31 to clarify the Department's intent regarding the type of data required to be submitted in the Department's statement of examples;
- HFS 120.03 (34) in Section 31 to correct the language to reflect the fact that the Department is not a party to the contract in a trading partner agreement;
- HFS 120.05 (2) in Section 32 and 120.11 (3) (c) in Section 33 to allow electronic communications in a format specified by the Department;
- HFS 120.11 (3) (d) 1. in Section 33 to reduce the time within which facilities must verify data and add appropriate cross references to reflect the fact that the provision should also apply to hospital ambulatory surgery and freestanding ambulatory surgery center data;
- HFS 120.11 (3) (f) in Section 34 to correct an original error insofar as the requirement should only apply to physician office visit data collection; not to hospital and freestanding ambulatory surgery center data;
- HFS 120.11 (4) (e) in Section 35 to clarify terminology and the process for disputing data;
- HFS 120.12 (1) (b) 2., 120.12 (2) (c) 2. a., 120.12 (3) (c) 3. and 120.12 (5) (b) 4. in Section 36, 120.12 (5m) (b) 4. and 120.12 (6) (c) 3. in Section 38, 120.13 (2) (b) in Section 39, 120.14 (1) (b) 3. in Section 40, 120.14 (1) (c) 9. in Section 44, 120.14 (3) (b) 2. in Section 44 and 120.15 (3) (b) in Section 45 to replace the confusing term "catastrophic" with a term that implies a lower threshold of computer malfunction;
- HFS 120.12 (2) (b) 1. in Section 36 to update the national standard for reporting data to the Department;
- HFS 120.12 (3) (b) 11. and (c) 1. in Section 36 to update the basis upon which hospitals report data;
- HFS 120.12 (5) (b) 2. in Section 36, 120.12 (5m) (b) 2. and (6) (c) 2. in Section 38 and 120.13 (2) (a) in Section 39 to conform to the existing Department practice giving entities 45 rather than 30 days to submit pertinent data;
- HFS 120.12 (5m) (a) 30. and 31. in Section 37 to add patient race and ethnicity to the list of data hospital emergency departments report to the Department, thereby making it consistent with the Department's collection of other hospital data under section HFS 120.12 (5) (a);
- HFS 120.12 (5m) (b) 5. a. in Section 38 to eliminate the requirement that hospitals using qualified vendors notarize the data submitted to the Department;
- HFS 120.14 (1) (b) 1. in Section 40 to give the Department more flexibility in specifying data transmission requirements;
- HFS 120.14 (b) 2. in Section 40 to recognize the fact that data are currently reported quarterly and give the data submitter more flexibility with the timing of their submission;
- HFS 120.14 (1) (b) 4. a. in Section 40 to simplify the administration of the trading partner agreement;
- HFS 120.14 (1) (b) 4. b. in Section 40 to extend to delegated representatives of physicians accountability for failure to submit and edit data;
- HFS 120.14 (1) (b) 5. in Section 40 to correct a typographical error;
- HFS 120.14 (1) (b) 6. in Section 40 to extend to qualified vendors the prohibition of submitting data to the Department that uses specified information as patient account numbers;
- HFS 120.14 (1) (c) 2. (intro) in Section 40 to increase program operating efficiencies by allowing the Department to delete the data it receives rather than returning it to the sender;
- HFS 120.14 (1) (c) 3. and 4. in Sections 41 and 42 to put the provisions in a more appropriate order, to extend applicability of the provision to qualified vendors, and to clarify the requirements under subdivision paragraph 4. b.;
- HFS 120.14 (1) (c) 4. c. in Section 43 to eliminate a provision no longer needed after the order of section HFS 120.14 (1) (c) 3. and 4. is reversed;
- HFS 120.14 (1) (c) 5. in Section 44 to extend applicability of the provision to persons delegated by the physician to review and verify data;
- HFS 120.14 (1) (e) 1. in Section 44 to require physicians who submit electronic claims data after 1998 to also submit their data to the Department electronically;
- HFS 120.14 (1) (e) 4. in Section 44 to correct a naming error;
- HFS 120.20 (3) (b) in Section 46 to expand applicability of open record exemptions to data covered under section HFS 120.11 because the section contains a substantial amount of confidential communication between the physician and the Department;
- HFS 120.21 (1) (a) in Section 47 and 120.22 (1) (a) 1. in Section 48 to clarify the name of "annual hospital fiscal year survey" by adding the term "year;"
- HFS 124.05 (3) (h) [Hospitals] in Section 49 to include "in situ carcinoma of the cervix uteri" on the list of non-reportable cancers to reflect federal guidelines modified because the Centers for Disease Control determined that routine collection of such data is incomplete due to the inconsistent collection of other High Grade Neoplasia by cancer registries; moreover, the data are not comparable over time due to changing terminology and diagnostic criteria;
- HFS 124.12 (5) (b) 11. in Section 50 to conform with the policy allowing verification of medical staff orders within 72 hours instead of 24 hours, as expressed in numbered memo BQA-98-050;
- HFS 132.42 (3) (a) [Nursing Homes] in Section 51, 132.42 (4) in Section 52, 132.51 (2) (b) 1. in Section 54 and 132.52 (2) (c) in Section 55 to conform with federal Americans with Disabilities Act requirements;
- HFS 132.44 (1) (b) in Section 53 to delete reference to training requirements because training requirements are specified in both federal regulations, s. 146.40 of the Wisconsin statutes and chapter HFS 129;
- HFS 132.66 (1) (d) in Section 56 to remove an outdated restriction against physician extenders giving orders for skilled care residents for blood, lab and radiology services and thereby make it consistent with federal regulations and Department policy as expressed in numbered memo BQC-91-050;
- HFS 133.03 (8) [Home Health Agencies] in Section 57 to make reference to the Department of Administration's Division of Hearings and Appeals more accurate;
- HFS 134 (title) [Facilities for the Developmentally Disabled] in Section 58, 134.11 in Section 59, 134.12 (1) in Section 60, 134.13 (7) and (note), (12), (13) and (39) (intro) in Section 61, 134.14 (1), (2) (a) (intro) and (5m) in Section 62, 134.815 (1) and (2) (a) in Section 63, and 134.82 (title) in Section 64 to revise a name to be "people with developmental disabilities;"

- HFS 134.12 (1) in Section 60 to clarify the applicability of chapter HFS 134;

- HFS 134.13 (10) (a) in Section 61 to update the provision with current practice by cross referencing the dietitian certification requirements under section 448.78 of the Wisconsin statutes;

- HFS 134.13 (17) in Section 61 to improve the definition of “interdisciplinary team;”

HFS 144.03 (2) (b), (c) and (e) and Tables HFS 144.03–A footnotes 1. and 4. [Immunization of Students] in Section 65 to incorporate a new recommendation made by the federal Centers for Disease Control’s Advisory Committee on Immunization Practices allowing a 4–day grace period for receipt of vaccines; the rule would apply only to date–specific vaccine requirements;

- HFS 145.05 (2), (3) and (4) (Note) [Control of Communicable Diseases] in Section 66 to update the applicable edition of the American Public Health Association’s document “Control of Communicable Diseases Manual;”

- HFS 155 [Injury Prevention Grants] in Section 67 to repeal the a chapter concerning grants for injury prevention under section 146.56 (3) of the 1991 statutes that no longer exists in Wisconsin statutes;

- TCB 1.04 (1) (d) 1. b. [Tobacco Control Board] in Section 68 to modify the one of the Tobacco Control Board’s performance –based standards; and

- TCB 1.07 (1) (a) in Section 69 to give the grant manager discretion to approve the use of grant award monies for the purchase of tobacco use cessation medications.

- By the presentation of this list, the Department is not representing that the list constitutes all possible minor errors and technical changes needed in the Department’s administrative code. The Department recognizes its administrative rules frequently need changing due to periodically changing statutes, rules, federal laws and societal change. Consequently, the Department intends to continually collect and propose for promulgation non–substantive and technical rule changes as the Department learns of the need and justification for such changes.

The Department’s authority to repeal and recreate these rules is found in ss. 48.67, 49.45 (10), 50.02 (2) (a), 50.36 (1), 50.95 (1), 51.44 (5) (a), 52.02 (4), 153.75, 227.11 (2) (a), 252.02 (4), 252.04 (1), (2) and (10), 252.07 (11), 254.51 (3) and 255.15 (1m) (c), Stats. The rules interpret ss. 48.62, 48.66, 48.68, 48.75, 49.43 to 49.497, 50.02 (2) (a) and (3), 50.035, 50.36 (1), 50.95 (1), 51.44, 153.05 (5) and (8), 153.45 (3), 153.75, 252.02 (4), 252.04 (1) to (7) and (10), 252.07 (11) and 255.15 (1m), Stats.

Contact Person

If you have any questions about these proposed rule changes or about filing a written petition for a hearing, contact Larry Hartzke, Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707–7850, 608–267–2943 or via email at hartzlr@dhfs.state.wi.us.

This proposed rulemaking order contains a variety of minor revisions to the Department’s administrative rules. These revisions have little substantive effect on those regulated by the rules. The Department is issuing these changes in a single order to conserve limited agency resources while making necessary updates and improvements in the Department’s body of administrative code.

Text of Proposed Rules

SECTION 1. HFS 56.02 (2) (a) 1. is amended to read:

HFS 56.02 (2) (a) 1. A licensing agency may grant an exception to any requirement in this chapter if the licensing agency determines that the exception will not jeopardize the health, safety or welfare of the foster children, except that the licensing agency may not grant an exception to any of the following requirements: s. HFS 56.04 (1), (2), (4) (a) 1., 2., 3., 4., 5., 8., or 9. or (b) 2., (6), (7) or (8); s. HFS 56.05 (1) (a), (b) 2., (c) 2., 3., 4., 5., 6., 7. or 9., (d), (f) or; (3) (a) ~~or (4) (a)~~; s. HFS 56.07 (3) (a), (4) (b), (c), ~~(d)~~, (e), (f), (g) or (h), (5) (a), (6) or (10) (a); s. HFS 56.08 (1), (2), (3), (4), (5), (6) (c) 1., 2., 3. or 4. a., (7) (a) 3., (8) (a) 1. or 2., or (c) or (10); s. HFS 56.09 (1), (2) (c), (3), (4) (c) or (d), (5), (9), (11) or (12) (a), (c) or (d); or s. HFS 56.11.

SECTION 2. HFS 83.05 (1) (c) is amended to read:

HFS 83.05 (1) (c) A CBRF for 21 ~~for~~ more residents shall be licensed as a large CBRF.

SECTION 3. HFS 90.05 (4) (a) and (c) 1. are amended to read:

HFS 90.05 (4) PROCEDURES FOR RECEIVING AND RESOLVING COMPLAINTS ABOUT OPERATION OF THE PROGRAM. (a) 1. Any individual or organization having reason to believe that one or more requirements of this chapter or Part C and its implementing regulations, 34 CFR Pt. 303, are not being met by the department or a county administrative agency or by any other public agency or private provider involved in the early intervention system under agreement with the county administrative agency may complain to the department. The complaint shall be in writing and be signed and shall consist of a statement setting forth the complaint and the facts upon which the complaint is based. The department shall develop procedures to inform parents and other interested individuals and organizations about their right to file a complaint and how to file a complaint.

2. Complaints under subd. 1. shall not concern events that occurred more than one year before the complaint is made, except if the complainant could not have reasonably known about the event any earlier.

(c) 1. Except as provided under subd. 2., within 60 days after receiving a complaint under this subsection the department shall prepare a written decision stating the reasons for the decision, ~~provide notice that the complainant or agency may request review of that decision by the secretary of the U.S. department of education,~~ and forward the decision to the affected agency or agencies with a copy to the complainant.

SECTION 4. HFS 90.06 (2) (m) is repealed.

SECTION 5. HFS 90.08 (3) (b) 3. and 11. are amended to read:

HFS 90.08 (3) (b) 3. Occupational therapists ~~certified~~licensed under ch. 448, Stats.;

11. ~~Special educators~~special education teachers, including early childhood ~~exceptional~~special education needs ~~(ECEEN)~~ ~~educator~~teachers, vision ~~educator~~teachers, and hearing ~~educator~~teachers, licensed under ch. 115, Stats., and ch. PI ~~3 through the department of public instruction;~~

SECTION 6. HFS 90.10 (2) (b) (intro) is amended to read:

HFS 90.10 (2) (b) *Provision of services before completing evaluation and assessment.* Provision of early intervention services to an ~~eligible~~ child and the child’s family may be started before the evaluation and assessment are completed if there is a clear and obvious need that can be addressed without waiting for completion of the formal evaluation and assessment and if the following conditions are met:

SECTION 7. HFS 90.11 (1) (b) 7., (3) (b), (6) (a) 4., 10., 11. and 14. are amended to read:

HFS 90.11 (1) (b) 7. Facilitating the development of transition plans under s. HFS 90.10 (5) ~~(h)~~(f).

(3) (b) With parent consent a third party may be billed for ~~early intervention core services evaluation and assessment activities~~. The service coordinator shall ensure that the parent, prior to giving consent, is informed and understands that because of third party billing the parent may incur financial loss, including but not limited to a decrease in benefits or increase in premiums or discontinuation of the policy.

(6) (a) 4. Occupational therapists shall be ~~certified~~ licensed under s. 448.963 (2) ~~ch. 448, Stats.~~; and occupational therapy assistants shall be ~~certified~~ licensed under s. 448.963 (3) ~~ch. 448, Stats.~~;

10. Registered nurses shall be licensed under s. 441.06, Stats., and ~~within 5 years after July 1, 1992, shall have at least a bachelor's degree in nursing from an accredited institution of higher education, and licensed practical nurses shall be licensed under s. 441.10, Stats.~~;

11. Rehabilitation counselors shall be ~~employed by the department's division of vocational rehabilitation as coordinators of hearing impaired services and have at least a master's degree in rehabilitation counseling or a related field;~~

14. Special educators ~~education teachers, including early childhood exceptional special education needs (ECEEN) educator teachers, vision educator teachers and hearing educator teachers, shall be licensed under ch. 115, Stats., and ch. PI 3 through the department of public instruction, within 5 years after the effective date of this chapter; and~~

SECTION 8. HFS 90.12 (6) (e) is amended to read:

HFS 90.12 (6) (e) *Civil action*. Either party aggrieved by the decision under par. (d) 4. d. may bring a civil action in state or federal court. An action filed in circuit court shall be commenced within 30 days after the date of the written decision. Pursuant to 20 USC 1439 (a) (1) and s. 51.44 (1m) and (5) (a) 4., Stats., the court shall receive the record of the administrative hearing, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of evidence, shall grant whatever relief the court determines is appropriate. Sections 227.52 to 227.58, Stats., do not apply to actions under this ~~paragraph~~ section.

SECTION 9. HFS 101.03 (49) is amended to read:

HFS 101.03 (49) "Drug index" means the list of covered legend and nonlegend drugs and medical supplies maintained and updated by the department.

SECTION 10. HFS 105.01 (3) (intro) is amended to read:

HFS 105.01 (3) GENERAL CONDITIONS FOR PARTICIPATION. In order to be certified by the department to provide specified services for a reasonable period of time as specified by the department, a provider shall truthfully, accurately, completely and in a timely manner do all of the following:

SECTION 11. HFS 105.39 (4) (b) 2. is repealed.

SECTION 12. HFS 105.39 (4) (b) 3. is renumbered HFS 105.39 (4) (b) 2.

SECTION 13. HFS 105.41 (title) and (intro) are amended to read:

HFS 105.41 Hearing aid dealers Certification of hearing instrument specialists. For MA certification, hearing aid dealers ~~instrument specialists~~ shall be licensed pursuant to ss. 459.05 ~~459.01 to 459.14, Stats.~~

SECTION 14. HFS 105.52 (1) (L) and (2) (a) (intro), 1., 6., 7. and 8. are amended to read:

HFS 105.52 (1) (L) A ~~certified~~ registered nurse or nurse practitioner;

(2) (a) *Definition*. In this subsection, "qualified professional" means ~~and is limited to any of the following:~~

1. A nurse practitioner licensed as a ~~certified~~ registered nurse pursuant to s. 441.06, Stats., and currently certified by the American nurses' association, the national board of pediatric nurse practitioners and associates or the nurses' association of the American college of obstetricians and gynecologists' certification corporation;

6. A ~~dietician~~ dietitian certified or eligible for registration by the commission on dietetic registration of the American dietetic association with at least 2 years of community health experience;

7. A ~~certified~~ registered nurse with at least 2 years of experience in maternity nursing or community health services or a combination of maternity nursing and community health services;

8. A ~~social worker~~ employee with at least a bachelor's degree and 2 years of experience in a health care or family services program; or

SECTION 15. HFS 105.53 (3) (a) 3. and 4., (c) 1. and (6) (b) are amended to read:

HFS 105.53 (3) (a) 3. Documentation used to develop the recipient's IEP ~~or IFSP~~ and to annually revise the IEP ~~or IFSP~~; and

4. Annual documentation of the individual's progress toward treatment goals identified in the IEP ~~or IFSP~~, changes in the individual's physical or mental status and changes in the treatment plan identified in the IEP ~~or IFSP~~.

(c) 1. For each service provided, a brief description of the recipient's response to the service and progress toward the treatment goals identified in the IEP ~~or IFSP~~; and

(6) (b) *Coordination with fee-for-service providers*. When a recipient receives similar services from both an MA fee-for-service provider and a school-based service provider, the school-based service provider shall document, at least annually, regular contacts with the MA fee-for-service provider, and provide the MA fee-for-service provider with copies of the recipient's IEP ~~or IFSP~~ and relevant components of the multidisciplinary team evaluation under s. 115.80 (3) and (5), Stats., upon request.

SECTION 16. HFS 106.03 (2) (c) and (4) (b) and (c) are amended to read:

HFS 106.03 (2) (c) Whether submitted directly by the provider, by the provider's billing service or by another agent of the provider, the truthfulness, completeness, timeliness and accuracy of any claim are the sole responsibility of the provider.

(4) (b) Where the service requiring prior authorization was provided before the recipient became eligible, and the provider applies to and receives from the department retroactive authorization for the service; ~~or~~

(c) Where time is of the essence in providing a service which requires prior authorization, and verbal authorization is obtained by the provider from the department's medical consultant or designee. To ensure payment on claims for verbally-authorized services, the provider shall retain records which show the time and date of the authorization and the identity of the individual who gave the authorization, and shall follow-up with a written authorization request form attaching documentation pertinent to the verbal authorization; or

SECTION 17. HFS 106.06 (8) and (25) are amended to read:

HFS 106.06 (8) CRIMINAL CONVICTION. The provider has been convicted of a criminal offense related to providing or claiming reimbursement for services under medicare or under this or any other state's MA program. In this subsection, "convicted" means that a ~~judgment of conviction~~

has been entered by a federal, state or local court has found the provider guilty, irrespective of whether a judgment of conviction has been entered or an appeal from that judgment is pending;

(25) REFUSAL TO REPAY ERRONEOUS PAYMENTS. The provider has failed to repay or has refused to repay amounts that have been determined to be owed the department either under s. HFS 106.04 (5) or 108.02 (9) or pursuant to a judgment of a court of competent jurisdiction, as a result of erroneous or improper payments made to the provider under the program;

SECTION 18. HFS 107.02 (2m) (a) 10. and (c) are amended to read:

HFS 107.02 (2m) (a) 10. Drugs, except when prescribed by a nurse practitioner under s. HFS 107.122, ~~or a podiatrist under s. HFS 107.14~~ or an advanced practice nurse prescriber under s. HFS 107.10;

(c) A prescription for specialized transportation services ~~for a recipient not declared legally blind or not determined to be permanently disabled~~ shall include an explanation of the reason the recipient is unable to travel in a private automobile, or a taxicab, bus or other common carrier. ~~The~~ A prescription for a recipient not declared legally blind or not determined to be indefinitely disabled, as defined under s. HFS 107.23 (1) (c) shall specify the length of time for which the recipient shall require the specialized transportation, which may not exceed 90 days.

SECTION 19. HFS 107.10 (1) and (note) are amended to read:

HFS 107.10 Drugs. (1) COVERED SERVICES. Drugs and drug products covered by MA include legend and non-legend drugs and supplies listed in the Wisconsin Medicaid drug index which are prescribed by a physician licensed under s. 448.04, Stats., by a dentist licensed under s. 447.05, Stats., by a podiatrist licensed under s. 448.04, Stats., or by an optometrist licensed under ch. 449, Stats., by an advanced practice nurse prescriber licensed under s. 441.16, Stats., or when a physician delegates ~~prescription~~ prescribing of drugs to a nurse practitioner or to a physician's assistant certified under s. 448.04, Stats., and the requirements under s. N 6.03 for nurse practitioners and under s. Med 8.08 for physician assistants are met.

Note: The Wisconsin ~~MA~~ Medicaid drug index is available from the State of Wisconsin Document Sales, P.O. Box 7840, Madison, WI 53707 Division of Health Care Financing, P.O. Box 309, Madison, WI 53701.

SECTION 20. HFS 107.10 (2) (a) is repealed.

SECTION 21. HFS 107.10 (2) (d), (3) (b) to (d) and (h) (intro) are amended to read:

HFS 107.10 (2) (d) Drugs ~~which have been demonstrated to the department has determined~~ entail substantial cost or utilization problems for the MA program, ~~including antibiotics which cost \$100 or more a day.~~ These drugs shall be noted in the Wisconsin Medicaid drug index;

(3) (b) Dispensing of non-scheduled ~~legend~~ drugs shall be limited to the original dispensing plus 11 refills, or 12 months from the date of the original prescription, whichever comes first.

(c) Generically-written prescriptions for drugs listed in the federal food and drug administration approved drug products publication shall be filled with a generic drug included in that list. Prescription orders written for brand name drugs which have a lower cost generically commonly available generic drug equivalent shall be filled with the lower cost drug product equivalent, unless the prescribing provider under sub.

(1) writes "brand medically necessary" on the face of the prescription.

(d) Except as provided in par. (e), legend drugs shall be dispensed in the full amounts prescribed, not to exceed a 34-day supply.

(h) To be included as a covered service, ~~an over-the-counter~~ a non-legend drug shall be used in the treatment of a diagnosable medical condition and be a rational part of an accepted medical treatment plan. ~~Only the~~ The following general categories of ~~over-the-counter~~ non-legend drugs are covered:

SECTION 22. HFS 107.10 (3) (h) 8. is created to read:

HFS 107.10 (3) (h) 8. Non-legend drugs not within one of the categories described under subs. 1. to 7. that previously had legend drug status and that the department has determined to be cost effective in treating the condition for which the drugs are prescribed."

SECTION 23. HFS 107.10 (3) (i), (4) (L) and (5) (a) are amended to read:

HFS 107.10 (3) (i) Any innovator multiple-source drug is a covered service only if the prescribing provider under sub. (1) certifies by writing the phrase "brand medically necessary" on the prescription to the pharmacist that a ~~specific~~ the innovator brand drug, rather than a generic drug, is medically necessary. The prescribing provider shall document in the patient's record the reason why the innovator brand drug is medically necessary ~~in the patient's record.~~ ~~In this paragraph, "innovator~~ The innovators of multiple source drug" means ~~a multiple source drug that was originally marketed under an original new drug application approved by the U.S. food and drug administration~~ are identified in the Wisconsin Medicaid drug index.

(4) (L) Drugs included in the Medicaid negative drug ~~list~~ formulary maintained by the department; and

(5) (a) The pharmacist shall ~~provide for a review of~~ the drug therapy before each prescription is filled or delivered to an MA recipient. The review shall include screening for potential drug therapy problems ~~due to~~ including therapeutic duplication, drug-disease contraindications, drug-drug interactions, including serious interactions with ~~non-prescription or over-the-counter~~ non-legend drugs, incorrect drug dosage or duration of drug treatment, drug-allergy interactions and clinical abuse or misuse.

SECTION 24. HFS 107.11 (6) (b) 5. is amended to read:

HFS 107.11 (6) (b) 5. ~~a. Except as provided in subd. par. b.,~~ Drugs and treatment shall be administered by the RN or LPN only as ordered by the recipient's physician or his or her designee. The nurse shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 working days.

b. Drugs may be administered by an advanced practice nurse prescriber as authorized under ss. N 8.06 and 8.10.

SECTION 25. HFS 107.12 (1) (e) is amended to read:

HFS 107.12 (1) (e) 1. Except as provided in subd. 2., Drugs and treatment shall be administered by the RN or LPN only as ordered by the recipient's physician or his or her designee. The nurse shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 working days.

2. Drugs may be administered by an advanced practice nurse prescriber as authorized under ss. N 8.06 and 8.10.

SECTION 26. HFS 107.24 (2) (a), (3) (h) 1. (intro) and 2. and (5) (j) are amended to read:

HFS 107.24 (2) COVERED SERVICES. (a) *Prescription and provision.* Durable medical equipment (DME) and medical supplies are covered services only when prescribed

by a physician and when provided by a certified physician, clinic, hospital outpatient department, nursing home, pharmacy, home health agency, therapist, orthotist, prosthetist, hearing aid dealer ~~instrument specialist~~ or medical equipment vendor.

(3) (h) 1. A request for prior authorization of a hearing aid or other ALD shall be reviewed only if the request consists of an otological report from the recipient's physician and an audiological report from an audiologist or hearing aid dealer ~~instrument specialist~~, is on forms designated by the department and contains all information requested by the department. A hearing aid dealer ~~instrument specialist~~ may perform an audiological evaluation and a hearing aid evaluation to be included in the audiological report if these evaluations are prescribed by a physician who determines that:

2. After a new or replacement hearing aid or other ALD has been worn for a 30–day trial period, the recipient shall obtain a performance check from a certified audiologist, a certified hearing aid dealer ~~instrument specialist~~ or at a certified speech and hearing center. The department shall provide reimbursement for the cost of the hearing aid or other ALD after the performance check has shown the hearing aid or ALD to be satisfactory, or 45 days has elapsed with no response from the recipient;

(5) (j) All repairs of a hearing aid or other assistive listening device performed by a dealer within 12 months after the purchase of the hearing aid or other assistive listening device. These are included in the purchase payment and are not as separate services separately reimbursable;

SECTION 27. HFS 107.36 (1) (a) 4., (b) to (i) and (2) (a) and (b) 2. are amended to read:

HFS 107.36 (1) (a) 4. Consultation, case monitoring and coordination related to developmental testing under the individuals with disabilities education act, 20 USC 1400 to 1485, are included in the MA–covered services described in this subsection when an IEP ~~or IFSP~~ results from the testing. Consultation, case monitoring and coordination for IEP ~~or IFSP~~ services are also included in the covered services described in this subsection.

(b) *Speech–language pathology, hearing and audiological services.* ~~Speech, language~~ Speech–language pathology, hearing and audiological services for a recipient with a speech, language or hearing disorder that adversely affects the individual's functioning are covered school–based services. These services include evaluation and testing to determine the individual's need for the service, recommendations for a course of treatment and treatment. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of a ~~speech and language~~ speech–language pathologist licensed by the department of public instruction under s. PI 3.35 or by an audiologist licensed by the department of public instruction under s. PI 3.355, and shall have a physician referral and be identified in the recipient's IEP ~~or IFSP~~.

(c) *Occupational therapy services.* Occupational therapy services which identify, treat, or compensate for medical problems that interfere with age–appropriate functional performance are covered school–based services. These services include evaluation to determine the individual's need for occupational therapy, recommendations for a course of treatment, and rehabilitative, active or restorative treatment services. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of an occupational therapist licensed by the department of public instruction under s. PI 3.36 and

shall be ~~prescribed by a physician and identified in the recipient's IEP or IFSP.~~

(d) *Physical therapy services.* Physical therapy services which identify, treat, or compensate for medical problems are covered school–based services. These services include evaluation to determine the individual's need for physical therapy, recommendations for a course of treatment, and therapeutic exercises and rehabilitative procedures. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of a physical therapist licensed by the department of public instruction under s. PI 3.37 and shall be prescribed by a physician when required by the department of regulation and licensing and identified in the recipient's IEP ~~or IFSP~~.

(e) *Nursing services.* Professional nursing services relevant to the recipient's medical needs are covered school–based services. These services include evaluation and management services, including screens and referrals for treatment of health needs; treatment; medication management; and explanations given of treatments, therapies and physical or mental conditions to family members or school district or CESA staff. The services shall be performed by a registered nurse licensed under s. 441.06, Stats., or a licensed practical nurse licensed under s. 441.10, Stats., or be delegated under nursing protocols pursuant to ch. N 6. The services shall be prescribed or referred by a physician or an advanced practice nurse as defined under s. N 8.02 (1) with prescribing authority granted under s. 441.16 (2), Stats., and shall be identified in the recipient's IEP ~~or IFSP~~.

(f) *Psychological counseling and social work services.* Psychological counseling and social work services relevant to the recipient's mental health needs with the intent to reasonably improve the recipient's functioning are covered school–based services. These services include testing, assessment and evaluation that appraise cognitive, emotional and social functioning and self–concept; therapy or treatment that plans, manages and provides a program of psychological counseling or social work services to individuals with psychological or behavioral problems; and crisis intervention. The services may be delivered to an individual or to a group of 2 to 10 individuals. The services shall be performed by a school psychologist, school counselor or school social worker licensed by the department of public instruction under ch. PI 3. The services shall be ~~prescribed or referred by a physician or a psychologist licensed under s. 455.04 (1), Stats., and shall be identified in the individual's IEP or IFSP.~~

(g) *Developmental testing and assessments under IDEA.* Developmental testing and assessments under the individuals with disabilities education act (IDEA), 20 USC 1400 to 1485, are covered school–based services when an IEP ~~or IFSP~~ results. These services include evaluations, tests and related activities that are performed to determine if motor, speech, language or psychological problems exist, or to detect developmental lags for the determination of eligibility under IDEA. ~~The services shall be performed by a special education teacher, diagnostic teacher or other school district staff licensed by the department of public instruction under ch. PI 3.~~ The services are also covered when performed by a therapist, psychologist, social worker, counselor or nurse licensed by the department of public instruction under ch. PI 3, as part of their respective duties.

(h) *Transportation.* Transportation services provided to individuals who require special transportation accommodations ~~in vehicles equipped with a ramp or lift~~ are covered school–based services if the recipient receives a school–based service other than transportation on the day

transportation is provided. These services include transportation from the recipient's home to and from school on the same day if the school-based service is provided in the school, and transportation from school to a service site and back to school or home if the school-based service is provided at a non-school location, such as at a hospital. Transportation shall be performed by a school district, CESA or contracted provider using vehicles equipped with a ramp or lift. A prescription from a physician or advanced practice nurse, as defined under s. N 8.02 (1), with prescribing authority granted under s. 441.16 (2), Stats., is required to demonstrate the recipient's need for special transportation. The service shall be included in the IEP or IFSP. The covered service that the recipient is transported to and from shall meet MA requirements for that service under ch. HFS 105 and this chapter.

(i) *Durable medical equipment.* Durable medical equipment except equipment covered in s. HFS 107.24 is a covered service if the need for the equipment is identified in the recipient's IEP or IFSP, the equipment is recipient-specific, the equipment is not duplicative of equipment the recipient currently owns and the equipment is for the recipient's use at school and home. Only durable medical equipment related to speech-language pathology, physical therapy or occupational therapy will be covered under the school based services benefit. The recipient, not the school district or the CESA, shall own the equipment.

(2) LIMITATIONS. (a) *Age limit.* School-based services may only be provided to MA-eligible recipients under between 3 and 21 years of age, or for the school term during which an MA-eligible recipient becomes 21 years of age.

(b) 2. Are identified in an IEP or an IFSP;

SECTION 28. HFS 111.03 (36) is amended to read:

HFS 111.03 (36) "Provisional EMT-intermediate" means the title and temporary license level given to EMTs-intermediate licensed based on the 1989 or earlier version of the national standard curriculum as of February 1, 2002. The temporary licensing level will no longer be used after June 30, ~~2004~~2006.

SECTION 29. HFS 120.02 is amended to read:

HFS 120.02 **Applicability.** This chapter applies to the department, the board on health care information, the independent review board, qualified vendors, health care plans, health care providers licensed in this state and persons requesting data from the department.

SECTION 30. HFS 120.03 (4m) is created to read:

HFS 120.03 (4m) "Claims data" means data stored in a health care provider's or qualified vendor's electronic billing system.

SECTION 31. HFS 120.03 (7) (note), (13), (20), (28), (29), (30) (note), (34) and (36) are amended to read:

HFS 120.03 (7) **Note:** A copy of the data submission manual is provided to each data submitting entity. Copies of the manual are also available at ~~http://badger.state.wi.us/agencies/oci/ohc~~http://www.dhfs.state.wi.us/healthcareinfo or by writing to the Bureau of Health Information at P.O. Box 309, Madison, WI 53701-0309.

(13) "Freestanding ambulatory surgery center" or "center" means any distinct entity that is operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization, that has an agreement with the federal health care financing administration centers for medicare and medicaid services under 42 CFR 416.25 and

416.30 to participate as an ambulatory surgery center, and that meets the conditions set forth in 42 CFR 416.25 to 416.49.

(20) "Individual data elements" means items of information from or derived from a uniform patient billing form or derived from a uniform patient billing form an electronic transaction and code set standard for health care.

(28) "Public use data" means any form of data from the department's comprehensive discharge database, physician office visit database or facility level database that does not allow the identification of an individual from the elements released in the data files.

(29) "Qualified vendor" means an entity under contract with a health care provider that will submit data to the department according to formats the department specifies in its data submission manual. Qualified vendors may be either internal to a clinic or medical group or an external organization.

(30) **Note:** Examples of raw data elements are any of the following:

a. The data files hospitals and surgery centers submitted to the department each quarter.

b. The public-use data files the department produces.

c. Any custom data file produced by the department that contains individual patient data records representing hospital discharges or surgical cases. Some customers purchase this kind of data when it is more cost-effective than purchasing the complete statewide public-use data files.

d. A computer printout of the individual data elements in individual patient data records representing hospital discharges or surgical cases.

(34) "Trading partner agreement" means a signed, formal arrangement between a health care provider, ~~the department~~ and a qualified vendor providing the transfer of data under this chapter. The agreement specifies the acceptable data formats, the edit review and verification requirements, including procedures for processing confidential patient data and the authorized signatory for the affirmation statement.

(36) "Uniform patient billing form or electronic transaction and code set standard for health care" means a forms or standard consistent with federal data standards for health care payment transactions.

SECTION 32. HFS 120.05 (2) is amended to read:

HFS 120.05 (2) TIMING. All written communications, including documents, reports and information required to be submitted to the department shall be submitted by 1st class or registered mail, or by delivery in person or in an electronic format specified by the department. The date of submission is the day~~date~~ the written communication is postmarked, or delivered in person the date delivery in person is made, or the date on the electronic communication.

SECTION 33. HFS 120.11 (3) (c) and (d) 1. are amended to read:

HFS 120.11 (3) (c) If the department determines data submitted by the facility to be questionable, and the department has determined that the data cannot be verified or corrected by telephone or electronic means, the department may return the questionable data to the facility or the facility's qualified vendor with information for revision and resubmission.

(d) 1. Within ~~30~~20 calendar days from the required date for data submission as specified in s. HFS 120.12 (5) (b) 2., ~~and (5m) (b) 2., and (6) (c) 2. and 120.13 (2) (a),~~ the facility shall do all of the following:

SECTION 34. HFS 120.11 (3) (f) is repealed.

SECTION 35. HFS 120.11 (4) (e) 1. and 2. are amended to read:

HFS 120.11 (4) (e) 1. If a physician files a timely request to review data before release, the department shall make the data available to the physician as it is submitted to the department. The department's ~~transmittal report~~ shall contain a "permission to change" authorization form that may be duplicated in the event of multiple problems.

2. If the physician wants to dispute the data, the physician shall ~~describe on the form~~ attest to the problem associated with the data on the authorization form, and an authorized representative of the facility shall indicate on the form if the facility agrees to the change.

SECTION 36. HFS 120.12 (1) (b) 2., (2) (b) 1., (c) 2. a., (3) (b) 11., (c) 1. and 3., (5) (b) 2. and 4. are amended to read:

HFS 120.12 (1) (b) 2. The department may grant an extension of a deadline specified under subd. 1. only when the hospital adequately justifies to the department the hospital's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~delay due to catastrophic~~ computer failure system malfunction. A hospital desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days before the date the data are due. The department may grant an extension for up to 30 calendar days.

(2) (b) *Data to be collected*. 1. 'General hospital data.' Hospitals shall report all of the following financial data to the department in the format specified by the department, in accordance with this subsection and department instructions that are based on guidelines from the ~~July 1998 version 2003 update~~ of the ~~*Audits of Providers of Health Care Services*~~ *Health Care Organizations – AICPA Audit and Accounting Guide*, published by the American institute of certified public accountants, generally accepted accounting principles and the national annual survey of hospitals conducted by the American hospital association.

(c) 2. a. Except as provided in subd. 2. b., the department may grant an extension of a deadline specified in subd. 1. only when the hospital adequately justifies to the department the hospital's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~catastrophic~~ computer failure system malfunction. A hospital desiring an extension shall submit a request in writing to the department at least 10 calendar days prior to the date that the data are due. The department may grant an extension for up to 30 calendar days.

(3) (b) 11. Swing-bed utilization, if applicable, including average number of swing beds, admissions discharges and days of care.

(c) 1. A hospital shall submit to the department the data specified in par. ~~(a)(b)~~ according to a schedule specified by the department.

3. The department may grant an extension of a deadline specified in this paragraph only when the hospital adequately justifies to the department the hospital's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~catastrophic~~ computer failure system malfunction. A hospital desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days prior to the date that the data are due. The department may grant an extension for up to 30 calendar days.

(5) (b) 2. Hospitals shall send the data to the department within ~~30~~ 3045 calendar days of the last day of each calendar quarter using the department's electronic submission system. Calendar quarters shall begin on January 1, April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31.

4. The department may grant an extension of the time limits specified under subd. 2. only when the hospital adequately justifies to the department the hospital's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~catastrophic~~ computer failure system malfunction. A hospital desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days prior to the date that the data are due. The department may grant an extension for up to 30 calendar days.

SECTION 37. HFS 120.12 (5m) (a) 30. and 31. are created to read:

HFS 120.12 (5m) (a) 30. Patient race.

31. Patient ethnicity.

SECTION 38. HFS 120.12 (5m) (b) 2., 4. and 5. a. and (6) (a) and (c) 2. and 3. are amended to read:

HFS 120.12 (5m) (b) 2. Within ~~30~~ 3045 calendar days after the last day of each calendar quarter, each hospital shall submit to the department the data specified in par. (a) using the department's electronic data submission system. Calendar quarters shall begin on January 1, April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31.

4. The department may grant an extension of the deadline specified under subd. 2. only when the hospital adequately justifies to the department the hospital's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~catastrophic~~ computer failure system malfunction. A hospital desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days before the date the data are due. The department may grant an extension for up to 30 calendar days.

5. a. To ensure confidentiality, hospitals using qualified vendors to submit data shall provide an original trading partner agreement to the department that has been signed ~~and notarized~~ by the qualified vendor and the hospital.

(6) (a) *Definition*. In this subsection "hospital-affiliated ambulatory surgical center" means an entity that is owned by a hospital and is operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization, has an agreement with the federal ~~health care financing administration~~ centers for medicare and medicaid services under 42 CFR 416.25 and 416.30 to participate as an ambulatory surgery center, and meets the conditions set forth in 42 CFR 416.25 to 416.49.

(c) 2. Within ~~30~~ 3045 calendar days after the end of each calendar quarter, each hospital shall submit to the department the surgical data specified in par. (a) for all ambulatory patient surgical procedures using the department's electronic submission system. The department's electronic submission system shall be described in the department's data submission manual. Calendar quarters shall begin on January 1, April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31.

3. The department may grant an extension of the deadline specified under subd. 2. only when the hospital adequately justifies to the department the hospital's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~catastrophic~~ computer failure system malfunction. A hospital desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days before the date the data are due. The department may grant an extension for up to 30 calendar days.

SECTION 39. HFS 120.13 (2) (a) and (b) are amended to read:

HFS 120.13 (2) (a) Each freestanding ambulatory surgery center shall electronically submit to the department, as described in the department's data submission manual, all data elements specified in sub. (1) for all ambulatory patient surgical procedures within ~~3045~~ calendar days after the end of each calendar quarter. Calendar quarters shall begin on January 1, April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31. The method of submission, data formats and coding specifications shall be defined in the department's data submission manual.

(b) The department may grant an extension of the time limits specified under par. (a) only when the center adequately justifies to the department the center's need for additional time. In this paragraph, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~eatastrophie-computer failure~~ system malfunction. A center desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days prior to the date that the data are due. The department may grant an extension for up to 30 calendar days.

SECTION 40. HFS 120.14 (1) (b) 1. and (note), 2. to 6. (intro) and (c) 2. (intro) are amended to read:

HFS 120.14 (1) (b) *Data submission procedures*. 1. Non-exempt physicians shall submit claims information to the department in an electronic format using secure methods specified in a data submission manual provided by the department. ~~Physicians shall send the information using an internet browser technology, over a secure internet protocol, using authentication and encryption to assure the safe transmission of data to the department. Physicians who submit data through a qualified vendor shall require their vendor to comply with the requirements specified in this paragraph. In addition, qualified vendors shall sign a trading partner agreement.~~

Note: Qualified vendors may be either internal to a clinic or medical group or an external organization. A copy of the data submission manual is provided to each data submitting entity. Copies of the manual are also available at <http://www.dhfs.state.wi.us/healthcareinfo> or by writing to the Bureau of Health Information at P.O. Box 309, Madison, WI 53701-0309.

2. Each physician shall submit his or her ~~monthly~~ data to the department within 30 calendar days following the close of the reporting period. The department shall provide instructions on submission in a data submission manual.

3. The department may grant an extension of the deadline specified under subd. 2. only when the physician or physician's qualified vendor adequately justifies to the department the physician's or physician's qualified vendor's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~eatastrophie-computer failure~~ system malfunction. A physician or physician's qualified vendor desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days prior to the date that the data are due. The department may grant an extension for up to 30 calendar days.

4. a. To ensure confidentiality of the data is maintained, physicians using qualified vendors to submit data shall provide to the department ~~an originalevidence of a signed trading partner agreement that has been signed and notarized by between~~ the qualified vendor and the physician in a format specified within the data submission manual.

b. A Physiciansphysician or his or her delegated representative shall be accountable for theirhis or her qualified vendor's failure to submit and edit data in the format required by the department.

5. A health care provider that is not a hospital or ambulatory surgery center shall, before submitting information required by the department under this chapter, convert any names of an insured's payer or other insured's payer to a payer category code as specified by the department in ~~it'sits~~ data submission manual.

6. A health care provider or qualified vendor may not submit information that uses any of the following as a patient account number:

(c) 2. ~~If the physician submits~~ The department may not retain or release any of the following data elements, the department shall immediately return the information to the physician, or, if the department subsequently discovers the data, the department shall permanently destroy, delete or make non-identifiable the data from its database if the department receives the elements:

SECTION 41. HFS 120.14 (1) (c) 3. is renumbered 120.14(1) (c) 4m. and amended to read:

HFS 120.14 (1) (c) 4m. If the data submitted by a physician or qualified vendor passes the department's editing processes, the department shall send a data profile to the physician or their qualified vendor indicating what has been sent and an affirmation statement. The physician or their qualified vendor shall review the profile and verify the accuracy of the profile's data.

SECTION 42. HFS 120.14 (1) (c) 4. b. is amended to read:

HFS 120.14 (1) (c) 4. b. The physician or the physician's qualified vendor shall correct all data errors ~~resulting from checks performed under this paragraph~~ identified by the department as requiring correction via either the department's, physician's or qualified vendor's data editing system and ~~complete resubmissions of the corrected~~ shall return corrected data to the department within 15 calendar days after the physician's or the physician's qualified vendor's ~~receipt of received~~ the data summary.

SECTION 43. HFS 120.14 (1) (c) 4. c. is repealed.

SECTION 44. HFS 120.14 (1) (c) 5. (intro) and b., 9., (e) 1. and 4. and (3) (b) 2. are amended to read:

HFS 120.14 (1) (c) 5. The physician or his or her delegated representative shall review the final data profile for accuracy and completeness and shall supply the department within 30 calendar days from the day the data is due to the bureau of health information ~~office~~ with the following:

b. A signed affirmation statement. ~~Physicians~~ A physician or the physician's delegated representative submitting affirmation statements to the department electronically shall use a digital signature approved by the department and returned by the physician or the physician's delegated representative during the timeframes for data submission specified by the department. A physician's or the physician's delegated representative's signature on the electronic data affirmation statement represents the physician's or the physician's delegated representative's acknowledgment that the data is accurate and the data submitter may no longer submit revised data.

9. The department may grant an extension for up to 15 calendar days beyond the 15 calendar days specified in subd. 4. b. if the physician or the physician's qualified vendor adequately justifies to the department the physician's need for additional time. In this subdivision, "adequate justification" means a delay due to a strike, fire, natural disaster or ~~eatastrophie-computer failure~~ system malfunction.

(e) 1. Physicians practicing anytime during calendar year 1998 and submitting claims data ~~to the department electronically to any payer~~ shall continue to submit their practice data to the department electronically.

4. The department shall report all exceptions granted by the department under subd. 3. to the board of health care information.

(3) (b) 2. The department may grant an extension of a deadline specified in subd. 1. for submission of information only when the physician adequately justifies to the department the physician's need for additional time. In this subdivision, "adequate justification" means a delay due to a labor strike, fire, natural disaster or catastrophic computer failure system malfunction. A physician or physician's qualified vendor desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days prior to the date that the data are due. The department may grant an extension for up to 30 calendar days. Physicians who have been granted an extension by the department shall submit their data directly to the department.

SECTION 45. HFS 120.15 (3) (b) is amended to read:

HFS 120.15 (3) (b) The department may grant an extension of a deadline specified in par. (a) for submission of health care provider information only when the health care provider adequately justifies to the department the health care provider's need for additional time. In this paragraph, "adequate justification" means a delay due to a labor strike, fire, natural disaster or catastrophic computer failure system malfunction. A health care provider desiring an extension shall submit a request for an extension in writing to the department at least 10 calendar days prior to the date that the data are due. The department may grant an extension for up to 30 calendar days. Health care providers who have been granted an extension by the department shall submit their data directly to the department.

SECTION 46. HFS 120.20 (3) (b) is amended to read:

HFS 120.20 (3) (b) Data collected under ss. HFS ~~120.12~~ 120.11 to 120.16 shall not be subject to inspection, copying or receipt as specified in the open record provisions under s. 19.35 (1), Stats.

SECTION 47. HFS 120.21 (1) (a) is amended to read:

HFS 120.21 (1) (a) The annual hospital fiscal year survey.

SECTION 48. HFS 120.22 (1) (a) 1. is amended to read:

HFS 120.22 (1) (a) 1. The annual hospital fiscal year survey.

SECTION 49. HFS 124.05 (3) (h) is amended to read:

HFS 124.05 (3) (h) *Cancer reporting.* Every hospital shall report to the department all malignant neoplasms that are diagnosed by the hospital diagnoses and all malignant neoplasms diagnosed elsewhere if the individual is subsequently admitted to the hospital. The hospital shall report of each malignant neoplasm shall be made on a form prescribed or approved by the department prescribes or approves and shall be submitted submit the report to the department within 6 months after the diagnosis is made or within 6 months after the individual's first admission to the hospital if the neoplasm is diagnosed elsewhere, as appropriate. In this paragraph, "malignant neoplasm" means an in situ or invasive tumor of the human body, but does not include a squamous cell carcinoma or basal cell carcinoma arising in the skin or an in situ carcinoma of the cervix uteri.

SECTION 50. HFS 124.12 (5) (b) 11. is amended to read:

HFS 124.12 (5) (b) 11. A statement specifying categories of personnel duly authorized to accept and implement medical staff orders. All orders shall be recorded and authenticated. All verbal and telephone orders shall be authenticated by the prescribing member of the medical staff in writing within 24 hours of receipt.

SECTION 51. HFS 132.42 (3) (a) is amended to read:

HFS 132.42 (3) PHYSICAL HEALTH CERTIFICATIONS. (a) *New employees.* Every employee shall be certified in writing by a physician or physician extender as having been screened for tuberculosis infection and being free from clinically apparent communicable disease within 90 days before beginning work prior to employment for evidence of infection.

SECTION 52. HFS 132.42 (4) is repealed and recreated to read:

HFS 132.42 (4) DISEASE SURVEILLANCE AND CONTROL. When an employee or prospective employee has a contagious infection, he or she may not perform employment duties in the nursing home until the nursing home makes safe accommodations to prevent the infection's spread.

Note: The Americans with Disabilities Act and Rehabilitation Act of 1973 prohibits the termination or non-hiring of an employee based solely on an employee having an infectious disease, illness or condition.

SECTION 53. HFS 132.44 (1) (b) is repealed.

SECTION 54. HFS 132.51 (2) (b) 1. is repealed and recreated to read:

HFS 132.51 (2) (b) 1. 'Communicable disease management.' The nursing home shall have the ability to manage persons with communicable disease the nursing home admits or retains.

SECTION 55. HFS 132.52 (2) (c) is amended to read:

HFS 132.52 (2) (c) Receipt of certification in writing from a physician or physician extender that the person is free of airborne or other communicable tuberculosis disease and clinically apparent communicable disease, or an order for procedures to treat and limit the spread of any communicable disease the person may be found to have.

SECTION 56. HFS 132.66 (1) (d) is repealed.

SECTION 57. HFS 133.03 (8) (b) is amended to read:

HFS 133.03 (8) (b) If a home health agency wants to contest a department action specified in par. (a), it shall file a written request for a hearing under s. 227.44, Stats., with the department of administration's division of hearings and appeals within 10 days of receipt of notice of the contested action.

SECTION 58. HFS 134 (title) is amended to read:

HFS 134 Facilities ~~for the Developmentally Disabled~~ Serving People with Developmental Disabilities

SECTION 59. HFS 134.11 is amended to read:

HFS 134.11 Authority and purpose. This chapter is promulgated under the authority of s. 50.02 (2) and (3), Stats., to provide conditions of licensure for facilities that primarily serve developmentally disabled persons people with developmental disabilities who require active treatment. This chapter is intended to protect and promote the health, safety and well-being of residents of these facilities.

SECTION 60. HFS 134.12 (1) is amended to read:

HFS 134.12 Scope. (1) APPLICABILITY. All facilities that provide care primarily for developmentally disabled persons who require active treatment, including facilities owned and operated by the state, a county, a municipality or another public body, are subject to this chapter. A facility that is regulated as a community-based residential facility defined in s. 50.01 (1), Stats., or a nursing home, defined in s. 50.01 (3), Stats., on July 1, 1988 is subject to this chapter rather than to ch. HFS 83 or 132 if it is a facility for the developmentally disabled serving people with developmental disabilities.

SECTION 61. HFS 134.13 (7) and (note), (10) (a), (12), (13), (17) and (39) (intro) are amended to read:

HFS 134.13 (7) “Center for the developmentally disabled” means a department–operated residential institution for the care of ~~developmentally disabled persons~~people with developmental disabilities.

Note: There are 3 state centers for ~~developmentally disabled persons~~people with developmental disabilities in Wisconsin: Central Center, Northern Center and Southern Center.

(10) (a) Eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982 and certified with the state of Wisconsin under s. 448.78, Stats.; or

(12) “Facility” means a facility ~~for the developmentally disabled~~servicing people with developmental disabilities.

(13) “FDD” or “facility ~~for the developmentally disabled~~servicing people with developmental disabilities” means a residential facility with a capacity of 3 or more residents in which nursing care is provided to any resident and which primarily serves residents who ~~are developmentally disabled~~have developmental disabilities and who require and receive active treatment.

(17) “Interdisciplinary team” means the persons ~~employed by a facility or under contract to a facility who are responsible for planning the program and delivering the services relevant to a resident’s care needs~~who possess the knowledge, skills and expertise necessary to accurately identify the comprehensive array of the client’s needs and design a program that is responsive to those needs.

(39) (intro) “QMRP” or “qualified mental retardation professional” means a person who has specialized training in mental retardation or at least one year of experience in treating or working with ~~mentally retarded persons~~people with mental retardation or other developmental disabilities, and is one of the following:

SECTION 62. HFS 134.14 (1), (2) (a) (intro) and (5m) are amended to read:

HFS 134.14 Licensure. (1) APPLICATION. Application for a license to operate a facility ~~for the developmentally disabled~~servicing people with developmental disabilities shall be made on a form provided by the department.

(2) (a) A new facility ~~for the developmentally disabled~~ may not have more than 16 residents, except that:

(5m) ANNUAL REPORT. Every 12 months, on a schedule determined by the department, a facility ~~for the developmentally disabled~~ licensee shall submit a report to the department in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a), Stats. If a complete report is not timely filed, the department shall issue a warning to the licensee. If the licensee of a facility ~~for the developmentally disabled~~ who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

SECTION 63. HFS 134.815 (1) and (2) (a) are amended to read:

HFS 134.815 Fees for plan reviews. (1) REQUIREMENT. Before the start of any construction or remodeling project for a facility ~~for the developmentally disabled~~, the plans for the construction or remodeling shall be submitted to the department, pursuant to s. HFS 134.84 (1), for review and approval by the department. The fees established in this section shall be paid to the department for providing plan review services.

(2) FEE SCHEDULE. (a) *General*. The department shall charge a fee for the review under s. HFS 134.812 of plans for a facility ~~for the developmentally disabled~~ capital construction or remodeling project. The fee shall be based in part on the dollar value of the project, according to the schedule under par. (b), and in part on the total gross floor area in the plans, in accordance with par. (c). The total fee for plan review is determined under par. (d). Fees for review of partial plans, for revision of plans, for extensions of plan approval, and for handling and copying, and provisions for the collection and refund of fees are found in par. (e).

SECTION 64. Table HFS 134.82 (title) is amended to read:

Table HFS 134.82 LIFE SAFETY CODE REQUIREMENTS FOR FACILITIES ~~FOR THE DEVELOPMENTALLY DISABLED~~SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES

SECTION 65. HFS 144.03 (2) (b), (c) and (e) and footnotes 1. and 4. to Table 144.03–A are amended to read:

HFS 144.03 (2) (b) Immunization against measles, mumps and rubella shall have been received on or after the date of the first birthday. A dose received 4 days or less before the first birthday is acceptable.

(c) Exceptions may be made in requirements for the fourth dose of DTP/DT/DaP/Td vaccine and the fourth dose of polio vaccine. Students who receive the third dose of either of these vaccines after their fourth birthday are not required to receive a fourth dose of that vaccine. A dose received 4 days or less before the 4th birthday is acceptable.

(e) Exceptions may be made in requirements for Hib vaccine. Students who began the Hib series at 12 to 14 months are only required to receive 2 doses at least 2 months apart. Students who received one dose of Hib at 15 months of age or after are not required to obtain additional doses. A dose received 4 days or less before 15 months of age is acceptable.

Table 144.03–A Footnote 1. For kindergarten only, at least one dose to be received after 4 years of age unless medically contraindicated. A dose received 4 days or less before the fourth birthday is acceptable.

4. At least one dose to be received after 12 months of age unless medically contraindicated. A dose received 4 days or less before the first birthday is acceptable.

SECTION 66. HFS 145.05 (2), (3) and (4) (note) are amended to read:

HFS 145.05 (2) Local health officers shall follow the methods of control set out in section 9 under each communicable disease listed in the ~~16th~~17th edition (1995)(2000) of *Control of Communicable Diseases Manual*, edited by ~~Abram S. Benenson~~James Chin, published by the American Public Health Association, unless specified otherwise by the state epidemiologist. Specific medical treatment shall be prescribed by a physician or an advanced practice nurse prescriber.

(3) Any person licensed under ch. 441 or 448, Stats., attending a person with a communicable disease shall instruct the person in the applicable methods of control contained in *Control of Communicable Diseases Manual*, ~~16th~~17th edition (1995)(2000), edited by ~~Abram S. Benenson~~James Chin, published by the American Public Health Association, unless specified otherwise by the state epidemiologist, and shall cooperate with the local health officer and the department in their investigation and control procedures.

(4) **Note:** The handbook, *Control of Communicable Diseases Manual*, ~~16th~~17th edition (1995)(2000), edited by ~~Abram S. Benenson~~James Chin, is on file in the Department’s Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State’s Office, and is available for purchase

from the American Public Health Association, 1015 Fifteenth St., NW, Washington, DC 20005.

SECTION 67. HFS 155 is repealed.

SECTION 68. TCB 1.04 (1) (d) 1. b. is amended to read:

TCB 1.04 (1) (b) 1. b. ~~Create more adverse attitudes toward smoking among 15 percent of the target population within 6 months of initiating the campaign message a 10 percent change in attitudes, beliefs and knowledge of identified tobacco-related issues. Issues may include secondhand smoke, the dangers of tobacco, tobacco addiction cessation and the roles of the tobacco industry.~~

SECTION 69. TCB 1.07 (1) (a) is amended to read:

TCB 1.07 (1) (a) Purchasing tobacco use cessation medications without written permission from the grant manager.

Fiscal Estimate

The Department's proposed changes will not have a fiscal effect.

Initial Regulatory Flexibility Analysis

The rule changes will not affect small businesses as defined in s. 227.114 (1) (a), Stats.

Notice of Hearings

Health and Family Services (Health, Chs. HFS 110—) [CR 03-041]

Notice is hereby given that, pursuant to ss. 254.47 (4) and 254.68, Stats., the Department of Health and Family Services will hold public hearings to consider the proposal to repeal HFS 196 Appendix chapter 12, subpart, 12-202.11 (C); to amend HFS 196 Appendix chapter 12, subpart 12-101.12 (A), (C), and (D), 12-201.11 (A) to (D), 12-202.11 (B) and (Note), 12-202.12, 12-401.11 (A) and (Note); to repeal and recreate HFS 196 Appendix chapter 12, subparts 12-201.12 and 12-201.13, 12-301.11 and (Note), 12-401.11 (B) and (C), and 12-402.11 and (Note); to create HFS 196 Appendix chapter 12, subpart 12-302.11, relating to certification of food managers.

Hearing Information

The public hearings will be held:

Wednesday, June 4, 2003

Beginning at 11:00 a.m.

Public Health Regional Office

200 North Jefferson Street, Room 152 B

Green Bay, WI 54301

Thursday, June 5, 2003

Beginning at 11:00 a.m.

Marathon County Health Department

Lakeview Professional Plaza

1200 Lakeview Drive, West Conference Room

Wausau, WI 54403

Friday, June 6, 2003

Beginning at 11:00 a.m.

Wilson Street State Office Building

1 West Wilson Street, Room B145

Madison, WI 53701

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Family Services

Chapter 12 of HFS 196 Appendix, establishes the requirements for certification of food managers. Section 254.71, Stats., and HFS 196 Appendix, commonly known as the Wisconsin Food Code, require an operator or at least one manager of a food establishment to have achieved a minimum proficiency in food safety through classroom training and examination. The classroom session and examination are administered by independent organizations such as the Tavern League of Wisconsin and the Wisconsin Restaurant Association, or by technical colleges utilizing an examination approved by the Department. In order for an individual to be certified, proof of passing the examination is required to be submitted to the Department along with a \$10 certification fee. The certificate may be renewed, within 6 months of the expiration date, by completing a Department-approved recertification training course and payment of a \$10 recertification fee. Certification and recertification is valid for a period of 5 years.

The Department proposes to amend ch. 12, of HFS 196 Appendix, to do all of the following:

1. Increase the certification fee and the recertification fee from \$10 for 5 years to \$25 for 5 years, with an additional increase to \$30 for 5 years effective July 1, 2004.

2. Revise the recertification requirements to be equal to the requirements of the initial certification.

3. Grant automatic approval to create and administer written examinations on food protection practices to testing service organizations that are accredited by the National Conference for Food Protection (NCFP), the recognized authority for setting national standards in food safety.

Justification:

1. **Fee Increase:** The current fee of \$10 for certification and the current fees of \$10 for recertification was established at the conception of the certified food manager program in 1994. The cost of maintaining and verifying the registry of certified food managers has increased since then. Health inspectors and certificate holders frequently contact the Department to check on the status of a misplaced certificate, to request duplicates, or to determine when renewal is due. The Department estimates that central office support staff spend 46 hours per week on the certification program. Additional costs related to the program are incurred at each annual inspection. The Department estimates that a 5-year certificate issued for \$10 costs the state more than \$70 over its 5-year life. The additional revenue generated from these fee increases will enable the Department to maintain the current registry, and to respond in a timely manner to information requests regarding CFMs. Neighboring states currently charge up to \$35 for 5-year certificates or renewals.

2. **Recertification Requirements:** The current recertification requirement is 3 hours of classroom instruction and an examination on the information presented. There are no requirements concerning the content of the examination, nor are individuals required to achieve a passing grade on the examination. The Department believes that recertification requirements that are at least as stringent as the initial certification requirements will increase the level of food safety in each food service operation by reminding the CFM of processes or procedures that may have been forgotten, as well as addressing new trends and problems.

3. **Change in Examination Approval:** The Department believes it is more appropriate for course materials and examinations to be approved by the NCFP. The NCFP has

more expertise and knowledge in this field. Additionally many states are moving in this direction, resulting in improved consistency and uniformity from one jurisdiction to another.

The Department's authority to amend these rules is found in ss. 227.11 (2) (a), 254.74 (1), and 254.71 (6), Stats. The rule interprets ss. 254.71 (6) and 254.74 (1), Stats.

Contact Person

To find out more about the hearings or to request a copy of the rulemaking order, write or phone:

Greg Pallaske

Food Safety and Recreational Licensing Section

Division of Public Health

P. O. Box 2659

Madison, WI 53701-2659

608-266-8351 or, if you are hearing impaired, 608-266-1511 (TTY)

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at a hearing difficult and if you, therefore, require an interpreter, or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10

days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than June 13, 2003, will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

It is estimated that the Department will receive approximately 12,400 applications for the certification or recertification of food managers in FY04. Increasing the certification and recertification fee from \$10 to \$25 dollars will increase revenues by \$186,000. In FY05 it is estimated that the Department will receive approximately 14,000 applications for the certification or recertification of food managers. Increasing the certification and recertification fee from \$25 to \$30 in FY05, plus the \$15 increase in FY04, will generate an additional \$280,000 in revenues.

Due to the 5-year recertification cycle revenues vary from year to year. Assuming on average 12,000 certifications and recertifications per year, this rule will increase program revenues by \$240,000 per year.

Initial Regulatory Flexibility Analysis

The Department expects that the proposed increase in certification and recertification fees will impact small businesses where the owner is the certified manager. The Department estimates that the proposed recertification fee of \$30 and the \$25 fee for the national recertification examination will cost that operator \$11 per year. Initial certification will cost an operator \$55.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

**Accounting Examining Board
(CR 02-149)**

Ch. Accy 3, relating to a new computer-based examination.

**Administration
(CR 03-002)**

Ch. Adm 19, relating to small cities community development block grants for housing.

**Health and Family Services
(CR 03-001)**

Ch. HFS 78, relating to the telecommunications assistance program for the deaf, deafblind and severely hard of hearing.

**Health and Family Services
(CR 03-019)**

Ch. HFS 163, relating to the abatement of lead-contaminated soil and the standards defining lead-based paint hazards.

**Higher Educational Aids Board
(CR 02-148)**

Ch. HEA 5, relating to the Talent Incentive Program Grant.

**Natural Resources
(CR 02-097)**

Chs. NR 406 and 445, relating to control of hazardous air contaminants.

**Natural Resources
(CR 02-144)**

Ch. NR 25, relating to smelt trawling in Green Bay.

**Natural Resources
(CR 03-016)**

Chs. NR 10, 12 and 45, relating to control and management of chronic wasting disease.

**Natural Resources
(CR 03-017)**

Chs. NR 10 and 19, relating to the regulation of baiting and feeding to control and manage chronic wasting disease.

**Regulation and Licensing
(CR 02-125)**

Chs. RL 140 to 142, relating to changes made as a result of 2001 Wisconsin Act 80, specifically music, art and dance therapists who practice psychotherapy.

**Veterans Affairs
(CR 03-024)**

Ch. VA 2, relating to the expenditure limitation for dentures under the health care aid grant program.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (CR 02-111)

An order affecting ch. A-E 3, relating to architectural interns.
Effective 7-1-03.

Natural Resources (CR 02-061)

An order creating ch. NR 109, relating to aquatic plant management.
Effective 6-1-03.

Natural Resources (CR 02-114)

An order affecting ch. NR 169, relating to the reimbursement of response action costs for response actions taken at eligible dry cleaning facilities.
Effective 6-1-03.

Natural Resources (CR 02-122)

An order affecting ch. NR 191, relating to lake protection and classification grants.
Effective 6-1-03.

Natural Resources (CR 02-134)

An order affecting chs. NR 140 and 811, relating to groundwater quality standards and the development of an aquifer storage recovery well or the operation of an ASR system by a municipal water utility.
Effective 7-1-03.

Natural Resources (CR 02-142)

An order affecting ch. NR 20, relating to fishing for walleye and sauger in Escanaba Lake, Vilas County.
Effective 7-1-03.

Public Service Commission (CR 01-077)

An order creating ch. PSC 130, relating to municipal regulation of municipal rights-of-way (ROW).
Effective 7-1-03.

Public Service Commission (CR 02-115)

An order affecting ch. PSC 114, relating to electric safety – revision of Volume 1 of the Wisconsin State Electrical Code.
Effective 7-1-03.

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