

Wisconsin Administrative Register

No. 636



Publication Date: December 14, 2008

Effective Date: December 15, 2008



Legislative Reference Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

The Wisconsin Administrative Register is published twice
monthly by the Legislative Reference Bureau.

Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590
email: bruce.hoesly@legis.wisconsin.gov

The Wisconsin Administrative Register and Administrative Code
may be obtained from the
Department of Administration
Office of Document Sales
(608) 266-3358
and may be accessed on the internet at:
<http://www.legis.state.wi.us/rsb/code.htm>

Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 9**

Children and Families:

(Formerly Workforce Development)

Revises Ch. DWD 40 (renumbered to Ch. DCF 150), relating to the establishment of birth cost orders based on child support guidelines. **EmR0821**

Commerce:

Uniform Dwelling, Chs. Comm 20–25***Wisconsin Commercial Building Code, Chs. Comm 60–66***Revises Chs. Comm 20, 21, 62 and 66, relating to carbon monoxide alarms and affecting small business. **EmR0826*****Financial Resources for Businesses and Communities, Chs. Comm 104–135***Revises Ch. Comm 108 and s. Comm 154.06 (intro.), relating to emergency assistance grants in the community development block grant program, and affecting small businesses. **EmR0823**Creates s. Comm 113.03 (4), relating to allocation of volume cap on tax–exempt private activity bonds. **EmR0831**

Corrections:

Creates s. DOC 332.20, relating to establishing a reimbursement fee to offset the costs of monitoring persons subject to global positioning system tracking or passive positioning system tracking. **EmR0835**

Financial Institutions — Securities:

Revises Chs. DFI–Sec 4, 5 and 10, relating to misleading designations or certifications regarding special expertise in the financial or retirement needs of seniors. **EmR0829**

Government Accountability Board:

Repeals and recreates Ch. GAB 4, relating to observers at a polling place or other location where votes are being cast, counted or recounted. **EmR0830**

Health Services:

(Formerly Health and Family Services)

Mgmt. & Technology & Strategic Finance, Chs. HFS 1—Revises Ch. HFS (DHS) 12, relating to background checks of individuals who provide personal care services, and affecting small businesses. **EmR0832**Revises s. HFS (DHS) 10.23, relating to confidentiality requirements of the Family Care program. **EmR0834*****Health, Chs. HFS 110—***Creates Ch. HFS 119, relating to training and qualifications for EMTs, first responders, and individuals providing instruction. **EmR0825**

Military Affairs — Wisconsin Emergency Management:

Revises Ch. WEM 1, relating to fee revisions to facilities housing hazardous chemicals, hazardous substances, and extremely hazardous substances. **EmR0836**

Natural Resources:

Fish, Game, etc., Chs. NR 1—Revises ss. NR 10.01 (1) and 10.06 (5), relating to the 2008 migratory game bird seasons and waterfowl hunting zones. **EmR0824**

	<i>Environmental Protection — General, Chs. NR 100—</i> Revises Ch. NR 198, relating to grants for the control of aquatic invasive species. EmR0809
Public Instruction:	Revises Ch. PI 37, relating to grants for national teacher certification and master educator licensure. EmR0813 Revises Ch. PI 30, relating to state special education aid for certain pupil services personnel. EmR0816
Regulation and Licensing:	Revises s. RL 161.04, relating to examinations for substance abuse professionals. EmR0819 Creates s. RL 91.01 (3) (k), relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker. EmR0827 Revises ss. RL 180.02 and 181.01, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife. EmR0828
Revenue:	Creates ss. Tax 8.03 and 8.05, relating to registration of wine collectors and the creation and organization of small winery cooperative wholesalers. EmR0820
Transportation:	Creates Ch. Trans 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials. EmR0818 Revises Chs. Trans 325, 326 and 327, relating to motor carrier safety, and hazardous material transportation safety. EmR0833
Scope Statements.	Pages 10 to 12
Commerce:	<i>Petroleum Products, Ch. Comm 48</i> Revises Ch. Comm 48, relating to minimum product grade specifications for liquid fuels. <i>Verified Statements and Penalties for Grant and Loan Programs, and Penalties for Tax Credit Programs, Ch. Comm 205</i> Creates Ch. Comm 205, relating to verified statements and penalties for grant and loan programs, and penalties for tax credit programs.
Medical Examining Board:	Revises s. Med 1.02, relating to application requirements for a license to practice medicine.
Natural Resources:	<i>Fish, Game, etc., Chs. NR 1—</i> Revises Chs. NR 20, 21, 23, and 24, pertaining to fishing regulations on inland waters, Wisconsin–Minnesota, and Wisconsin–Michigan boundary waters, and clamming.
Submittal of Rules to Legislative Council Clearinghouse.	Page 13
Health Services:	<i>Management and Technology and Strategic Finance, Chs. DHS 1—</i> Revises s. DHS 10.23 (2) (d) 2., relating to confidentiality requirements of the Family Care program. CR 08–109

Medical Assistance, Chs. DHS 100—

Revises s. DHS 105.17, relating to permitting tribal government agencies to become MA certified personal care agencies. **CR 08–108**

Insurance:

Revises s. Ins 2.07, relating to replacement of life insurance or annuity contracts and disclosure requirements. **CR 08–107**

Rule–Making Notices.**Pages 14 to 17**

Health Services:

Management and Technology and Strategic Finance, Chs. DHS 1—

Hearing to consider emergency rules and permanent rules revising Ch. DHS 12, relating to background checks of individuals who provide personal care services, and affecting small businesses. **EmR0832 — CR 08–098**

Insurance:

Hearing to consider rules to revise s. Ins 2.07, relating to replacement of life insurance or annuity contracts and disclosure requirements. **CR 08–107**

Submittal of Proposed Rules to the Legislature.**Page 18**

Agriculture, Trade and Consumer Protection:

Revises Ch. ATPC 123, relating to customer access to subscription video services. **CR 08–067**

Rule Orders Filed with the Legislative Reference Bureau.**Page 19**

Health Services:

Community Services, Chs. DHS 30—

Revises Ch. DHS 83, relating to community–based residential facilities. **CR 07–095**

Health, Chs. HFS (DHS) 110—

Revises Chs. HFS (DHS) 173, 175, 178, and 195 to 198, relating to tattooing and body piercing establishments, recreational and educational camps, campgrounds, lodging establishments, and vending of food. **CR 08–073**

Occupational Therapists Affiliated Credentialing Board:

Revises s. OT 4.04, relating to occupational therapist supervision of occupational therapy assistants. **CR 08–050**

Public Instruction:

Revises Ch. PI 37, relating to grants for national teacher certification and master educator licensure. **CR 08–044**

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.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Children and Families

(Formerly Workforce Development)

Family Supports, Chs. DWD 12 to 59

EmR0821 — Rules adopted creating **ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D** (renumbered DCF 150.02 (12m), 150.05 and DCF 150 Appendix D, effective 12–1–08), relating to establishment of birth cost orders based on child support guidelines.

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:

The federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state's request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer's ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

Publication Date: June 27, 2008

Effective: June 27, 2008 through November 23, 2008

Hearing Date: July 29, 2008

Extension Through: December 31, 2008

Commerce

Uniform Dwelling, Chs. Comm 20–25 Wisconsin Commercial Building Code, Chs. Comm 60–66

EmR0826 — Rules adopted to renumber **s. Comm 66.0911; to amend s. Comm 20.24 (1) and (2); and to create ss. Comm 21.095, 20.24 Table 20.24–14, 62.1200, 62.3500 (3) (e), 66.0911 (title) and (2)**, relating to carbon monoxide alarms and affecting small business.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2007 Wisconsin Act 205, the Department of Commerce is directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, neither the department of commerce or the department of health services is required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the installation and maintenance of carbon monoxide alarms in buildings accommodating certain types of residential occupancies and within which fuel burning appliances are located. Residential occupancies include tourist rooming houses, bed and breakfast establishments, and any public building that is used for sleeping or lodging, such as, hotels, motels, condominiums, apartment buildings, dormitories, fraternities, sororities, convents, seminaries, community based residential facilities, home shelters, but not hospitals and nursing homes. The Act requires the installation of carbon monoxide alarms in new buildings as of October 1, 2008. The owners of existing buildings will have until April 1, 2010 to install the carbon monoxide alarms. The Act also provides for the omission of carbon monoxide alarms in certain instances which are further clarified by the administrative rules.

Publication Date: September 10, 2008

Effective: October 1, 2008 through February 27, 2009

Hearing Date: October 14, 2008

Commerce (2)

Financial Resources for Businesses and Communities, Chs. Comm 104–135

- 1. **EmR0823** — Rules adopted amending **Comm Table 108.6–1, sections Comm 108.07 (5), 108.22 (1), and 154.06 (intro.)**, relating to emergency assistance grants in the community development block grant program, and affecting small businesses.

Finding of Emergency

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

Currently under sections Comm 108.06, 108.07, and 108.22 of the Wisconsin Administrative Code, as promulgated under sections 560.04, 560.045, and 560.9809 of the Statutes, the Department may annually use up to 5 percent of its federal Community Development Block Grant (CDBG) funds to repair or replace public infrastructure or facilities, or for emergency services necessitated by a natural disaster or catastrophic event. Also under sections Comm 108.07 and 108.22, the maximum amount of CDBG funds that the Department can award to any local government for a natural disaster or catastrophic event is \$500,000.

Currently under section Comm 154.06, as promulgated under sections 560.02 (4) and 560.9809 (2) of the Statutes, the Department may annually use up to \$2,000,000 of CDGB funds to address emergency housing needs caused by natural disasters or catastrophic events.

Because of the unprecedented levels of damage to public infrastructure and facilities from the severe storms and widespread flooding that occurred throughout the State in June 2008, the need for emergency assistance to communities far exceeds the \$1.35 Million of CDBG funding that results from the above 5–percent limit, and the need for emergency housing assistance for low and moderate income households far exceeds the above \$2,000,000. Communities and households in 28 of the 30 counties where the Governor has declared a state of emergency are eligible for this CDBG program assistance.

This emergency rule repeals the above limits of 5 percent, \$500,000 and \$2,000,000. This will enable the Department to (1) use any available CDBG funds for emergency assistance with repairing or replacing public infrastructure and facilities, and with repairing or replacing homes damaged by the severe storms and flooding; and (2) base the award amounts on the scope of the damages and destruction in the community and on the funds available.

Publication Date: July 16, 2008
Effective: July 16, 2008 through December 12, 2008
Hearing Date: August 27, 2008
Extension Through: February 10, 2009

- 2. **EmR0831** — Rules adopted creating section **Comm 113.03 (4)**, relating to allocation of volume cap on tax–exempt private activity bonds.

Finding of Emergency

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

The facts constituting the emergency are as follows. Because of widespread disruption of the housing markets, Congress has enacted the Housing and Economic Recovery Act of 2008 (the “Act”), which contains various relief measures relating to housing. Section 3021 of the Act creates a special one–time additional allocation of volume cap for calendar year 2008, to be used for the issuance of single–family housing bonds and multifamily housing bonds no later than December 31, 2010.

Under section 560.032 of the Statutes, the Department of Commerce is charged with allocating to Wisconsin issuers the private activity bond volume cap allocated to Wisconsin under the Internal Revenue Code of 1986, 26 USC 146. This emergency rule is necessary to implement the special allocation of volume cap under the Act, as described above.

Pursuant to section 227.24 of the Statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Legislative Reference Bureau.

Publication Date: September 27, 2008
Effective: September 27, 2008 through February 23, 2009
Hearing Date: October 27, 2008

Corrections

- EmR0835** — Rules adopted creating **s. DOC 332.20**, relating to establishing a reimbursement fee to offset the costs of monitoring persons subject to global positioning system tracking or passive positioning system tracking.

Finding of Emergency

The department of corrections finds that an emergency exists and that rules included in this order are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Under 2005 WI Act 431, section 8, the legislature requires certain persons who have been convicted of a serious child sex offense, who have been found not guilty of a serious child sex offense by reason of mental disease or mental defect, or who are the subject of notification under s. 301.46 (2m) (am), Stats., to be placed on lifetime tracking under a global positioning system (GPS) or a passive positioning system (PPS). The legislature also authorized the department to establish a rule to require persons who are subject to GPS tracking or PPS tracking to pay the cost of tracking.

If the rule is not created promptly and immediately, the department will not be able to collect the fees which are to be used to offset the costs of the tracking program, which could result in a lessening of tracking due to budget limitations.

The purpose of the emergency rule is to require all persons who are subject to tracking to pay the tracking fee which is used to offset the costs of the tracking program. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to respond promptly to the collection of tracking fees while permanent rules are being developed.

Publication Date: November 12, 2008
Effective: November 12, 2008 through April 10, 2009
Hearing Date: December 11, 2008

Financial Institutions — Securities

EmR0829 — Rules adopted to amend s. DFI–Sec 4.06 (2) (i) and to create ss. DFI–Sec 4.06 (1) (v), 5.06 (14) and Chapter DFI–Sec 10, relating to making it a dishonest or unethical practice for securities licensees to make use of misleading designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division is taking immediate, emergency–rule action to protect seniors in Wisconsin from being misled through the use by securities licensees of designations and credentials that imply or represent that a person has special expertise, certification, or training in financial planning for seniors, but where such designations and/or credentials are either non–existent or do not involve significant education, testing, training or experience, and in reality are marketing ploys.

Publication Date: September 15, 2008
Effective: September 15, 2008
 through February 11, 2009

Government Accountability Board

EmR0830 — Rules adopted repealing and recreating Chapter GAB 4, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

Pursuant to section 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board’s May 5, 2008 decision to decline to reaffirm the administrative rule section EIBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct they must abide by.

The Board further finds that given the intense interest in the fall election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers’ conduct and that the attached rule governing observer conduct must be adopted prior to the fall elections to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date: September 26, 2008
Effective: September 26, 2008
 through February 22, 2009
Hearing Date: November 11, 2008

Health Services (2)

(Formerly Health and Family Services)

Management & Technology & Strategic Finance, Chs. HFS (DHS) 1–

1. **EmR0832** — Rule adopted to repeal s. HFS (DHS) 12.03 (15) and to create ss. HFS (DHS) 12.03 (20m), 12.115 and Table HFS (DHS) 12.115, relating to background checks of individuals who provide personal care services, and affecting small businesses.

Finding of Emergency

The Department of Health 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 the emergency are as follows:

2007 Wisconsin Act 172 requires the department to specify by rule, the crimes, a conviction of which an entity must disclose to a client or a client’s guardian before the caregiver provides the client with personal care services in the client’s home. Act 172 also requires the department to define the term “substitute caregiver”. Under s. 50.065 (2m) (d), Stats., as created by 2007 Wisconsin Act 172, the department created a list of crimes required and also as required defined the term “substitute caregiver”.

Effective November 1, 2008, entities, including home health agencies and temporary employment agencies, are required under s. 50.065 (2m) (d), Stats., to disclose to the client or the client’s guardian, the assigned caregiver’s convictions of crimes specified by the department by rule.

Publication Date: October 20, 2008
Effective: November 1, 2008 through
 March 31, 2009
Hearing Date: January 6, 2009

2. **EmR0834** — Rules adopted amending s. HFS (DHS) 10.23 (2) (d) 2., relating to confidentiality requirements of the Family Care program that prohibit benefit specialists from disclosing personally identifying information about a client without the client’s informed consent, unless required by law.

Finding of Emergency

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

Chapter HFS 10 is the department’s rule that guides the implementation of the department’s Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client’s consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder adults and adults at risk under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., s. HFS 10.23 (2) (d) 2., effectively prevents disability benefits specialists from making such disclosures.

Amending s. HFS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial

exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults–at–risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

Publication Date: November 3, 2008
Effective: November 3, 2008 through April 1, 2009

Health Services

(Formerly Health and Family Services)

Health, Chs. HFS 110—

EmR0825 — Rule adopted creating **Chapter HFS 119**, to require emergency medical technicians, first responders, and individuals who provide instruction to emergency medical technicians and first responders to complete training on the use of automated external defibrillators and to specify the content of the training, qualifications of providers, and frequency with which training is to be completed, and affecting small businesses.

Exemption From Finding of Emergency

The legislature by 2007 Act 104 provides the department with an exemption from a finding of emergency to adopt these emergency rules.

Publication Date: August 29, 2008
Effective: September 1, 2008 through January 28, 2009
Hearing Date: December 11, 2008

Military Affairs —

Wisconsin Emergency Management

EmR0836 — Rule adopted revising **Chapter WEM 1**, relating to fee revisions to facilities housing hazardous chemicals, hazardous substances, and extremely hazardous substances as defined in s. WEM 1.02 (5).

Finding of Emergency

The Wisconsin Division of Emergency Management (WEM)/State Emergency Response Commission finds that an emergency exists and that a rule revision is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting an emergency is as follows:

Emergency response to and planning for accidental or purposeful releases of dangerous chemicals will be compromised by a significant reduction of money available to fund emergency management activities at the county level. County emergency management agencies will be unable to fully comply with state and federal laws. Wisconsin Emergency Management would also experience substantial reductions in capabilities to assist local units of government with their state and federally required responsibilities. Sufficient funding of the county grant program and WEM activities is necessary to protect and defend the citizens of Wisconsin from accidental releases and releases caused by terrorist actions.

Publication Date: December 1, 2008
Effective: December 1, 2008 through April 29, 2009
Hearing Dates: December 18 and 19, 2008

Natural Resources

Fish, Game, etc., Chs. NR 1—

EmR0824 — Rule adopted revising ss. **NR 10.01 (1) (b), (g), (h), (u) and (v) and 10.06 (5)**, relating to the 2008 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 30, 2008
Amendment: September 26, 2008
Effective: August 30, 2008 through January 26, 2009
Hearing Date: October 27, 2008

Natural Resources

Environmental Protection – General, Chs. NR 100—

EmR0809 — Rule adopted to repeal s. **NR 198.15 (2)**, to renumber s. **NR 198.12 (6) to (10)**, to amend ss. **NR 198.11, 198.14 (1) (e) and (f) 2., 198.23 (5) to (7), 198.33 (5), and 198.44 (5)** and to create ss. **NR 198.12 (6) and (7), 198.33 (6) and subch. V of ch. NR 198**, relating to grants for the control of aquatic invasive species.

Finding of Emergency

The substantial increase in grant funding is a strong message from the Legislature that concern over the welfare of our public waters is growing, along with the expectation that these additional funds be put to work as soon as possible. The appropriation from which these funds are spent is a biennial appropriation, meaning that any unspent funds at the end of the biennium automatically lapse back to the Water Resources Account of the Conservation Fund. The timeline for permanent rule promulgation and the lack of staff to provide support to eligible sponsors may impede the Department's ability to fully and responsibly invest the authorized spending by the end of the biennium because of the current rule's limitations. An emergency rule will help to minimize or eliminate the amount of funds that are lapsed.

Publication Date: April 7, 2008
Effective: July 1, 2008 through November 27, 2008
Hearing Dates: July 22 to August 5, 2008
Extension Through: January 26, 2009

Public Instruction (2)

1. **EmR0813** — A rule is adopted revising **Ch. PI 37**, relating to grants for national teacher certification and master educator licensure.

Finding of Emergency

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

The new provisions modifying the grants for the national teacher certification program under 2007 Wisconsin Act 20, the biennial budget bill, took effect October 27, 2007. In order to establish the new application criteria and procedures to award grants to eligible applicants in the 2007–08 school year, emergency rules must be in place as soon as possible.

Publication Date: May 17, 2008
Effective: May 17, 2008 through October 13, 2008
Hearing Date: July 23, 2008
Extension Through: December 12, 2008

2. **EmR0816** — A rule adopted revising **Ch. PI 30**, relating to state special education aid for certain pupil services personnel.

Finding of Emergency

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

The new provisions under 2007 Wisconsin Act 221 modifying the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement first applies to state aid distributed in the 2008–09 school year. In order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms, rules must be in place as soon as possible.

Publication Date: May 30, 2008
Effective: May 30, 2008 through October 26, 2008
Hearing Date: July 14, 2008
Extension Through: December 25, 2008

Regulation and Licensing (3)

1. **EmR0819** — A rule adopted revising **s. RL 161.04**, relating to examinations for substance abuse professionals.

Finding of Emergency

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for

more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

Publication Date: June 18, 2008
Effective: June 18, 2008 through November 14, 2008
Hearing Date: November 11, 2008
Extension Through: January 14, 2009

2. **EmR0827** — Rule adopted **creating s. RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008 through February 6, 2009
Hearing Date: November 26, 2008

3. **EmR0828** — Rules adopted to **amend s. RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008 through February 6, 2009
Hearing Date: November 26, 2008

Revenue

EmR0820 — Rule adopted creating **ss. Tax 8.03 and 8.05**, relating to the registration of wine collectors, establishing standards of eligibility for registration as a wine collector, specifying the form and manner of notice required prior to the sale of wine by a wine collector, and the creation and organization of small winery cooperative wholesalers.

Exemption From Finding of Emergency

The legislature by Section 50 of 2007 Wisconsin Act 85 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: June 26, 2008
Effective: June 26, 2008 through July 1, 2010 or the date on which permanent rules take effect, whichever is sooner.

Transportation (2)

1. **EmR0818** — A rule adopted creating **Ch. Trans 263**, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Exemption From Finding of Emergency

The Legislature, by 2007 Wisconsin Act 171, Section 6 (2), provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: July 1, 2008
Effective: July 1, 2008 through July 1, 2009 or the date on which permanent rules take effect, whichever is sooner.
Hearing Date: July 30, 2008

2. **EmR0833** — Rule adopted revising **Chs. Trans 325, 326 and 327**, relating to motor carrier safety, and hazardous material transportation safety.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety or welfare. Recently enacted commercial motor carrier safety regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce and enhance highway safety. It is imperative the industry operates under a single set of safety regulations to minimize confusion that could result in inadvertent noncompliance or application of an outdated safety standard. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding, which is used to administer various highway safety programs, and that funding and the safety programs it supports will be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

Publication Date: November 5, 2008
Effective: November 5, 2008 through April 3, 2009
Hearing Date: December 2, 2008

Scope Statements

Commerce

Petroleum Products, Ch. Comm 48

Subject

Revises Chapter Comm 48, relating to minimum product grade specifications for liquid fuels.

Objective of the Rule

The primary purpose of this rule revision is to update chapter Comm 48 to include several newer editions of nationally recognized fuel standards promulgated by ASTM International, and to include one or more new ASTM standards for liquid fuels. Several miscellaneous updates of other portions of Comm 48 may also be included, to make the chapter consistent with recently developed federal criteria and with current industry and regulatory practices, particularly relating to biofuels.

Policy Analysis

The Department has promulgated and enforced minimum product grade specifications for liquid fuels for heating equipment and engines for several decades. These specifications and the Department's inspection program for verifying compliance with them are required by sections 168.04 (3) and 168.07 (2) of the Statutes to be in conformity with the current editions of applicable nationally recognized standards, such as those published by ASTM International. Under sections 168.14 (2m) (b) 3. and (c) 3. of the Statutes, biodiesel fuel and fuels that are blends of biodiesel fuel and petroleum products must comply with all applicable ASTM requirements. The corresponding requirements in chapter Comm 48 for blending biodiesel fuel with petroleum products address the quality of biodiesel fuel before it is blended with a petroleum product, but do not address the quality of the blended fuel.

The updated ASTM standards that are expected to be addressed in this rule revision include (1) newly allowing up to 5 percent biodiesel fuel in traditional petroleum-based diesel fuel, home heating fuel, and boiler fuel; and (2) newly requiring a cold soak filterability test to control minor compounds in pure biodiesel fuel. The new ASTM standards that are expected to be addressed in this rule revision include specifications for blends of biodiesel fuel and petroleum-based fuel that range from 6 to 20 percent biodiesel fuel.

Not updating chapter Comm 48 as described herein would be contrary to the above directives in chapter 168 of the Statutes.

Statutory Authority

Sections 101.02 (1), 168.04 (1) and (3), 168.07 (2), 168.16 (4), and 227.11 (2) (a), Stats.

Comparison with Federal Regulations

In section 80.1101(h)(3) of Title 40 of the Code of Federal Regulations, the United States Environmental Protection Agency (USEPA) currently defines biodiesel as being a motor vehicle fuel or fuel additive that in part meets the 2007 edition of ASTM D 6751.

Section 205 of the federal Energy Independence and Security Act of 2007 requires labeling of each retail diesel fuel pump in a manner that informs consumers of the percent of biodiesel or biomass-based diesel which is contained in the fuel, if that percent exceeds 5 percent. The Act also requires the Federal Trade Commission to promulgate corresponding labeling requirements, and those requirements, in Part 306 of Title 16 of the Code of Federal Regulations, have an effective date of December 16, 2008. Those requirements define biodiesel, in part, as meeting the 2007b edition of ASTM D 6751. Those requirements do not apply to biodiesel blends and biomass-based diesel blends which contain 5 percent or less biofuels by volume and which meet the 2007b edition of ASTM D 975.

The Energy Independence and Security Act of 2007 also requires that transportation fuels which are sold or introduced into commerce within the United States in the future must contain substantially greater volumes of renewable fuels – such as biodiesel, cellulosic biofuel and other advanced biofuels. This volume is to be at least 36 billion gallons by 2022, compared to 4 billion gallons in 2006. The USEPA is currently developing regulations for implementing this legislation.

Further incentives for substantially increasing production and usage of renewable and alternative fuels are being developed by the Internal Revenue Service – through proposed regulations relating to tax credits and payments for biodiesel mixtures, renewable diesel mixtures, alcohol mixtures, alternative fuels, and alternative fuel mixtures – in Parts 1, 40, and 48 of Title 26 of the Code of Federal Regulations.

Entities Affected by the Rule

This rule revision primarily may affect vendors and marketers of biodiesel fuel or fuels that are a blend of biodiesel fuel and petroleum products, and may affect vendors and marketers of other liquid fuels.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop this rule revision is expected to range from 200 to 400 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Commerce

Verified Statements and Penalties for Grant and Loan Programs, and Penalties for Tax Credit Programs, Ch. Comm 205

Subject

Creates Chapter Comm 205, relating to verified statements and penalties for grant and loan programs, and penalties for tax credit programs.

Objective of the Rule

The rules would implement the provisions of 2007 Wisconsin Act 125 that relate to verified statements and

penalties for each of the economic–development grant or loan programs administered by the Department, and penalties for each of the tax credit programs administered by the Department.

Policy Analysis

The Department has various rules for administering several economic development programs, but those rules typically do not include the expected text in the proposed rules that would (1) require submittal of a verified statement signed by both an independent certified accountant and the director or principal officer of the recipient of an economic development grant or loan; and (2) specify penalties the Department may impose for submitting false or misleading information, or for failing to comply with the terms of a contract and then failing to adequately explain the noncompliance. This rulemaking may also include minor changes to the Department’s other economic development rules to achieve consistency with this new chapter Comm 205 and with 2007 Wisconsin Act 125. The alternative of not promulgating these rules would conflict with the directives in Act 125 that (1) require this promulgation for each of the economic development programs administered by the Department, and (2) require the Department to coordinate the development of these accountability measures with the other State agencies that administer economic development programs.

Statutory Authority

Section 560.01 (2) (ae) 6. and 7., as created in 2007 Wisconsin Act 125; and section 227.11 (2) (a), Stats.

Comparison with Federal Regulations

The federal Government Performance and Results Act (GPRA) of 1993, as primarily enacted in sections 1115 and 1116 of Title 31 of the United States Code, contains several main elements that are substantially similar to the main elements of 2007 Wisconsin Act 125 — such as requiring governmental executive agencies to (1) establish measurable goals and performance indicators for each applicable program administered by the agency, and (2) annually submit a corresponding detailed report to legislative reviewers that assesses the overall effectiveness of each of those programs. However, GPRA does not include the Act 125 requirements that (1) the recipients of the program benefits must submit performance and financial reports and corresponding verified statements to the administering agency; and (2) administering agencies must establish penalties for a recipient who submits false or misleading information, or who fails to comply with the terms of a contract and then fails to adequately explain the noncompliance.

Section 6304 of Title 31 of the United States Code requires a federal executive agency to use a grant agreement as the legal instrument reflecting the relationship between the United States Government and a State, a local government, or other recipient when (1) the principal purpose of the relationship is to transfer something of value to the recipient to carry out a public purpose, and (2) substantial involvement is not expected between the executive agency and the recipient when carrying out the activity contemplated in the agreement. Several of the economic development programs administered by the Department of Commerce include federal grant funding and therefore are addressed in such grant agreements. The Department likewise uses similar grant and loan agreements with the local recipients of the benefits of these and other economic development programs. Federal administrative requirements for grant agreements between

federal agencies and nonprofit organizations, for example, are established in section 215 of Title 2 of the Code of Federal Regulations. Those requirements include having the recipient submit performance reports and financial status reports to the awarding agency at least annually – and the financial status report must include a certification statement from an authorized official for the recipient, that attests to the accuracy and completeness of the report and to the validity of all included outlays. This required recipient performance reporting closely matches the recipient performance reporting that is required in 2007 Wisconsin Act 125; and the required certification statement on the financial report closely matches the verification statement which is likewise required in Act 125, and which is to be addressed in the proposed rules.

Sections 215.61 and 215.62 of Title 2 of the Code of Federal Regulations specify that grant awards may be withheld, suspended, or terminated in whole or in part if a recipient fails to comply with the terms and conditions of an award. These penalties for this failure closely match the withholding–payment penalty which is authorized in Act 125 for recipients who fail to comply with the terms of a grant or loan agreement, and which is to be addressed in the proposed rules.

Under the federal civil money penalty law, as enacted in 1981 and as currently applied, for example, to the Social Security program through section 1320a–8 of Title 42 of the United States Code, any person who submits false or misleading statements for an agency’s use in determining eligibility for program benefits is subject to a penalty of not more than \$5000 for each such statement, and to an assessment of not more than twice the amount of benefits or payments paid as a result of the statements. Since 1981, the provisions of the civil money penalty law have been expanded by reference to numerous types of fraudulent and abusive activities, including those addressed by the federal Economic Development Administration. These penalties for these statements closely match the Act 125 penalties which impose a forfeiture or recoup a payment in response to submittal of false or misleading statements, and which are to be addressed in the proposed rules.

An Internet–based search of recent editions of the *Federal Register* did not reveal any currently proposed federal regulations regarding penalties in the economic development grant and loan programs administered by the Department; or regarding penalties for submitting false or misleading information in the economic development tax credit programs administered by the Department. In the November 21, 2007, edition of the *Federal Register*, notice was found of a proposal by the federal Department Housing and Urban Development to extend its information–collection requirements to include requirements for grant recipients to report against their baseline performance standards, in a manner that standardizes grants progress reporting requirements and promotes greater emphasis on performance and results in grant programs.

Entities Affected by the Rule

The rules may affect any entity that chooses to accept an economic development grant or loan or tax credit administered by the Department.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to range from 200 to 400 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

Medical Examining Board

Subject

Revises section Med 1.02, relating to application requirements for a license to practice medicine.

Objective of the Rule

To eliminate the requirement that applicants for a license to practice medicine and surgery submit a verified photographic copy of the diploma conferring the degree of doctor of medicine or doctor of osteopathy granted to the applicant verifying graduation from a medical or osteopathic school approved by the board.

Policy Analysis

Currently, physician applicants are required to submit as part of the application to practice medicine and surgery in Wisconsin verified documentary evidence of graduation from a medical or osteopathic school approved by the board and a verified photographic copy of the diploma from the school. Diplomas are more susceptible to fraud than verification directly from the school and are viewed by the Division of Credential Processing as unnecessary so long as verified documentary evidence from the school is required.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Physician applicants, medical and osteopathic schools approved by the board, and the Wisconsin Department of Regulation and Licensing.

Estimate of Time Needed to Develop the Rule

80 hours.

Natural Resources

Fish, Game, etc., Chs. NR 1—

Subject

Revises Chapters NR 20, 21, and 23, pertaining to fishing regulations on inland waters, Wisconsin–Minnesota, and Wisconsin–Michigan boundary waters, and revises Chapter NR 24, pertaining to clamming.

Policy Analysis

The Department is beginning the process of recommending changes to Wisconsin administrative code relating to recreational fishing and clamming regulations. These changes are proposed to better protect and enhance the State's fish and clam resources, and do not reflect major changes in Department policy. The Department anticipates requesting hearings on these changes in January, 2009, and holding hearings, if approved, in April 2009.

Statutory Authority

Sections 29.014, 29.041, and 29.537, Stats.

Comparison with Federal Regulations

Authority to promulgate fishing regulations is granted to States. No federal regulations apply to the proposed changes in regulating recreational fishing activity.

Entities Affected by the Rule

The proposed rule changes will affect recreational anglers and clam harvesters.

Estimate of Time Needed to Develop the Rule

The Department anticipates spending approximately 200 hours in the rule development process.

Contact Information

Joseph M. Hennessy
 Wisconsin Department of Natural Resources
 Bureau of Fisheries Management (FM/4)
 101 S. Webster St., Box 7921
 Madison, WI 53701–7921
 Ph: 608–267–9427
 Fax: 608–266–2244

Submittal of Rules to Legislative Council Clearinghouse

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

Health Services

Management and Technology and Strategic Finance, Chs. DHS 1— CR 08–109

On November 25, 2008, the Department of Health Services submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section DHS 10.23 (2) (d) 2., relating to confidentiality requirements of the Family Care program that prohibits benefit specialists from disclosing personal identifying information about a client without the client’s informed consent, unless required by law.

Agency Procedure for Promulgation

A public hearing is required but has not yet been scheduled.

Contact Information

For substantive questions on rules contact:

Jane A. Raymond
Advocacy & Protection Systems Developer
Department of Health Services
1 West Wilson Street, Room 450
Madison, WI 53702
608–266–2568
Jane.raymond@dhs.wisconsin.gov

Small business regulatory review coordinator:

Rosie Greer
608–266–1279
greerrj@dhs.state.wi.us

Health Services

Medical Assistance, Chs. DHS 100— CR 08–108

On November 18, 2008, the Department of Health Services submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section DHS 105.17, relating to permitting tribal government agencies to become MA certified personal care agencies.

Agency Procedure for Promulgation

A public hearing is required but has not yet been scheduled.

Contact Information

For substantive questions on rules contact:

Al Matano
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53702
608–267–6848
alfred.matano@wisconsin.gov

Small business regulatory review coordinator:

Rosie Greer
608–266–1279
greerrj@dhs.state.wi.us

Insurance

CR 08–107

On November 20, 2008, the Office of the Commissioner of Insurance submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section Ins 2.07, relating to replacement of life insurance or annuity contracts and disclosure requirements.

Agency Procedure for Promulgation

A public hearing is scheduled for January 29, 2009.

Contact Information

A copy of the proposed rule may be obtained from the website at: <http://oci.wi.gov/ocirules.htm>, or by contacting:

Inger Williams
Public Information and Communications
Office of the Commissioner of Insurance
608–264–8110

For additional information, contact:

James W. Harris
OCI Legal Unit
608–267–2833
james.harris@wisconsin.gov

Rule–Making Notices

Notice of Hearing

Health Services

Management and Technology and Strategic Finance, Chs. DHS 1—

EmR0832 and CR 08–098

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.065 (2m) (d) and 227.11 (2) (a), Stats., the Wisconsin Department of Health Services proposes to repeal s. DHS 12.03 (15) and to create ss. DHS 12.03 (20m), 12.115 and Table DHS 12.115, relating to background checks of individuals who provide personal care services, and affecting small businesses, and will hold a public hearing on emergency and proposed permanent rules as follows:

Hearing Information

Date and Time	Location
January 6, 2009	Wilson Street State Office Bldg.
9:00 — 11:00 a.m.	1 West Wilson Street
	Room 1150 A
	Madison, Wisconsin

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non–English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Analysis Prepared by the Department of Health Services

Statute interpreted

Section 50.065 (2m) (a) 1. and 4. and (b), Stats.

Statutory authority

Section 50.065 (2m) (d), Stats., as created by 2007 Wisconsin Act 172, and 227.11 (2) (a), Stats.

Explanation of agency authority

Section 50.065 (2m) (d), Stats., requires the Department to promulgate rules to specify crimes for which an entity must disclose a conviction to a client or the client’s guardian of a caregiver who is assigned to provide personal care services to a client in the client’s personal residence and to specify who is a “substitute caregiver”.

Section 227.11 (2) (a), Stats., allows agencies to promulgate rules interpreting the provision of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

Chapter DHS 13.

Plain language analysis

Section 50.065 (2m) (d), Stats., requires the Department to promulgate rules to specify crimes for which an entity must disclose to a client or the client’s guardian, a conviction of a caregiver who is assigned to provide personal care services to the client in the client’s personal residence and to specify who

is a “substitute caregiver”. These requirements were established under 2007 Act 172.

The proposed rule includes a definition of the term “substitute caregiver.” It also includes a list of crimes that require disclosure for caregivers providing personal care services. They include all of the crimes currently listed under s. 50.065 (1) (e), Stats., that are already used by entities to determine an individual’s eligibility to work for the entity as a caregiver, and the following additional crimes:

- Theft
- Robbery
- Financial card transactions crimes
- Identity theft
- Drug crimes

Comparison with federal regulations

There are no known existing or proposed related federal regulations.

Comparison with rules in adjacent states

Illinois:

Illinois has no list of crimes for which an entity must disclose a conviction to a client or the client’s guardian of a caregiver who is assigned to provide personal care services.

Iowa:

Iowa has no list of crimes for which an entity must disclose a conviction to a client or the client’s guardian of a caregiver who is assigned to provide personal care services.

Michigan:

Michigan has no list of crimes for which an entity must disclose a conviction to a client or the client’s guardian of a caregiver who is assigned to provide personal care services.

Minnesota:

Minnesota has no list of crimes for which an entity must disclose a conviction to a client or the client’s guardian of a caregiver who is assigned to provide personal care services.

Summary of factual data and analytical methodologies

The Department solicited comments from representatives from the Disability Rights Wisconsin, Inc., the Board on Aging and Long Term Care (BOALTC), the Wisconsin Coalition of Aging Groups (CWAG), Independence First, Association of Retarded Citizens, Wisconsin Personal Services Association (WPSA), Community Alliance of Providers of Wisconsin (CAPOW), representatives from the Home Care Advisory Committee (HCAC) and the Home Care Consumer Advisory Committee (HCCAC), and legislators. Representatives from these organizations reviewed the initial draft of the rule including a list of crimes and a definition of “substitute caregiver”. The Department revised the rule based upon comments received.

Analysis and supporting documents used to determine effect on small business

The small businesses affected by the proposed rule are temporary employment agencies and home health agencies, and any other agency that may assign individuals to provide personal care services to clients in the clients’ private residence. The proposed rule would not have a fiscal impact on small businesses over and above the costs imposed by the

requirements established by Act 172 under s. 50.065 (2m), Stats., for entities to conduct background checks, including criminal history checks, on individuals the entity assigns to provide personal care services in a client’s private residence and disclose the results to the client or the client’s guardian.

Small Business Impact

The proposed rule would not have a fiscal impact on small businesses over and above the costs imposed by the requirements established by Act 172 under s. 50.065 (2m), Stats., for entities to conduct background checks, including criminal history checks, on individuals the entity assigns to provide personal care services in a client’s private residence and disclose the results to the client or the client’s guardian.

Fiscal Estimate

Section 50.065 (2m) (d), Stats., requires the Department to promulgate rules to specify crimes for which an entity must disclose to a client or the client’s guardian, a conviction of a caregiver who is assigned to provide personal care services to the client in the client’s personal residence and to specify who is a “substitute caregiver”. These requirements were established under 2007 Act 172.

The proposed rule includes a definition of the term “substitute caregiver.” It also includes a list of crimes that require disclosure for caregivers providing personal care services. They include all of the crimes currently listed under s. 50.065 (1) (e), Stats., that are already used by entities to determine an individual’s eligibility to work for the entity as a caregiver, and the following additional crimes:

- Theft
- Robbery
- Financial card transactions crimes
- Identity theft
- Drug crimes

The proposed rule would not affect the revenues or costs of the department or local governments.

The proposed rule would not have a fiscal impact on small businesses over and above the costs imposed by the requirements established by Act 172 under s. 50.065 (2m), Stats., for entities to conduct background checks, including criminal history checks, on individuals the entity assigns to provide personal care services in a client’s private residence and disclose the results to the client or the client’s guardian.

Agency Contact Person

Pat Benesh, Quality Assurance Program Spec–Senior
DHS Division of Quality Assurance
1 West Wilson Street, Rm. 1150
Madison, WI 53701
Phone: 608–264–9896
Fax: 608–267–7119
Patricia.Benesh@Wisconsin.gov

Submission of Written Comments

Comments may be submitted to the agency contact person that is listed above. The deadline for submitting comments is January 16, 2009. The notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov>.

Text of Proposed Rule

SECTION 1. DHS 12.03 (15) is repealed.

SECTION 2. DHS 12.03 (20m) is created to read:

DHS 12.03 (20m) “Substitute caregiver” means an individual who provides personal care services to the client for 7 or fewer days in a 90 day period.

SECTION 3. DHS 12.115 is created to read:

DHS 12.115 Personal care services, disclosure of convictions. Pursuant to s. 50.065 (2m) (d) Stats., Table DHS 12.115 lists the crimes for which an entity must disclose under s. 50.065 (2m) (a) 1., Stats., a conviction of a caregiver who provides personal care services to a client or the client’s guardian.

Table DHS 12.115

Wisconsin Statutes	Crime
940.19 (3), 1999 Stats.	Battery
940.01	First–degree intentional homicide
940.02	First–degree reckless homicide
940.03	Felony murder
940.05	Second–degree intentional homicide
940.12	Assisting suicide
940.19 (2), (4), (5) or (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1 st , 2 nd , or 3 rd degree sexual assault
940.285 (2)	Abuse of individuals at risk
940.29	Abuse of residents of penal facilities
940.295	Abuse or neglect of patients and residents
943.20	Theft
943.201	Unauthorized use of an individual’s personal identifying information or documents
943.203	Unauthorized use of an entity’s identifying information or documents
943.32	Robbery
943.38	Forgery
943.41	Financial transaction card crimes
948.02 (1) or (2)	1 st or 2 nd degree sexual assault of a child
948.025	Engaging in repeated acts of sexual assault of the same child
948.03 (2) (a), (b) or (c)	Physical abuse of a child
948.05	Sexual exploitation of a child
948.051	Trafficking of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.08	Soliciting a child for prostitution
948.085	Sexual assault of a child placed in substitute care
948.11 (2) (a) or (am)	Exposing a child to harmful material or harmful descriptions or narrations
948.12	Possession of child pornography
948.13	Child sex offender working with children
948.21(1)	Neglecting a child
948.30	Abduction of another’s child; constructive custody

948.53	Child unattended in child care vehicle
961.41 (1)	Manufacture, distribution or delivery of a controlled substance or a controlled substance analog
961.41 (1m)	Possession with intent to manufacture, distribute or deliver a controlled substance or a controlled substance analog
961.41 (3g)	Possession or attempt to possess a controlled substance or a controlled substance analog
961.43 (1) (a)	Acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge
961.43 (1) (b)	To make, distribute or possess material designed to reproduce the trademark upon any drug or container or label so as to make a counterfeit substance or to duplicate the physical appearance, form, package or label of a controlled substance
A violation of the law of any other state or United States jurisdiction that would be a violation of a crime listed in this table.	

Notice of Hearing

Insurance

CR 08–107

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of an order affecting section Ins 2.07, Wis. Adm. Code, relating to replacement of life insurance or annuity contracts; disclosure requirements.

Hearing Information

Date: January 29, 2009

Time: 2:00 p.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227
125 South Webster Street, 2nd Floor
Madison, WI

Submission of Written Comments

Written comments can be mailed to:

James W. Harris
Legal Unit – OCI Rule Comment for Rule Ins 207
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707–7873

Written comments can be hand delivered to:

James W. Harris
Legal Unit – OCI Rule Comment for Rule Ins 207
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703–3474

Comments can be emailed to:

James W. Harris
james.harris@wisconsin.gov

Comments on the proposed rules submitted through the Wisconsin Administrative Rule Website at: <http://adminrules.wisconsin.gov> will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted

Sections 600.01 and 628.34 (12), Stats.

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

Explanation of agency authority

OCI has established minimum standards to be observed by insurers and intermediary agents when replacing or proposing replacement of certain life insurance policies or annuities in order to minimize the opportunity for misrepresentation or unfair business practices.

Related statutes or rules

See the statutes interpreted above.

Plain language analysis and summary of the proposed rule

OCI has established minimum standards of conduct to be observed by insurers and producers in life insurance and annuity replacement or financed purchase transactions to assure disclosure of material information to purchasers and to reduce opportunities for misrepresentation and unfair business practices. The proposed rule expands and clarifies the information that must be communicated by a producer to a purchaser at the time an application is completed. The rule provides notice formats to assure uniform disclosures. The rule requires that certification of the disclosure be obtained from the purchaser and the producer, and that a copy of the certification along with a copy of all sales materials be provided to the purchaser and submitted to the insurer with the completed application. The rule defines and includes financed purchases in the replacement disclosure and reporting requirements.

Under the proposed rule insurers who use producers are required to maintain a system of supervision, control and monitoring to assure compliance which at a minimum must provide training, guidance, review and detection procedures. Insurers must have the capacity to monitor each producer's replacement activity and to maintain and produce transactional records upon request of the commissioner. Records must be retained by the insurer for at least 5 years. A replacing insurer must notify an existing insurer of a replacement transaction within 5 business days of receipt of a completed application, and must notify a purchaser of the right to cancel the transaction within 30 days of delivery of a policy or contract and receive a refund. An existing insurer must retain replacement notices for at least 5 years, must notify the existing policyholder of the right to receive information regarding the existing policy or contract and must notify the existing policyholder of the potential effect of release of policy values. Insurers engaging in direct response solicitation where there is no producer are required to make inquiries and provide disclosures to an applicant in any transaction that may involve a replacement.

Comparison with federal regulations

There are no federal regulations which address replacement of life insurance policies or annuities by insurers or intermediary agents doing business in Wisconsin.

Comparison of rules in adjacent states

Illinois:

Admin. Reg. Title 50, ss 917.20 to 917.110

Iowa:

Admin. Code ss 191–16.21 to 191–16.30

Michigan:

Admin Code R ss. 500.601 to 500.606

Minnesota:

Stats. ss. 61A.53 to 61A.60

Factual data and analytical methodologies

The proposed rule is based upon a model regulation adopted and recommended by the National Association of Insurance Commissioners (NAIC). It has been adopted by a number of states, and a former version of the model formed a basis of the existing Wisconsin replacement rule. The proposed rule will enhance supervision and monitoring by insurers of life insurance policy and annuity replacements and improve disclosure to consumers of the possible consequences and effects of replacement.

Analysis and supporting documentation used in determination of the rule's effect on small businesses

The proposed rule continues reporting and disclosure requirements relating to replacements of life insurance policies and annuities that have been in existence, and should therefore have little or no effect on small businesses.

Small Business Impact

This rule does not impose any additional requirements on

small businesses and will have little or no effect on small businesses.

Small business regulatory coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266–7843 or at email address eileen.mallow@wisconsin.gov

Fiscal Estimate

There will be no state or local government fiscal effect.

This rule change will have no significant effect on the private sector regulated by OCI.

Agency Contact Person and Copy of Proposed Rule

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI Services Section, at:

Phone: (608) 264–8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor
Madison WI

Mail: PO Box 7873, Madison, WI 53707–7873

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection
CR 08-067

A rule-making order revising Chapter ATCP 123, relating to customer access to subscription video services.

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference 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 Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266–7590 for updated information on the effective dates for the listed rule orders.

Health Services

Community Services, Chs. DHS 30—

CR 07–095

Revises Chapter DHS 83, relating to community–based residential facilities (CBRFs).
Effective 2–1–09.

Health Services

Health, Chs. HFS (DHS) 110—

CR 08–073

Revises Chapters HFS (DHS) 173, 175, 178, and 195 to 198, relating to tattooing and body piercing establishments, recreational and educational camps, campgrounds, hotels, motels, and tourist rooming houses, restaurants, bed and breakfast establishments, and vending of food.
Effective 2–1–09.

Occupational Therapists Affiliated Credentialing Board

CR 08–050

Revises section OT 4.04, relating to occupational therapist supervision of occupational therapy assistants.
Effective 2–1–09.

Public Instruction

CR 08–044

Revises Chapter PI 37, relating to grants for national teacher certification and master educator licensure.
Effective 2–1–09.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

Dated Material. Please Do Not Delay!