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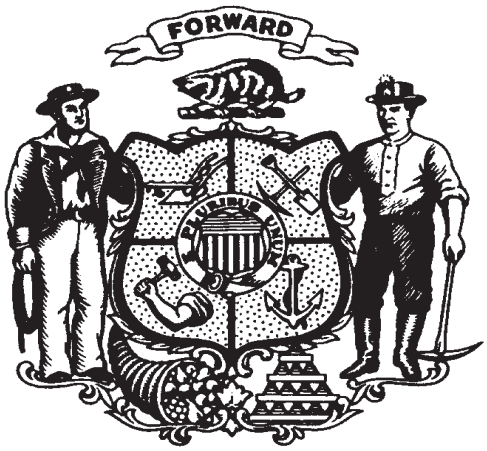

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Emergency rules now in effect

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.

Elections Board

Rules adopted creating **s. ElBd 1.395**, relating to the use of funds in a federal campaign committee that has been converted to a state campaign committee and relating to the use of those converted funds whose contribution to the federal committee would not have been in compliance with Wisconsin law if the contribution had been made directly to a state campaign committee.

Finding of Emergency

The Elections Board finds that an emergency exists in the recent change in federal law that permits the transfer of the funds in a federal candidate campaign committee's account to the candidate's state campaign committee account and finds that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

Since the Bi−Partisan Campaign Reform Act of 2002 (BICRA), transfers of funds from a federal campaign committee to a state campaign committee had not been authorized under federal law. In November, 2004, Congress amended the Federal Election Campaign Act, (H.R. 4818, s.532(3) and 532(4), to permit the transfer of a federal candidate's campaign committee's funds to the candidate's state campaign committee, if state law permitted, and subject to the state law's requirements and restrictions.

Because of Congress' action in November, 2004, money which had not been available to a state committee under BICRA, and which might not have qualified for use for political purposes in a state campaign because of its source or because of other noncompliance with state law, could now be transferred to a state committee, if state law permitted. Wisconsin law, under the Board's current rule, ElBd 1.39, Wis. Adm. Code, allows for conversion of federal campaign committees, and their funds, to a state campaign committee without regard to the source of those funds and without regard to contribution limitations.

Restricting the use of such money to that money which has been contributed to the candidate's federal committee, under circumstances in which the contribution would have complied with Wisconsin law if it had been given directly to the Wisconsin campaign committee, is found to be in the public interest.

Publication Date:	**February 3, 2005**
Effective Date:	**February 3, 2005***
Expiration Date:	**July 3, 2005**
Hearing Date:	**May 18, 2005**

***** On February 9, 2005, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

Health and Family Services (2)
(Health, Chs. HFS 110—)

1. Rules adopted revising **ch. HFS 113,** relating to certification of first responders.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting this emergency are:

Currently, first responders are restricted in their provision of emergency medical services (EMS) to performing defibrillation. These amended rules are primarily being published by emergency order to allow first responders to also use the following 2 potentially life−saving skills:

1. Non−visualized airway, to treat patients who are either not breathing or their airway has been compromised due to trauma or other means; and

2. The administration of epinephrine, for patients who have suffered a severe allergic reaction.

The Department intends to immediately follow this emergency rule with an identical proposed permanent rulemaking order.

Publication Date:	**June 6, 2005**
Effective Date:	**June 6, 2005**
Expiration Date:	**November 3, 2005**
Hearing Date:	**June 27, 2005**

2. Rules adopted amending **ss. HFS 119.07 (6) (b) to (d) and 119.15 (1) and (3),** relating to operation of the health insurance risk−sharing plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2), Stats., by using emergency rulemaking procedures, except that the

Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. These are the emergency rules. Department staff consulted with the Health Insurance Risk−Sharing Plan (HIRSP) Board of Governors on April 22, 2005 regarding the rules, as required by s. 149.20, Stats.

The State of Wisconsin in 1980 established a Health Insurance Risk−Sharing Plan (HIRSP). HIRSP provides major medical health insurance for persons who are covered under Medicare because they are disabled, persons who have tested positive for HIV, and persons who have been refused coverage or who cannot get coverage at an affordable price in the private health insurance market because of their mental or physical health conditions. Also eligible for coverage are persons who recently lost employer−sponsored insurance coverage if they meet certain criteria. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs, except for costs associated with premium and deductible reductions. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co−equal amounts.

HIRSP Plan 1 is for policyholders that do not have Medicare. Ninety−one percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 1. Plan 1 has Option A ($1,000 deductible) or Option B ($2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 15.0% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 12.1%. Rate increases for individual policyholders within Plan 1 range from 7.0% to 16.8%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. By law, Plan 1 rate increases reflect and take into account the increase in costs associated with Plan 1 claims.

HIRSP Plan 2 is for persons eligible for Medicare because of a disability or because they become age−eligible for Medicare while enrolled in HIRSP. Plan 2 has a $500 deductible. Nine percent of the 18,530 HIRSP policies in effect in February 2005 were enrolled in Plan 2. The rate increases for Plan 2 contained in this rulemaking order increase an average of 20.3% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 17.3%. Rate increases for individual policyholders within Plan 2 range from 11.2% to 22.2%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 premiums are set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

Publication Date: **June 15, 2005**
Effective Date: **July 1, 2005**
Expiration Date: **November 28, 2005**
Hearing Date: **July 11, 2005**

Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2005.

Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish fund fees is first available in December of each year. It is not possible to complete the permanent fee rule process in time for the injured patients and families compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2005.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 05−028, will be filed with the secretary of state in time to take effect October 1, 2005 Because the fund fee provisions of this rule first apply on July 1, 2005, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 17, 2005.

Publication Date: **June 27, 2005**
Effective Date: **July 1, 2005**
Expiration Date: **November 28, 2005**

Natural Resources (2)
(Environmental Protection − Water Regulation, Chs. NR 300—)

1. Rules adopted revising **ch. NR 326,** relating to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waterways.

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 Wisconsin Legislature recently enacted 2003 Wisconsin Act 118, to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the new law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

2003 Act 118 identifies certain activities that may be undertaken in public trust waters exempt from a permit, or under a general permit. Certain activities may not be undertaken in waters that are defined as "areas of special natural resource interest" or at other locations where the activity would cause detrimental impacts on public rights and interests in navigable waters. Without emergency rules to aid in administering the new law, the following severe problems will occur:

Until general permits are created by rule, any activity which is not exempt requires an individual permit with an automatic 30−day public notice. The required 30−day comment period will unnecessarily delay hundreds of construction projects that otherwise could go ahead with specified conditions for protecting lakes and streams (for example, all new riprap and culvert applications currently require public notices).

Unclear wording of exemptions currently puts property owners, contractors and consultants at risk of violation. Without clear procedures and standards established by emergency rule, many more people may request exemption determinations, slowing the decisions on individual permit applications.

Wording of exemptions and temporary grading jurisdiction puts lakes and streams at risk. Without standards as intended and described in the new law, exempted activities and grading along shorelines will cause inadvertent but permanent destruction of fish and wildlife habitat, loss of natural scenic beauty and reduced water quality. Rights of neighboring

property owners may also be harmed. Cumulatively over one or two construction seasons, these impacts will have immediate and permanent effects on Wisconsin's water−based recreation and tourism industry.

To carry out the intention of the Legislature that 2003 Act 118 to speed decision−making but not diminish the public trust in state waters, these emergency rules are required to establish definitions, procedures and substantive standards for exemptions, general permits and jurisdiction under the new law.

Publication Date: **April 19, 2004**
Effective Date: **April 19, 2004***
Expiration Date: **September 16, 2004**
Hearing Date: **May 19, 2004**

***On June 24, 2004, the Joint Committee for Review of Administrative Rules suspended this emergency rule.

2. Rules adopted creating **ch. NR 328, subch. III,** relating to shore erosion control on rivers and streams.

Finding of emergency

SECTION 2. FINDING. 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 Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken as exempt from a permit, or under a general permit. There are no statutory exemptions for shore protection on rivers and streams. Without emergency rules to create general permits, all shore protection projects on rivers and streams require an individual permit with an automatic 30−day public notice. The required 30−day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit.

To carry out the intention of Act 118 to speed decision−making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2005 construction season, with specific standards for shore erosion control structures on rivers and streams.

Publication Date: **April 8, 2005**
Effective Date: **May 1, 2005**
Expiration Date: **September 28, 2005**
Hearing Date: **May 16, 2005**

Public Instruction

Rules adopted revising **ch. PI 35**, relating to the private school proration process.

Finding of emergency

The department anticipates the program reaching the 15% cap in the 2005−06 school year. Because the department is required to prorate the number of spaces available at each participating private school, the prorating process must be in place as soon as possible to provide adequate notice to participating schools and parents. Further, procedures must be in place prior to the beginning of the 2005−06 school year to avoid removing pupils from private schools that have lost seats after the prorating process is completed.

Publication Date: **August 1, 2005**
Effective Date: **August 1, 2005**
Expiration Date: **November 29, 2005**
Hearing Date: **August 31, 2005**
[See Notice this Register]

Revenue

Rules adopted revising **s. Tax 18.07**, relating to the assessment of agricultural land.

Finding of emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5−year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 50 year average interest rate for a medium−sized, 1−year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three−year lag in determining the 5−year average. Thus, the 2003 use value is based on the 5−year average corn price, cost and yield for the 1996−2000 period, and the capitalization rate is based on the 5−year average interest rate for the 1998−2002 period. The 2005 use value is to be based on the 5−year average corn price, cost and yield for the 1998−2002 period, and the capitalization rate is to be based on the 2000−2004 period.

The data for the 1998−2002 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1998−2002 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2005.

Publication Date: **December 29, 2004**
Effective Date: **December 29, 2004**
Expiration Date: **May 28, 2005**
Hearing Date: **May 26, 2005**
Extension Through: **September 24, 2005**

Workforce Development (2)
(Labor Standards, Chs. DWD 270−279)

1. Rules adopted revising **ss. DWD 274.015 and 274.03** and creating **s. DWD 274.035,** relating to overtime pay for employees performing companionship services.

Finding of emergency

The Department of Workforce Development 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 facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of ch. DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that "no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person's life, health, safety or welfare." Section 103.01 (3), Stats., defines "place of employment" as "any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel."

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of "place of employment" and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the "department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one−half times the regular rates." Under s. DWD 274.03, "each employer subject to this chapter shall pay to each employee time and one−half the regular rate of pay for all hours worked in excess of 40 hours per week." Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third−party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for−profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. "Companionship services" is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term "companionship services" does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

Publication Date:	**March 1, 2004**
Effective Date:	**March 1, 2004***
Expiration Date:	**July 29, 2004**

* On April 28, 2004, the Joint Committee for Review of Administrative Rules suspended s. DWD 274.035 created as an emergency rule.

2. Rules adopted revising **ch. DWD 272,** relating to increasing Wisconsin's minimum wages.

Finding of emergency

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

The federal minimum wage has fallen to its lowest inflation−adjusted value of all time. When wages are so low that workers and their families can't afford their most basic needs, society, particularly taxpayers, bears tremendous costs due to poverty−related educational failure, workforce failure, and citizenship failure. An adequate minimum wage supports workers, helps strengthen families and communities, and promotes the state's overall economic and fiscal health.

Publication Date:	**May 25, 2005**
Effective Date:	**June 1, 2005**
Expiration Date:	**October 29, 2005**
Hearing Date:	**June 14, 2005**

Scope statements

Commerce

Subject

Objective of the rule. The objective of the rule is to update the department's administrative rules relating to explosive materials and the manufacture of fireworks. This code update may result in one or more rule packages to be presented for public hearings, and may include minor changes to other department rules relating to explosive materials and the manufacture of fireworks.

Policy analysis

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives.

Chapter Comm 7 covers the manufacture, storage and use of explosive materials, including the regulation of blasting resultants. The current rules of chapter Comm 7 are based on federal regulations issued by the Bureau of Alcohol, Tobacco and Firearms, a national standard published by the National Fire Protection Association (NFPA), and safety publications from the Institute of Makers of Explosives. Chapter Comm 9 covers the manufacture of fireworks. The current rules of chapter Comm 9 are based on a national standard published by the NFPA.

These two chapters contain a mix of fire prevention related provisions and non−fire prevention related provisions, and these chapters have not been updated for several years. This code project will evaluate updating the non−fire prevention related provisions, along with the removal of the fire prevention related provisions from these chapters and the insertion of those provisions into the department's fire prevention chapter, Comm 14. Chapter Comm 14 adopts the Uniform Fire Code published by the NFPA, which includes fire prevention related provisions for explosive materials and fireworks. This alternative will eliminate duplicative printing of NFPA provisions in chapters Comm 7 and 9. Chapter Comm 14 is currently being reviewed and updated under a previously published scope statement.

The alternative of not updating these chapters will result in administrative rules that are not consistent with currently recognized national standards and practices related to fire prevention.

Statutory authority

A. Explosive Materials – Section 101.15 (2) (e), Stats.

B. Manufacture of Fireworks – Section 167.10 (6m), Stats.

C. Fire Prevention – Section 101.14 (1) (a), Stats.

Staff time required

The department estimates that it will take approximately 400 hours to develop this rule. This time includes reviewing the current codes and related national standards, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to perform the review and develop the rule changes. There are no other resources necessary to develop the rule.

Entities affected by the rule

The rule will affect any entity that is involved with the manufacture, storage, handling or use of explosive materials and fireworks.

Comparison with federal requirements

An Internet−based search of the *Code of Federal Regulations* (CFR) found the following existing federal regulations relating to the activities to be regulated by the rule.

Title 27 CFR Part 555 – Commerce in Explosives, Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. This part contains extensive procedural and substantive requirements relative to: (1) The interstate or foreign commerce in explosive materials; (2) The licensing of manufacturers and importers of, and dealers in, explosive materials; (3) The issuance of permits; (4) The conduct of business by licensees and operations by permittees; (5) The storage of explosive materials; (6) The records and reports required of licensees and permittees; (7) Relief from disabilities under this part; (8) Exemptions, unlawful acts, penalties, seizures, and forfeitures; and (9) The marking of plastic explosives. These regulations relating to the storage of explosive materials, such as separation distances and magazine construction, are the same as in chapter Comm 7. These regulations cover fireworks to the extent that display and special fireworks are classified as explosive materials.

Title 30 CFR Part 57 – Safety and Health Standards – Underground Metal and Nonmetal Mines, Department of Labor. This part contains regulations relating to the storage, site transportation, use, extraneous electricity and equipment/tools for explosive materials at underground mines.

Title 30 CFR Part 56 – Safety and Health Standards – Surface Metal and Nonmetal Mines, Department of Labor. This part contains regulations relating to the storage, site transportation, use, extraneous electricity and equipment/tools for explosive materials at surface mines.

An Internet−based search of the 2004 and 2005 issues of the *Federal Register* found the following regulations relating to the activities to be regulated by the rule.

Federal Register, May 27, 2005. The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives published a final rule to require licensed importers to identify by marking all explosive materials they import for sale or distribution.

Federal Register, December 20, 2004. The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives published a notice containing the 2004 List of Explosive Materials.

Federal Register, March 31, 2004. The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives published a notice containing the 2003 List of Explosive Materials.

Natural Resources

Subject

The proposed rule changes would modify existing procedures regarding administration of the nonmetallic mining reclamation program as implemented through ch. NR 135, Wis. Adm. Code.

Policy analysis

Chapter NR 135, Wis. Adm. Code, has been in effect since December 2000. In that time, all required counties and numerous local units of government have successfully begun implementation of nonmetallic mining reclamation programs as provided by statute. As a result of nearly five years of experience gained in administration of the program, the need for refinement of certain procedures and clarification of existing language has become apparent. These rule changes will address those needs as well as remove "start−up" language from the rule that is no longer applicable.

A significant rule change concerns the timing of submittal of annual reports and fees and also the basis of the amount of the fees. Currently operators must pay fees to the regulatory authority on or before December 31st of each year. The amount of the fee is based on a projection of unreclaimed acres that will exist at the end of the following year. In addition, shortly after the end of each calendar year, operators are required to submit an annual report documenting the actual unreclaimed acreage that exists at the end of that year. The need for two separate submittals and projection of unreclaimed acres has led to confusion on the part of operators and regulatory authorities. Modifying the procedures so that only one submittal is required and basing the fees on actual unreclaimed acreage at the end of a calendar should help to clarify the situation.

Potentially significant changes involve review and possible modification of the requirements related to financial assurance mechanisms and also in regard to conflict resolution and appeal procedures. Various stakeholders have raised concern with the current requirements and have suggested that modifications should be considered.

Lastly, various minor changes will involve removal of provisions that are no longer operative and minor wording changes to address very specific issues that have arisen over the past five years. Numerous provisions were included in the rule to address special permitting and review processes for operations that were active at the time of rule promulgation. Examples of wording changes and clarifications include incorporating counties into the definition of "municipality", and clarifying the one−acre exemption provision.

The rule changes will be developed in consultation with the Nonmetallic Mining Advisory Committee, a nine−member advisory body created by administrative rule. In addition, it may also be necessary to form a dedicated Technical Advisory Committee in order to effectively solicit input from affected stakeholders. If formed, a Technical Advisory Committee would likely include representatives from county and local units of government, nonmetallic mine operators, environmental groups, consultants and interested citizens.

Statutory authority

ss. 295.12 and 227.11, Wis. Stats.

Staff time required

Approximately 250 hours of staff time will be required to complete the rule.

Entities affected by the rule

The parties most affected by the proposed rule changes include nonmetallic mine operators and county and municipal nonmetallic mining reclamation regulatory authorities.

Comparison with federal requirements

There are no comparable federal regulations pertaining to nonmetallic mining reclamation.

Pharmacy Examining Board

Subject

The Department of Regulation and Licensing, acting on behalf of the Pharmacy Examining Board, requires foreign pharmacy graduates to submit proof of completion of at least 1500 hours of supervised internship prior to advancing in the application process toward the grant of a pharmacy license. The hours must be verified by the department. Wisconsin pharmacy rules require a graduate of a foreign pharmacy school to apply for a license prior to beginning the required internship. Foreign Pharmacy Graduate Education Commission (FPGEC) certification, including passage of the examination, is not currently required unless the applicant exceeds 2,000 internship hours. The department must therefore conduct a review of diplomas and the professional education forms completed by schools, independent of the FPGEC, prior to the accumulation of any internship hours. The current foreign graduate internship rules do not ensure hours are adequately tracked by interns and supervisors or filed timely and accurately with the department. The rules do not require that a supervisor be identified prior to approval of the internship, resulting in incomplete reporting and difficulty in tracking internship hours.

Policy analysis

Objective of the rule. The three primary objectives of the rule changes are to: 1) require passage of the FPGEC prior to accumulation of any internship hours; 2) standardize document validation procedures consistent with FPGEC examination admission requirements; 3) improve procedures concerning the reporting of internship hours by foreign pharmacy graduate applicants and their supervisors.

There are a number of foreign pharmacy school graduates interning in Wisconsin who have not received approval of their internship, have not identified a supervising pharmacist, have not filed internship hours, may have exceeded 2,000 hours without completing FPGEC certification, or have filed an application with documents in question that need to be validated by department staff. There are several applications in process going back to 2002 that have not been completed for licensure, yet remain as pending applications with the Division of Professional Credential Processing.

The proposed rules would require completion of the examination offered by the FPGEC and submission of a report to the department's Division of Credential Processing identifying the intern's supervisor prior to the start of a foreign graduate internship. Currently, FPGEC certification is not required unless the applicant exceeds 2,000 hours. The change would streamline the screening of incomplete application information by centralizing certification procedures with the FPGEC, reduce staff time in validating application materials, and focus the tracking of interns and their hours through pharmacy supervisors.

Comparison with federal requirements

There is no existing or proposed federal regulation for summary and comparison.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats.

Staff time required

200 hours.

Pharmacy Examining Board

Subject

Conforming the state controlled substances theft and loss reporting requirement for pharmacies, practitioners or other DEA registrants to federal law.

Objective of the rule. Eliminate reports of drug loss reports from pharmacies, practitioners or other DEA registrants when losses are not significant by changing the state law to match federal law.

Policy analysis

Wisconsin Administrative Code s. Phar 8.02 (3) (f) requires pharmacies, practitioners and other DEA registrants authorized to possess controlled substances to notify the regional office of the DEA, the local police and the Pharmacy Examining Board of any theft or loss upon discovery. The DEA requires any theft to be reported but not any loss. Only significant losses must be reported.

Entities affected by the rule

Pharmacies, practitioners, other DEA registrants, the Pharmacy Examining Board, and the Wisconsin Department of Regulation and Licensing.

Comparison with federal requirements

Chapter 21 CFR 13.01.74 (c) and 1301.76 (b).

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats.

Staff time required

150 hours.

Regulation and Licensing

Subject

Identification and approval of the subject−matter areas or topics for continuing education courses required for auctioneers.

Policy analysis

Objective of the rule. Under the current law, in order to renew a registration, an auctioneer must complete 12 hours of continuing education that consist of four specific courses. The subject−matter of those four courses include: 1) three hours in Wisconsin laws relating to auctioneer ethical and professional conduct; 2) three hours in Wisconsin laws relating to maintenance of records and trust accounts; 3) three hours in federal laws relating to auctioneering and Wisconsin laws other than those described in paragraphs 1) and 2) above, and 4) three hours in certain elective courses that are relevant to the practice and legal requirements of auctioneering.

Except for the three hour ethics courses, the department proposes to revise the rules to eliminate the specific subject−matter areas or topics identified in the rules. Instead, the department would identify and approve the subject−matter areas or topics biennially.

Except for the three hour ethics course, the department proposes to revise the rules to eliminate the specific subject−matter topics identified in the rules. Instead, the department would identify and approve the subject−matter areas or topics biennially. This approach would allow the department to identify subject−matter areas or topics that are more relevant to current issues that relate to the practice of auctioneering, and to address areas of misconduct identified in consumer complaints.

Comparison with federal requirements

There is no existing or proposed federal regulation.

Statutory authority

Sections 227.11 (2) and 480.08 (6), Stats.

Staff time required

100 hours.

Submittal of rules to legislative council clearinghouse

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

Pharmacy Examining Board

Rule Submittal Date

On July 28, 2005, the Pharmacy Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Subject

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2) and (3), Stats.

The proposed rule−making order relates to prescription records and transfer of prescription order information.

Agency Procedure for Promulgation

A public hearing is required and will be held on September 7, 2005 at 9:30 a.m. in Room 179A.

Contact Information

Pamela Haack, Paralegal, Office of Legal Counsel, (608) 266−0495.

Pamela.haack@drl.state.wi.us

Public Instruction

Rule Submittal Date

On July 27, 2005, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Subject

The proposed rule amends Chapter PI 36, relating to parental signatures on the open enrollment application.

Agency Procedure for Promulgation

A public hearing has been scheduled for August 29, 2005, in Madison, from 5:00 – 6:00 p.m., in Room 041, 125 S. Webster Street.

Contact Information

The Division for Finance and Management is primarily responsible for promulgation of this rule. If you have questions regarding this rule, you may contact Mary Jo Cleaver, Open Enrollment Consultant, (608) 267−9101.

Rule−making notices

Notice of Hearing
Pharmacy Examining Board
[CR 05−078]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2) and (3), Wis. Stats., and interpreting ss. 450.09 (6), 450.11 (1), (2), (4) and 450.12, Wis. Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. Phar 7.05 (3) to (5) and the Note following s. Phar 7.05 (5); to renumber and amend s. Phar 7.05 (1) and (6); and to create s. Phar 7.055, relating to prescription records and transfer of prescription order information.

Hearing Date, Time and Location

Date: September 7, 2005

Time: 9:30 A.M.

Location: 1400 East Washington Avenue

Room 179A

Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708. Comments must be received on or before September 19, 2005, to be included in the record of rule−making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2), 450.02 (2) and (3), Stats.

Explanation of agency authority: The Wisconsin Pharmacy Examining Board is granted the authority to protect the public health, safety and welfare by establishing minimum standards for the practice of pharmacy. The practice of pharmacy includes creating and maintaining accurate records and the transfer of prescription order information.

Related statute or rule: Current Wis. Admin. Code s. Phar 7.05

Plain language analysis: The purpose of the proposed rule change is to provide greater clarity to guide pharmacists to differentiate between requirements for prescription recordkeeping generally versus the transfer of prescription order information. The use of a computer system for both purposes has components in common, but contain differences and limitations. The interplay of federal law was also more explicitly recognized by listing the additional requirements for the transfer of prescription order information necessary to comply with federal law.

SECTION 1 renumbers a section of the current rule regarding the period of time that pharmacy records must be kept and amends the rule to create consistent language usage between federal and state administrative rules.

SECTION 2 repeals sections of the current rule regarding the transfer of prescription order information.

SECTION 3 renumbers a section of the current rule and amends the rule to create consistent language usage between federal and state administrative rules and to segregate the requirements for general pharmacy recordkeeping.

SECTION 4 creates a new section to specify the requirements for the transfer of prescription order information. The requirements are delineated into four separate subsections; general requirements, non−controlled substances, controlled substances and the use of a computer system. The general requirements subsection applies to all transfers of prescription order information performed either verbally or by the use of a computer system, including the requirement that a pharmacist making a transfer or receiving a transfer must be licensed in the state in which they perform an act required to accomplish the transfer. The requirements subsection for non−controlled substances specifically delineates the information that must be recorded by the transferring and receiving pharmacist. The requirements subsection for controlled substances adds additional requirements for information to be recorded that is required by federal law.

Summary of factual data and analytical methodologies: The Pharmacy Examining Board reviewed adjacent state rules and federal law to determine how the impact of technology was influencing the practice of transferring prescription order information. The board became aware that greater clarity was needed to provide practice guidance to pharmacists to differentiate between prescription recordkeeping generally versus the transfer of prescription order information which uses and creates records. The use of a computer system for both purposes had become clouded in the rule in its present form as the rule had been amended piecemeal during the course of past years. Therefore, the board chose to repeal and recreate part of the rule related to the transfer of prescription order information, and to separate and update the current rule relating to the use of computer systems to maintain records generally in a pharmacy.

Anticipated costs incurred by private sector: The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate

The proposed rule will have minimal impact on the department's funds. The department will expend some training time and resources to update inspectors on these recordkeeping requirements.

Effect on small business

These proposed rules will be reviewed by the department's small business review advisory committee to determine whether they will have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266−8608.

Agency contact person

Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708−8935. Telephone: (608) 266−0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to Pamela Haack, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708−8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before September 19, 2005 to be included in the record of rule−making proceedings.

TEXT OF RULE

SECTION 1. Phar 7.05 (1) is renumbered Phar 7.05 (1m) and as renumbered is amended to read:

Phar 7.05 (1m) A record of all prescriptions dispensed shall be maintained for a period of 5 years after the date of the last ~~renewal~~ refill.

SECTION 2. Phar 7.05 (3) to (5) and the Note following 7.05 (5) are repealed.

SECTION 3. Phar 7.05 (6) is renumbered Phar 7.05 (1) and as renumbered Phar 7.05 (1) (intro.) and (b) are amended to read:

Phar 7.05 (1) (intro.) A computerized system may be used for maintaining a record required of prescription dispensing and transfers of prescription order information for the purposes of original or ~~renewal~~ refill dispensing if the system:

(b) Is equipped with an auxiliary procedure which, during periods of down−time, shall be used for documentation of prescription dispensing. The auxiliary procedure shall ensure that prescription ~~renewals~~ refills are authorized by the original prescription order, that the maximum number of prescription ~~renewals~~ refills has not been exceeded and that all of the appropriate data are retained for on−line entry as soon as the computer system is again available for use.

SECTION 4. Phar 7.055 is created to read:

Phar 7.055 Transfer of prescription order information. (1) GENERAL REQUIREMENTS. The transfer of prescription order information for the purpose of original or refill dispensing is permissible between pharmacies licensed in this state or another state pursuant to the following general requirements:

(a) The transfer shall be communicated directly between 2 pharmacists either by verbal transfer or by a computer system transfer meeting the requirements of sub. (4). Communication by facsimile machine is not allowed unless the prescription order information being transferred is verified verbally between 2 pharmacists.

(b) If a verbal transfer of prescription order information is performed for a non−controlled substance, the pharmacist making the transfer may record the information required by sub. (2) on a computer system meeting the requirements of s. Phar 7.05 (1) (a) and (b).

(c) The pharmacist receiving the verbal transfer of prescription order information for either a controlled or a non−controlled substance shall record the transferred information in writing unless a computer system transfer meeting the requirements of sub. (4) is used.

(d) All original and transferred prescription orders shall be maintained for a period of 5 years from the date of the last refill.

(e) A written copy of any prescription order for a prescribed drug provided by a pharmacist shall be identified in writing as "COPY – FOR INFORMATION ONLY." No prescribed drug may be dispensed based on an information copy.

(f) A pharmacist making or receiving a transfer of prescription order information shall be licensed in the state in which they perform an act required by this section.

(2) NON−CONTROLLED SUBSTANCES. The transfer of prescription order information for non−controlled substances for the purposes of original or refill dispensing is permissible pursuant to the following requirements:

(a) The pharmacist making the transfer records the following information:

1. The word "VOID" is written on the face of the invalidated prescription order or recorded in a similar manner to "VOID" a prescription order in a computer system meeting the requirements of s. Phar 7.05 (1) (a) and (b).

2. The name and address of the pharmacy to which it was transferred, the name of the pharmacist receiving the prescription order, the date and the name of the pharmacist transferring the information are recorded on the reverse side of the invalidated prescription order or in a computer system meeting the requirements of s. Phar 7.05 (1) (a) and (b).

3. A transfer of prescription order information for a non−controlled substance for the purposes of refill dispensing is limited to the number of authorized refills.

(b) The pharmacist receiving the transferred prescription order information shall record in writing the following:

1. The word "TRANSFER" on the face of the transferred prescription order.

2. The name and address of the patient, the name and address of the prescribing practitioner, and the name and quantity and dosage form of the drug product or device prescribed and the directions for use.

3. The date of issuance of the original prescription order.

4. The original number of refills authorized on the original prescription order.

5. The date of original dispensing if the prescription order has previously been dispensed.

6. The number of valid refills remaining and the date of the last refill.

7. The pharmacy's name, address, and the prescription order number from which the prescription order information was transferred.

8. The name of the pharmacist making the transfer.

9. The name, address and telephone number of the pharmacy from which the original prescription order was transferred if different than subd. 7.

(3) CONTROLLED SUBSTANCES. The transfer of prescription order information for controlled substances for the purposes of refill dispensing is permissible pursuant to the following requirements:

(a) The transfer of prescription order information is permissible only on a one time basis unless a computer system meeting the requirements of sub. (4) is used.

(b) If a computer system meeting the requirements of sub. (4) is used a transfer of prescription order information for the purposes of refill dispensing is limited to the number of authorized refills.

(c) Unless a computer system meeting the requirements of sub. (4) is used the pharmacist making the transfer shall record in writing the following information:

1. The word "VOID" is written on the face of the invalidated prescription order.

2. The name, address and DEA registration number of the pharmacy to which it was transferred, the name of the

pharmacist receiving the prescription order and the date and the name of the pharmacist transferring the information are recorded on the reverse side of the invalidated prescription order.

(d) Unless a computer system meeting the requirements of sub. (4) is used the pharmacist receiving the transferred prescription order information shall record in writing the following information:

1. The word "TRANSFER" on the face of the transferred prescription order.

2. The name and address of the patient, the name, address and DEA number of the prescribing practitioner, and the name and quantity and dosage form of the drug product or device prescribed and the directions for use.

3. The date of issuance of the original prescription order.

4. The original number of refills authorized on the original prescription order.

5. The date of original dispensing.

6. The number of valid refills remaining and the dates and locations of previous refills, if applicable.

7. The name, address, telephone number, DEA registration number and prescription order number of the pharmacy from which the prescription order information was transferred if different from the pharmacy from which the prescription order was originally dispensed.

8. The name of the pharmacist making the transfer.

9. The name, address, telephone number, DEA registration number and prescription order number of the pharmacy from which the prescription order was originally dispensed.

(4) USE OF COMPUTER SYSTEM. A computer system used for transferring prescription order information shall, in addition to meeting the requirements of s. Phar 7.05 (1) (a) and (b), contain a common central processing unit electronically sharing a real−time, on−line database to which both the transferring and receiving pharmacy have access.

Notice of Hearing
Public Instruction
[CR 05−076]

NOTICE IS HEREBY GIVEN That pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 118.51 (3) (a) 1., Stats., the Department of Public Instruction will hold a public hearing as follows to consider the amending of s. PI 36.03 (1) (d), relating to parental signatures on the open enrollment application.

The hearing will be held as follows:

Date and Time	Location
August 29, 2005	Madison
5:00 – 6:00 p.m.	GEF 3 Building
	125 South Webster St.
	Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Mary Jo Cleaver, open enrollment consultant, at (608) 267−9101 or leave a message with the Teletypewriter (TTY) at (608) 267−2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at: http://www.dpi.state.wi.us/dpi/dfm/pb/rulespg.html. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson, Administrative Rules and Federal Grants Coordinator

Department of Public Instruction

125 South Webster Street

P.O. Box 7841

Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mailing or email address no later than August 31, 2005, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Statute interpreted: s. 118.51 (3) (a) 1., Stats.

Statutory authority: s. 227.11 (2) (a) and (b), Stats.

Explanation of agency authority:

The Department is responsible for administering the Public School Open Enrollment Program under s. 118.51, Stats. Section 118.51 (3) (a) 1., Stats., requires parents who wish to participate in the program to submit an application "on a form provided by the department . . ." Further, s. 118.51 (15), Stats., requires the department to prepare and make available to parents the application form required under sub. (3) (a) 1.

Chapter PI 36 contains the administrative rules for the program, including requirements pertaining to submitting an application for open enrollment.

Because the department is responsible for administering the open enrollment program and the forms required under s. 118.51, Stats., s. PI 36.03 (1) (d) is being amended pursuant to rule−making authority granted under s. 227.11 (2) (a) and (b), Stats.

Related statute or rule: None.

Plain language analysis: Section PI 36.03 (1) (d) requires a parent to sign the open enrollment application form. If parents are divorced or legally separated, both parents are required to sign the form.

This proposed rule would repeal the requirement that both custodial parents must sign the form.

Summary of, and comparison with, existing or proposed federal regulations: There are no similar existing or proposed federal regulations concerning inter−district open enrollment programs.

Comparison with rules in adjacent states:

Illinois has no open enrollment program. Michigan has a limited open enrollment program but there is no application available for review. Iowa and Minnesota have statewide open enrollment programs but do not require more than one signature on the application form.

Summary of factual data and analytical methodologies:

Current administrative rules require a parent to sign the open enrollment application. If parents are divorced or legally separated, both parents are required to sign the form. The Department proposes to repeal the requirement for both custodial parents to sign the form.

This provision was intended to require parents to keep each other informed and to keep school districts out of the middle of the situation. However, it has created a hardship in cases where one custodial parent cannot be located.

In other cases, the rule has had the opposite of the desired effect. The open enrollment period is only three weeks long and custody issues can be very complicated. Three weeks can be too short a time to have the issue resolved, especially when mediation and/or family court are involved. Requiring both signatures before the issue has been resolved reduces the child's educational options. And occasionally, school districts are drawn into the disagreement, rather than be insulated from it.

The open enrollment form is an application only. Allowing one of the custodial parents to sign the form, even without informing the other, is not determinative of where the child must go to school. That question must be resolved in the way all joint custodial decisions are made. But it keeps the open enrollment option open until such time as the parents can make a joint decision.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: None.

Anticipated costs incurred by private sector: None.

Effect on small business: The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Fiscal Estimate

These proposed rules have no state or local fiscal effect. The proposed rules have no fiscal effect on small businesses.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing
Public Instruction

NOTICE IS HEREBY GIVEN That pursuant to ss. 119.23 (2) (b) and (11) and 227.11 (2) (a), Stats., and interpreting s. 119.23 (2) (b), Stats., the Department of Public Instruction will hold a public hearing as follows to consider emergency rules amending of Chapter PI 35, relating to the prorate method to be used under the Milwaukee Parental Choice Program. The emergency rules became effective August 1, 2005. The hearing will be held as follows:

Date and Time	**Location**
August 31 , 2005	Milwaukee
4:00 – 6:00 p.m.	Milwaukee Area Technical College
	700 W. State St.
	Room S−120

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please contact Lisa Geraghty, Consultant, Milwaukee Parental Choice Program, elisabeth.geraghty@dpi.state.wi.us, (608) 266−0523, or leave a message with the Teletypewriter (TTY), (608) 267−2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at:
http://www.dpi.state.wi.us/dpi/dfm/pb/mpcpratem.html and http://www.dpi.state.wi.us/dpi/dfm/pb/mpcpratefn.html, respectively. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson, Administrative Rules and Federal Grants Coordinator

Department of Public Instruction

125 South Webster Street

P.O. Box 7841

Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mailing or email address no later than September 2, 2005, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Statute interpreted: s. 119.23 (2) (b), Stats.

Statutory authority: ss. 119.23 (2) (b) and (11) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Under s. 119.23 (2) (b), Stats., no more than 15% of the Milwaukee Public Schools' membership may attend private schools participating in the program. If in any school year there are more spaces available in the participating private schools than the maximum number of pupils allowed to participate, the department is required to prorate the number of spaces available at each participating private school. Because the department is interpreting the provisions of this statute and administers/enforces the program governed by it, s. 227.11 (2) (a), Stats., gives the department general rule−making authority.

Section 119.23 (11), Stats., gives the department authority to promulgate rules to implement and administer the entire program.

Court decisions directly relevant: None.

Related statute or rule: None.

Plain language analysis:

Under s. 119.23 (2) (b), Stats., no more than 15% of Milwaukee Public School's (MPS) membership (approximately 15,000 students) may attend private schools under the MPCP. The department is required to prorate the number of spaces available at each participating private school if in any school year there are more spaces available than the maximum number of students allowed to participate in the program.

The proposed rules establish a process by which the number of seats will be prorated among all participating private schools if there are more pupil applications submitted than the statutory limit permits to participate. Under the proposed rule, the application periods for students applying to start school in the fall of 2005 would end by August 20, 2005. The department would calculate the number of spaces available after processing eligible student applications and the private school's 3rd Friday in September membership reports received at the department by October 1, 2005, and divide any remaining spaces by the number of eligible private schools interested in accepting additional students. Each interested school would receive an equal number of spaces. Participating private schools would fill the seats first from their established waiting lists, if applicable, and second from applications accepted in November and December.

Summary of, and comparison with, existing or proposed federal regulations: None.

Comparison with rules in adjacent states: None.

Summary of factual data and analytical methodologies:

The department anticipates the program reaching the 15% cap in the 2005−06 school year. By October 25, 2005, the

department will determine the number of seats available, prorate any remaining seats equally among all participating private schools, and notify the private schools of pupils each private school may enroll in the program for the remainder of the school year. The department would like the rule in place as soon as possible in order to provide adequate notice to participating schools and parents.

The prorating process established in this emergency rule is different from that proposed in Clearinghouse Rule (CHR) 04−069 which was objected to by the Assembly Education Reform Committee on October 20, 2004, and the Joint Committee for Review of Administrative Rules on December 16, 2004. To prohibit the department from selecting pupils for the Milwaukee Parental Choice Program on a random basis as proposed in CHR 04−059, Senate Bill 8 and Assembly Bill 8 were introduced in the legislature on January 13 and 18, 2005, respectively. The bills were introduced as required under s. 227.19 (5) (e), Stats., in support of the objection of the committees.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: None.

Anticipated costs incurred by private sector: None.

Fiscal Estimate

Section 119.23 (2) (b), Stats., requires the department to establish a proration method to utilize when there are more spaces available in the participating private schools than the maximum number of pupils allowed to participate. No more than 15% of Milwaukee Public School's (MPS) membership (approximately 15,000 students) may attend private schools under the MPCP. The rules establish a process by which the number of seats will be prorated among all participating private schools if there are more pupil applications submitted than the statutory limit permits to participate.

These rules will not have a fiscal effect on the private schools participating in the program, MPS, the department, or small businesses.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Submittal of proposed rules to the legislature

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

Health and Family Services

(CR 05−047)

Ch. HFS 119, relating to HIRSP.

Insurance

(CR 05−023)

Ch. Ins 3, relating to mortgage guaranty insurance.

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.

Revenue
(CR 05−035)

An order affecting ch. Tax 18, relating to the 2005 agricultural use value.

Effective 9−1−05.

Transportation
(CR 05−034)

An order affecting ch. Trans 117, relating to CDL occupational licenses.

Effective 10−1−05.

Public notices

Department of Health and Family Services
(Medicaid Drug Coverage and Reimbursement)

The state of Wisconsin covers legend and non−legend drugs and drug products and reimburses pharmacies for services provided to low−income persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health and Family Services administers this program, which is called Medical Assistance or Medicaid.

Federal statutes and regulations require a state plan that indicates Medicaid covered services and limits to coverage.

A state plan is in effect that indicates coverage of drugs and drug products for medically needy and categorically needy Medicaid recipients and reimbursement policy for pharmacy services. Pursuant to final provisions of the state budget act, the Department is proposing to make changes in the provisions contained in the state plan that apply to pharmacy reimbursement policies.

Change in Payment Methods

Pharmacies are currently reimbursed for brand name drugs at a rate of Average Wholesale Price (AWP) minus 13%, and a dispensing fee of $4.38 for brand or generic drugs. Based on the Governor's budget vetoes and the provisions of 2005 Act 25, the 2005−2007 state biennial budget act, the Department will reimburse pharmacies for brand name drugs at a rate of AWP minus 16% and a dispensing fee of $3.88 for brand or generic drugs. The Department is proposing modifications to the state Medicaid plan effective August 16, 2005 to reflect provisions of the budget bill, and is implementing the change on the earliest possible date not before August 16, 2005.

The change in AWP reimbursement is projected to decrease expenditures $3,921,300 GPR in state fiscal year 2006 and $6,020,000 GPR in state fiscal year 2007. The change in the dispensing fee is projected to decrease expenditures $1,319,800 GPR in state fiscal year 2006 and $1,880,500 all funds in state fiscal year 2007.

Copies of Proposed Changes and Proposed Payment Rates

When the proposed state plan changes have been drafted, copies may be obtained free of charge by calling or writing as follows:

Mail:

James J. Vavra, Director

Bureau of Fee−for−Service Health Care Benefits

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701−0309

Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e−mail, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266−1096. The e−mail address is matana@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered. The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin.

Copies of the legislative enactment directing the change and conforming state plan change will be made available for review at the main office of any county department of social services or human services. Revisions may be made in the proposed changed methodology based on comments received.

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