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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.

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.

Commerce

Fee Schedule, Ch. Comm 2

EmR0837 — Rule adopted revising **s. Comm 2.68**, relating to public swimming pool and water attraction plan review and inspection fees.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Implementation of the federal Virginia Graeme Baker Pool and Spa Safety Act necessitates most existing public swimming pools and water attractions to undergo physical modifications to reduce the risk of entrapment at suction outlets.

2. The Virginia Graeme Baker Pool and Spa Safety Act has a compliance date of December 19, 2008.

3. The department estimates that 3,700 existing pools and water attractions will need to be modified in order to comply with the federal act.

4. The current department plan review fees and inspection fees under s. Comm 2.68 reflect an estimated average time and cost to provide those services. For the types of pool and water attraction modifications necessary to comply with the Virginia Graeme Baker Pool and Spa Safety Act, the department believes that the time and cost to provide the service will be below the averages reflected under the current fee structure of section Comm 2.68.

5. The department believes that a temporary fee reduction to facilitate plan review and inspection relative to the Virginia Graeme Baker Pool and Spa Safety Act is in alignment with the direction provided under s. 101.19, Stats., of keeping fees consistent with the costs of providing service.

Publication Date:	December 15, 2008
Effective:	December 15, 2008 through May 13, 2009
Hearing Date:	January 8, 2009

Commerce

Elevators, Escalators and Lift Devices, Ch. Comm 18

EmR0901— Rule adopted repealing **s. Comm 18.1702 (8)**, relating to a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators that use smaller sized wire ropes.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. The recent revision of chapter Comm 18, Elevators, Escalators and Lift Devices, references and adopts the 2007 edition of the national standard ASME A17.1, developed by the American Society of Mechanical Engineers. Effective January 1, 2009, the regulations include a provision, s. Comm 18.1702 (8), that requires a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes.

2. The department included the wear and fatigue monitoring system and protection device requirements in anticipation that the next edition of the national ASME A17.1 standard would incorporate a similar provision. The department developed s. Comm 18.1702 (8) based on code language being proposed by the national standard ASME A17.1 Committee.

3. The wear and fatigue monitoring system and the device to protect against suspension loss were not incorporated into the next version of the ASME A17.1. The ASME A17.1 Committee withdrew the section because of implementation concerns, and at this time it is unclear what the final section on suspension ropes and their connections in elevators will include.

4. Because the department adopts by reference the national standard ASME A17.1, it recognizes that without promulgating this emergency rule, there could be confusion in what constitutes recognized safe practices for a monitoring system and protection against suspension loss for electric traction elevators. The department believes that repealing s. Comm 18.1702 (8) will keep the Wisconsin code in alignment

with the most current edition of ASME A17.1 and still promote safety.

Publication Date: February 5, 2009
Effective: February 5, 2009 through July 4, 2009
Hearing Date: March 2, 2009

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*

- 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

- 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 18, 2008
Effective: September 18, 2008
 through February 14, 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—*

- 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
Hearing Date: January 27, 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
Extension Through: March 29, 2009

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

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: March 27, 2009

Regulation and Licensing (3)

- 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: March 14, 2009

- 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 the date on which the final rules take effect
Hearing Date: November 26, 2008

- 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 the date on which the final rules take effect
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

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

Workforce Development

Public Works Construction Contracts, Chs. DWD 290–294

EmR0838 – Rules adopted revising s. **DWD 290.155 (1)**, relating to the adjustment of thresholds for application of prevailing wage rates.

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:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule–making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule–making process.

Publication Date: December 29, 2008
Effective: January 1, 2009 through May 30, 2009
Hearing Date: February 12, 2009

Scope Statements

Dentistry Examining Board

Subject

Revises various provisions relating to licensing of dentists.

Objective of the Rule

1. Change the definition of active practice in s. DE 1.02 (2) to include years of postgraduate dental residency training to qualify for active practice clock hours for licensure by endorsement;

2. Continue to accept board specialty certification of an accredited specialty as a pathway to licensure by endorsement. However, the board requirement for specialty certification within 10 years of applying for a license will no longer be required;

3. Amend s. DE 2.015 to allow the board to grant a limited license to full time faculty of CODA accredited postgraduate residency training programs located in Wisconsin.

Policy Analysis

The board believes that its current rules create barriers to licensing dentists and intends to make certain changes. Currently, the board's active practice rule does not recognize residency training as qualifying activity for active practice in endorsement licensure, but it does count hours spent in private practice and clinical instruction at a dentistry school accredited by the ADA. The board will continue to accept board specialty certification of an accredited specialty as a pathway to licensure by endorsement. However, the board requirement for specialty certification within 10 years of applying for a license is no longer deemed necessary. Lastly, the board would like to extend the faculty license procedure currently in place for Marquette University School of Dentistry (MUSoD) faculty to applicants in faculty positions at accredited institutions in Wisconsin that train postgraduate dental residents.

Statutory Authority

Sections 15.08 (5) (b), 227.11 (2) and ch. 447, Stats.

Comparison with Federal Regulations

There is no existing or proposed federal regulation.

Entities Affected by the Rule

Dental license applicants who train in a CODA accredited residency program, applicants who practice in a specialty recognized by CODA, institutions that hire dentists as faculty, the Dentistry Examining Board, and the Wisconsin Department of Regulation and Licensing.

Estimate of Time Needed to Develop the Rule

60 to 180 hours.

Insurance

Subject

Revises section Ins 3.32, relating to affiliated producer disclosure and affecting small business.

Objective of the Rule

To promote consumer information regarding title insurance relationships with affiliates by utilizing disclosure of affiliate arrangements to OCI, the public and individual purchasers of title insurance.

Policy Analysis

Currently, s. Ins 3.32 imposes some restrictions on affiliated producers of title insurance but no disclosure of the affiliations. In other states, affiliated business entities are subject to additional regulation and disclosures because of the possibility of "reverse competition." Some states currently require disclosure and publication of affiliation of title businesses which are owned or controlled by creditors, real estate organizations and others in a position to steer title customers to certain agencies affiliated with the entity doing the referring. This allows consumers to better make informed decisions.

Statutory Authority

Section 628.34 (12), Stats.

Comparison with Federal Regulations

Under the Real Estate Settlement Procedures Act (1974), the federal agency, Housing and Urban Development ("HUD"), imposes certain limitations on affiliated entities regarding investments, financing and control. HUD also requires disclosure of certain affiliated entities to potential consumers.

Entities Affected by the Rule

Title insurance insurers, agents, agencies and affiliated entities.

Estimate of Time Needed to Develop the Rule

200 hours and no other resources are necessary.

Transportation

Subject

Revises Chapter Trans 252, relating to policies that apply to escort vehicles for oversize or overweight transport.

Objective of the Rule

The proposed rule amendment will add explicit requirements and approval procedures for use of an escort that is formally trained as an oversize/overweight transport escort as approved by the Department, in lieu of a police escort as currently allowed.

Policy Analysis

Currently, ch. Trans 252 allows the Department or local permit issuing authority to require the permittee to use an escort that is a uniformed police officer with a marked squad car, if the Department or permit issuing authority determines that the load or route presents difficulties that may require traffic direction or other specialized authority or knowledge that a law enforcement officer would have.

In recent years, as the State Patrol and other law enforcement agencies deal with greater workload and

shrinking resources, providing oversize/overweight transport escort services, even if paid for by the permittee, exceeds the capacity of the agency.

By policy, the Department currently allows permittees to use a private transport escort that has obtained formal training, specializing in issues that a transport escort must understand and be able to put into operation. The training must satisfy the Department. This proposed rule amendment would establish this policy in the rule.

Even with specialized training, oversize/overweight transport escorts are not empowered to direct traffic. In promulgating this rule amendment, the Department will designate certain route locations and intersections at which a trained transport escort may, under approval by state or local law enforcement, provide some traffic direction strictly limited to passage of the oversize or overweight load.

Statutory Authority

Section 348.25 (3), Stats.

Comparison with Federal Regulations

No federal regulations address escort requirements for oversize or overweight transport.

Entities Affected by the Rule

Motor carriers that obtain permits for oversize and overweight transport, businesses that provide oversize/overweight transport escort services, law enforcement agencies, and the Department and local permitting authorities and authorities in charge of maintenance of state and local highways.

Estimate of Time Needed to Develop the Rule

100 hours.

Transportation

Subject

Revises Chapter Trans 254, relating to policies and procedures for single trip oversize and overweight permits.

Objective of the Rule

This rule making will amend the rule to incorporate Department policies and procedures that have been established, and to accommodate changes in the industry environment since the rule was last revised. Specifically, the rule proposes to:

- Add a requirement for the permit applicant to give the Department an e-mail address in addition to a mail address, if the applicant has e-mail.
- Eliminate application by telephone call-in procedure and instead allow internet application, as the Department has replaced telephone with internet application.
- Increase insurance amounts required of the carrier to reflect current industry standards.
- Clarify reasons that the Department may withdraw the permit, reflecting recent policy modifications.
- Clarify conditions that are adverse weather conditions under which the Department may invalidate the permit.
- Eliminate references to operation restrictions on the Milwaukee County expressway system, because improvements to the highway system in Milwaukee County allow for relief from the most restrictive vehicle size and time of operation in the state.

- Reduce the length of permit validity from two weeks to one week to make Wisconsin permit validity length more consistent with all bordering states. Permit validity of two weeks is implied in the current rule but not explicitly stated.

In addition, the rule will require a single trip permit applicant to provide a route survey of the proposed route that determines the sufficiency of the route to handle the length, width, and height of the load as well as the weight, including sufficiency of turns to accommodate the turning radius of the load, and specifying any pre-move remediation of identified problems. The route must be surveyed by a professional transportation engineer. The rule will clarify that the applicant is responsible for any costs incurred as a result of any at-fault incidents on the route.

Policy Analysis

Currently, Department policy and procedure addresses several of the proposed rule changes. However, in the absence of rule authority, the department may not require certain things; for example, while most carriers carry insurance significantly greater than current minimums, the department may not require higher amounts.

Currently, the applicant proposes a route for a single trip permit, and the Department approves the route or stipulates a different route. The policy proposed in this rule will accomplish three objectives: First, it will reduce workload requirement for the Department engineering staff, as the Department is faced with growing numbers of oversize and overweight permit applications at the same time as reductions in staffing. Second, it will assure that the applicant has driven the route, is familiar with all potential impediments, and has a plan to minimize impacts before the move, rather than repairing damage after the move. Third, it provides clear basis for understanding that the carrier, rather than the Department, is responsible for any costs incurred as a result of any at-fault incident on the route.

Statutory Authority

Section 348.25 (3), Stats.

Comparison with Federal Regulations

This rule, like all Department size and weight rules and statutes, complies with federal regulations regarding size and weight limitations on federally funded highways.

Entities Affected by the Rule

Motor carriers that request oversize or overweight single trip permits.

Wisconsin law enforcement officers, who enforce size and weight restrictions.

Local governments and local highway authorities.

Estimate of Time Needed to Develop the Rule

100 hours.

Transportation

Subject

Revises Chapters Trans 267 and 268, relating to emergency energy conservations permits and emergency agricultural transportation permits.

Objective of the Rule

Chapter Trans 268 governs emergency energy conservation permits under ss. 340.01 (15s) and 348.17 (3), Stats. Chapter Trans 267 governs emergency agricultural

transportation permits under s. 348.17 (4), Stats. 2005 Wis. Act 364 repealed that provision and instead created s. 348.17 (5), Stats., allowing overweight transport of certain crops during certain time periods. This proposed rule amendment will combine ch. Trans 267 into ch. Trans 268.

The proposed amendment will incorporate provisions on operation, permit suspension, driver requirements, and similar provisions that apply to all permits, to make the rule consistent with other overweight rules. The proposed amendment will include provisions related to any permit that might be authorized by any Gubernatorial declaration of agricultural emergency unrelated to s. 348.17(5), Stats.

Policy Analysis

The proposed rule amendment will reflect updated statutory provisions related to overweight agricultural transport, and will incorporate into this rule current Department policies that apply to all overweight permits.

Statutory Authority

Sections 348.17 (3) and 348.25 (3), Stats.

Comparison with Federal Regulations

This rule, like all Department size and weight rules and statutes, complies with federal regulations regarding size and weight limitations on federally funded highways.

Entities Affected by the Rule

Motor carriers that request emergency energy or agricultural transport permits.

Wisconsin law enforcement officers who enforce weight restrictions.

Local governments and local highway authorities

Estimate of Time Needed to Develop the Rule

100 hours.

Transportation

Subject

Revises Chapters Trans 510 and 512, relating to the Transportation Facilities Economic Assistance and Development Program, and the Transportation Infrastructure Loan Program.

Objective of the Rule

The objective of the proposed rule is to implement the provisions of 2007 Wis. Act 125 that relate to verified statements from an independent certified accountant and the director or principal officer of the recipient of the grant or loan for each economic development program administered by the Department.

Policy Analysis

Under chs. Trans 510 and 512, there are existing policies regarding job guarantees, reporting requirements, benchmarks and payback provisions for failure to meet the requirements under the project agreements. However, the existing rules do not include in text any requirement for (1) the 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; (2) the Department to coordinate the development of these accountability measures with the other State agencies that administer economic development programs; or (3) standardized reporting requirements for the economic development programs.

Statutory Authority

Section 84.01 (6m) (b) 6., 7. and (11m), Stats., as created by 2007 Wis. Act 125.

Comparison with Federal Regulations

No federal regulation applies to other DOT programs defined as an “economic development program” under 2007 Wis. Act 125. The Act defines economic development program as a program or activity having the primary purpose of encouraging the establishment and growth of business in the state, including the creation and retention of jobs. DOT programs are transportation infrastructure projects that contribute to mobility, safety and efficiency transporting freight and the traveling public.

Entities Affected by the Rule

This rule making may affect any public entity that chooses to accept an economic development grant or loan administered by the Department.

Estimate of Time Needed to Develop the Rule

40 to 80 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Agriculture, Trade and Consumer Protection

CR 09–009

On January 29, 2009, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter ATCP 70, relating to food processing plants.

Agency Procedure for Promulgation

The Department’s Division of Food Safety is primarily responsible for this rule. Public hearings are scheduled for March 3, 12 and 13, 2009.

Contact Information

Tom Leitzke
Phone: 608–224–4711

Commerce

Elevators, Escalators and Lift Devices, Ch. Comm 18

CR 09–012

On February 2, 2009, the Department of Commerce submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order repeals s. Comm 18.1702 (8), relating to suspension ropes and their connections serving elevators.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for March 2, 2009.

Contact Information

Larry Swaziek, Program Manager
Phone: 608–267–7701
Email: larry.swaziek@wisconsin.gov

Dentistry Examining Board

CR 09–007

On January 22, 2009, the Department of Regulation and Licensing submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapters DE 1 and 2 and repeals Chapter DE 4, relating to the licensure of foreign trained dentists.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 4, 2009.

Contact Information

Pamela Haack, Paralegal
Office of Legal Counsel
Phone: 608–266–0495
Email: Pamela.haack@wisconsin.gov

Health Services

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

CR 09–003

On January 21, 2009, the Department of Health Services submitted a proposed rule–making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises sections DHS 10.55 and 10.56, relating to fair hearings and continuation of benefits pending the outcome of a grievance, department review, or fair hearing under the family care program.

Agency Procedure for Promulgation

A public hearing is required; however, a public hearing has not yet been scheduled for this proposed rule.

Contact Information

For substantive questions of rules contact:

Charles Jones, Family Care Program Manager
Office of Family Care Expansion, Managed Care Section
1 W. Wilson Street, Room 518
P.O. Box 7851
Madison, WI 53707–7851
Phone: 608–266–0991
FAX: 608–266–5629
Email: jonescm@dhfs.state.wi.us

Small Business Regulatory Review Coordinator:

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

Insurance

CR 09–004

On January 22, 2009, 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 sections Ins 17.01 and 17.28, relating to fiscal 2010 fund fees, provider classifications, and mediation panel fees and affecting small business.

Agency Procedure for Promulgation

A public hearing is scheduled for March 2, 2009.

Contact Information

Theresa L. Wedekind
Phone: 608-266-0953
Email: theresa.wedekind@wisconsin.gov

**Medical Examining Board
CR 09-005**

On January 22, 2009, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section Med 20.05 and creates section Med 20.055, relating to temporary certificates for respiratory care practitioners who are certified in other jurisdictions.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 18, 2009.

Contact Information

Pamela Haack, Paralegal
Office of Legal Counsel
Phone: 608-266-0495
Email: Pamela.haack@wisconsin.gov

**Medical Examining Board
CR 09-006**

On January 22, 2009, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section Med 8.08, relating to prescribing limitations for physician assistants.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 18, 2009.

Contact Information

Pamela Haack, Paralegal
Office of Legal Counsel
Phone: 608-266-0495
Email: Pamela.haack@wisconsin.gov

**Public Instruction
CR 09-011**

On February 2, 2009, the Department of Public Instruction submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order amends Chapter PI 22, relating to the precollege scholarship program.

Agency Procedure for Promulgation

The Department's Division for Reading and Student Achievement is primarily responsible for promulgation of this rule. Public hearings will be scheduled.

Contact Information

Kevin Ingram, Director
Educational Opportunity Programs and Urban Education
Phone: 414-227-4413

**Regulation and Licensing
CR 09-008**

On January 22, 2009, the Department of Regulation and Licensing submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter RL 186, relating to the registration and regulation of professional employer organizations and groups.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 2, 2009.

Contact Information

Pamela Haack, Paralegal
Office of Legal Counsel
Phone: 608-266-0495
Email: Pamela.haack@wisconsin.gov

Rule–Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

CR 09–009

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed changes to rules relating to Food Processing Plants in Chapter ATCP 70, Wis. Adm. Code.

Hearing Information

DATCP will hold the public hearings at the times and locations shown below.

March 3, 2009

1:00 PM to 4:00 PM

Meeting Room

Eau Claire Office, Division of Food Safety

3610 Oakwood Hills Parkway

Eau Claire, WI

March 12, 2009

9:30 AM to 12:00 PM

Room C (Downstairs)

Appleton Public Library

225 N. Oneida Street

Appleton, WI

March 13, 2009

9:00 AM to 12:00 PM

Board Room, 1st Floor

WI Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive

Madison, WI

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 20, 2009, by writing to Arthur Ness, DATCP Division of Food Safety, P.O. Box 8911, Madison, WI 53708–8911, or e–mailing to Arthur.Ness@wi.gov. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

Submission of Written Comments

DATCP invites the public to attend the hearings and comment on the rules. Following the hearings, the hearing record will remain open through Monday, March 30, 2009 for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to arthur.ness@wisconsin.gov, or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

Copies of Proposed Rule

You may obtain a free copy of the proposed rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224–4700 or emailing Arthur.ness@wi.gov. Copies will also be available at the

hearing. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

The department of agriculture, trade and consumer protection (DATCP) currently licenses and regulates food processing plants to protect public health and safety. This rule updates current DATCP rules and harmonizes them with current federal rules.

Statutes interpreted

Sections 97.02, 97.03, 97.09, 97.10, 97.29 and 97.34, Stats.

Statutory authority

Sections 93.07 (1), 97.09, 97.29 (5) and 97.34 (2) (a), Stats.

Explanation of statutory authority

DATCP has general authority under s. 93.07 (1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP is specifically authorized under ss. 97.09, 97.29 (5) and 97.34 (2) (a) and (c), Stats., to adopt rules to regulate food processing, labeling and distribution.

Related rules or statutes

This rule incorporates, by reference, parts or all of the following rules:

- DATCP rules related to retail food establishments (ATCP 75) and fair packaging and labeling (ATCP 90).
- Department of natural resources (DNR) rules related to safe drinking water (NR 809), community water systems (NR 811) and well construction (NR 812).
- Federal rules adopted by the United States food and drug administration (FDA). These include 21 CFR 101 (food labeling), 21 CFR 113 (low–acid food packaged in hermetically sealed containers), 21 CFR 120 (juice processing), 21 CFR 123 (fish processing), 21 CFR 129 (bottled water), and 21 CFR 165.110 (bottled water labeling).

Rule contents

This rule does all of the following:

- *Definitions.* This rule harmonizes current definitions with federal rules, as well as with Wisconsin retail food rules under ch. ATCP 75. For example, this rule creates or modifies definitions of “juice,” “major food allergen,” “potentially hazardous food,” “ready–to–eat food,” “reduced oxygen packaging” and “safe temperatures” to be consistent with other state and federal rules.
- *Handwashing facilities.* This rule updates current standards related to handwashing facilities serving toilet rooms and food processing areas. New requirements apply only to facilities installed after the effective date of this rule, to food processing plants initially licensed after the effective date of this rule, or to food processing plants licensed to a new operator after the effective date of this rule.
- *Hand contact with ready–to–eat food.* This rule prohibits bare hand contact with ready–to–eat food, unless bare hand contact is reasonably necessary and does not contaminate food. If a food processing plant operator allows bare–hand contact with ready–to–eat food, the

operator must do all of the following (requirements are consistent with current rules for retail food establishments):

- Establish written policies and procedures related to bare–hand contact. These must identify authorized employees and tasks, affected foods, and the procedures that employees must follow to prevent food contamination from bare–hand contact.
 - Provide advance training to employees who may have bare hand contact with ready–to–eat food. A written training plan must identify responsible training providers, training contents (including operator policies and procedures related to bare–hand contact), the form of initial training, the form and frequency of follow–up training, and measures to ensure that effective training is provided as planned.
 - Keep records to document compliance with bare–hand food handling policies, procedures and training requirements.
- *Cleaning and sanitizing procedures.* This rule updates and clarifies current requirements for cleaning and sanitizing food processing equipment and utensils, and creates procedures by which DATCP may authorize alternative procedures and sanitizing materials.
 - *Reclaimed water.* This rule updates and clarifies current standards related to use of reclaimed water in food processing plants.
 - *Re–circulated water systems.* This rule regulates the use of re–circulated water in coolers and heat exchangers (if there is any possibility that the re–circulated water may come in contact with any food product or food contact surface).
 - *Water and potable liquids transported in bulk.* This rule regulates the transportation and handling of water and other potable liquids transported to or from a food processing plant. Transported water must be obtained from a potable source that complies with DNR rules. Bulk tankers must be constructed, maintained, cleaned and sanitized for sanitary operation, and bulk liquids must be loaded and unloaded in a sanitary manner.
 - *Labeling packaged food.* This rule incorporates, by reference, current federal and state food packaging and labeling requirements. Among other things, this rule incorporates current federal rules related to disclosure of major food allergens.
 - *Recall plan.* Consistent with current federal rules, this rule requires a food processing plant operator to have a written plan for identifying and recalling food produced at the plant, should a food recall become necessary. This rule does not dictate the contents of the plan, but it does provide content suggestions in an accompanying note.
 - *Low–acid food packaged in hermetically sealed containers.* This rule clarifies that low–acid food packaged in hermetically sealed containers (including aseptically processed food as well as thermally processed food) must be processed according to federal rules under 21 CFR 113.
 - *Fish processing: general.* This rule repeals and recreates current rules related to fish processing, in order to make the rules consistent with federal rules under 21 CFR 123.
 - Under federal rules and this rule, fish processors must have a HACCP plan to identify and control food safety hazards associated with fish processing. Plans must meet federal standards.
- This rule repeals current required procedures related to smoked–fish processing, in favor of the more flexible HACCP plan approach. However, this rule encourages smoked fish processors to incorporate and adapt the repealed procedures, as appropriate, in their HACCP plans (this rule includes the repealed procedures in an appendix, which processors may consult for guidance).
 - This rule updates and clarifies current rules related to the labeling and sale of smoked fish. Among other things, this rule repeals the current 21–day shelf–life limit on sales of smoked fish (this rule requires a stated shelf–life expiration date for smoke fish, but the shelf–life will be based on the HACCP plan per federal rules).
 - This rule updates and clarifies current rules related to processing, labeling and sale of fish eggs (roe). This rule applies to all fish roe, not just “caviar.” This rule clarifies current labeling requirements related to processed fish roe. A fish roe product, other than a sturgeon roe product, may not be labeled as “caviar” unless the name of the fish species is also disclosed (e.g., “whitefish caviar”).
- *Bottling establishments.* This rule updates and clarifies current rules related to bottling establishments.
 - Bottling establishments producing bottled water must comply with federal rules under 21 CFR 129.
 - Bottling establishments engaged in juice processing must comply with federal rules under 21 CFR 120.
 - This rule updates and clarifies current product testing requirements, including test frequencies, and harmonizes current requirements with applicable federal rules. Operators who obtain ingredient water from municipal sources are exempt from some, but not all, testing requirements.
 - This rule regulates the transportation and handling of water and other potable liquids transported to or from a bottling establishment (see above). If ingredient water is transported to a bottling establishment in bulk, the operator must test the ingredient water at least weekly for coliform bacteria and heterotrophic plate count. An operator must keep records of bulk shipments.
 - Labeling of bottled products must comply with general food labeling standards (see above). Bottled water labeling must also comply with specific federal requirements under 21 CFR 165.110. A juice label may not misrepresent that juice has been pasteurized. A juice label may not represent as “fresh” any juice that has been treated with ultra–violet light.
 - *Lab test methods.* This rule updates required laboratory methods for food safety tests, based on updated official methods published by the association of official analytical chemists.
 - *Organizational and technical drafting changes.* This rule makes other organizational, technical and drafting changes to update and clarify current rules.

Comparison with federal regulations

At the federal level, the United States food and drug administration (FDA) is primarily responsible for regulating food processing plants. FDA has established basic food safety standards and requirements for food processing plants, but those standards do not preempt consistent or more rigorous state standards. Most food processing plant inspections are conducted by the states (FDA does few inspections). States generally coordinate their regulatory programs with FDA,

and state regulations are based to a considerable degree of federal regulations.

This rule incorporates by reference parts or all of the following FDA regulations:

21 CFR 101 (food labeling), 21 CFR 113 (low–acid food packaged in hermetically sealed containers), 21 CFR 120 (juice processing), 21 CFR 123 (fish processing), 21 CFR 129 (bottled water), and 21 CFR 165.110 (bottled water labeling).

Comparison of rules in adjacent states

Michigan, Minnesota, Illinois and Iowa all regulate and inspect food processing plants. Rules in those states are broadly consistent with this rule and federal rules, although there are a number of specific variations between the states.

Data and analytical methodologies

This rule relies, generally, on a large body of generally–accepted scientific information related to food safety hazards (and effective means for preventing or controlling those hazards). That information also provides the basis for federal and state rules that DATCP has incorporated by reference in this rule.

This rule incorporates, by reference, laboratory test methods published in the official methods of analysis of the association of official analytical chemists, 18th edition revision 2 (2007).

Technical standards incorporated by reference

This rule incorporates, by reference, laboratory test methods published in the official methods of analysis of the association of official analytical chemists (AOAC), 18th edition revision 2 (2007). Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general to incorporate the AOAC methods by reference in this rule. Copies will be kept on file with DATCP and the legislative reference bureau.

Fiscal Estimate

This rule will have no significant fiscal impact on Wisconsin state government and no fiscal impact on local units of government. DATCP will incur some costs to provide information and education to affected businesses. However, DATCP expects to absorb those costs.

Small Business Impact

This rule will help Wisconsin food processors to produce safe food products. Food safety regulation is important not only for consumers, but also for the food processors themselves. Food safety problems can harm individual businesses and the overall food industry.

For the most part, this rule merely updates and clarifies current rules and makes the rules consistent with other federal and state rules. These modifications will eliminate inconsistent and duplicative regulation, which will make it easier for food processors to comply. Generally, this rule gives affected food processors more flexibility to design effective food safety systems tailored to their operations. But in some instances, this rule provides definite compliance standards that are not provided by federal rules.

This rule requires fish processors and juice processors to implement hazard analysis and critical control point (HACCP) plans. But there will be no added costs to affected businesses because those plans are already required by federal rules. DATCP will help train affected businesses on the implementation of HACCP plans and other food safety measures. The University of Wisconsin–Extension may offer seminars and training sessions at modest cost.

Consistent with current federal rules, this rule requires food processors to have written recall plans. However, this rule gives processors considerable flexibility to design recall plans that are tailored to their operations. This rule provides guidance on plan contents, but it does not impose specific content requirements.

This rule incorporates current state and federal labeling requirements for processed food, including current federal requirements related to disclosure of major allergens. This rule may prompt food processors to review their labels for compliance with current law, but it does not add any major new labeling requirements.

This rule requires food processors to keep certain records related to food processing operations to help ensure food safety. Since the recordkeeping requirements are consistent with normal business practice, they will not impose significant new burdens or costs. There are no new professional skills required.

This rule may require some changes in some food processing facilities and operations. But for most food processors, the changes (if any) will not be large or costly. Most food processors are already complying with most of the requirements. New requirements related to hand–washing facilities will apply prospectively to newly installed facilities or newly licensed operations.

Many of the food processing plants affected by this rule are “small businesses.” This rule will not have a significant adverse effect on small businesses, and it will help many small businesses by making food safety regulations clearer and more consistent. This rule does not exempt small businesses, because food safety risks affect small as well as large businesses. DATCP will help train affected businesses on the implementation of HACCP plans and other food safety measures. The University of Wisconsin–Extension may offer seminars and training sessions at modest cost.

This rule will promote food safety for the benefit of consumers and food processors. This rule will clarify current regulations, and make them more consistent. That will facilitate compliance by food processors. This rule will not have a significant adverse impact on small businesses (or other businesses), and it is not subject to the delayed small business effective date under s. 227.22 (2) (e), Stats.

Small business regulatory coordinator

To provide comments or concerns relating to small business, you may contact DATCP’s small business regulatory coordinator Keeley Moll at the address below, or by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224–5039.

Agency Contact Person

Questions and comments related to this rule may be directed to:

Arthur Ness
Dept. of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708–8911
Telephone (608) 224–4715
E–Mail: arthur.ness@wi.gov

Notice of Hearing Commerce

***Elevators, Escalators and Lift Devices, Ch. Comm 18
EmR0901 — CR 09–012***

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.63 (1), 101.73 (1), and 101.82 (1), Stats., the Department of

Commerce will hold a public hearing on the proposed permanent rule and emergency rule under Chapter Comm 18 relating to suspension ropes and their connections serving elevators.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
March 2, 2009	Thompson Commerce Building
Monday	Conference Room 3B
10:00 a.m.	201 W. Washington Avenue
	Madison, Wisconsin

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or (608) 264–8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Appearances at the Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rule. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until March 13, 2009, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to Larry Swaziek, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at larry.swaziek@wisconsin.gov.

Copies of Proposed Rule

The proposed rule and an analysis of the proposed rule is available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701–2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearing.

Analysis Prepared by the Department of Commerce

Statutes interpreted

Sections 101.02 (15) (h) to (j), 101.17, 101.63 (1), and 101.981 to 101.985, and 101.988, Stats.

Statutory Authority

Sections 101.02 (15) (h) to (j), 101.17, 101.63 (1), and 101.981 to 101.985 and 101.988, Stats.

Related statute or rule

Chapters Comm 60 to 66, Wisconsin Commercial Building Code.

Chapters Comm 20 to 25, Wisconsin Uniform Dwelling Code.

Explanation of agency authority

Under the authority of ss. 101.17, 101.63 and 101.982, Stats., the Department has the authority to promulgate rules for the safe installation and operation of conveyances

(elevators, escalators and lift devices). Under the authority of ss. 101.17, 101.983 and 101.988, Stats., the Department has the authority to promulgate rules for required permits, inspection and enforcement of the technical standards. Currently, the Department has fulfilled this responsibility by promulgating the Elevators, Escalators and Lift Devices Code, chapter Comm 18.

Summary of proposed rule

The proposed rule repeals a provision that requires a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes. The repeal is necessary because the American Society of Mechanical Engineers (ASME) did not incorporate a similar provision into the latest edition of its national A17.1 standard that is adopted by reference in Comm 18 which became effective January 1, 2009. Nationally, conveyance equipment is designed and manufactured to meet the ASME A17.1 standard.

Comparison with federal regulations

An Internet–based search of the code of federal regulations and the federal register did not identify any federal requirements relating to requiring a wear and fatigue monitoring system or a device that protects against suspension loss in electric traction elevators. There are no existing or proposed federal regulations that address the specific issue or impact the activities to be regulated by this proposed rule.

Comparison with rules in adjacent states

An Internet–based search found that all of the adjacent states adopt by reference certain editions of the ASME A17.1, Safety Code for Elevators and Escalators. The adjacent states also create amendments to the adopted standard similar to Wisconsin’s administrative rules relating to elevators, escalators and lift devices.

None of the elevator or escalator regulatory programs in the states of Illinois, Iowa, Michigan or Minnesota had specific rules or standards regarding the wear and fatigue monitoring system or the device that protects against suspension loss for electric traction elevators as addressed by the Wisconsin rule being repealed by this proposed rule.

Summary of factual data and analytical methodologies

The proposed rule was developed using information gathered when the department learned that the ASME A17.1 Committee was not incorporating the section relating to the wear and fatigue monitoring system and the device that protects against suspension loss for electric traction elevators into its next edition of the national A17.1, Safety Code for Elevators and Escalators. The current edition of the national standard for the design and construction of conveyance serves as the basis for the proposed rule as well as for the remainder of chapter Comm 18.

In addition, the department involved the Conveyance Safety Code Council in its review and assessment process. Council members represent many stakeholders involved in the conveyance industry, including manufacturers, inspectors, building contractors and the general public as users of the conveyances.

Analysis and supporting documents used to determine effect on small business

The department believes the proposed rule will not increase the effect on small businesses from what the current rules impose on them. An economic impact report has not been required pursuant to s. 227.137, Stats.

Small Business Impact**Initial regulatory flexibility analysis**

Types of small businesses that will be affected by the rule.

The proposed rule will affect businesses that install and maintain electric traction elevators. Repealing the rule will save those businesses implementation costs.

Reporting, bookkeeping and other procedures required for compliance with the rule.

There are no reporting, bookkeeping or other procedures required for compliance with the rule.

Types of professional skills necessary for compliance with the rule.

There are no new types of professional skills necessary for compliance with the rule.

Rule has a significant economic impact on small businesses.

No.

Small business regulatory coordinator

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267–0297, or Email at carol.dunn@wisconsin.gov.

Environmental Analysis

NOTICE IS HEREBY GIVEN that the Department has considered the environmental impact of the proposed rule. In accordance with chapter Comm I, the proposed rule is a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed the rule and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate**Summary**

The proposed rule repeals code language requiring a wear and fatigue monitoring system and a device that protects against suspension loss for electric traction elevators using smaller sized wire ropes. Repealing s. Comm 18.1702 (8) will not affect department revenue or expenditures.

State fiscal effect

None.

Local government fiscal effect

None.

Fund sources affected

PRO.

Long–range fiscal implications

No long range fiscal implications are anticipated.

Agency Contact Person

Larry Swaziek, Program Manager
Larry.swaziek@wisconsin.gov
 (608) 267–7701

Text of Emergency Rule

SECTION 1. Comm 18.1702 (8) is repealed.

Text of Proposed Permanent Rule

SECTION 1. Comm 18.1702 (8) is repealed.

**Notice of Hearing
 Dentistry Examining Board
 CR 09–007**

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 447.04 (1) (b) 1., Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise Chapters DE 1 and 2, and to repeal Chapter DE 4, relating to licensure of foreign trained dentists.

Hearing Information

Date: March 4, 2009
Time: 9:00 a.m.
Location: 1400 East Washington Avenue
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing and Submission of Written Comments

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 Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to pamela.haack@wisconsin.gov. Comments must be received on or before March 20, 2009, to be included in the record of rule–making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at pamela.haack@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing**Statutes interpreted**

Section 447.04 (1) (a) and (b), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 447.04 (1) (b) 1., Stats.

Explanation of agency authority

Section 447.04 (1) (b) 1., Stats., enables the Dentistry Examining Board to write rules for the licensing of individuals who are licensed in good standing to practice dentistry in another country.

Related statute or rule

There are no related statutes or rules other than those listed above.

Plain language analysis

This proposed rule–making creates a route for foreign trained dentists to be licensed in Wisconsin. It creates requirements that a foreign trained dentist must meet to get a license for both initial licensure and endorsement.

SECTION 1 renumbers s. DE 1.02 (1).

SECTION 2 creates a definition for “accredited” to mean accredited by the American Dental Association’s Commission on Dental Accreditation (ADA CODA) or its successor agency. This is the same definition that is in s. 447.01 (1), Stats.

SECTION 3 amends the rule to delete foreign trained dentists from the initial licensing requirements in s. DE 2.01 (1). Section DE 2.01 (1) lists the items and evidence an applicant must submit to the board to receive an initial license.

SECTION 4 creates a new provision for initial licensure that applies only to foreign trained dentists. A foreign trained dentist will qualify for a license if he or she submits to the board evidence of graduation from a foreign dental school, evidence of the successful completion of an accredited postgraduate program in advanced education in general dentistry or an accredited general dental practice residency. In addition, a foreign trained dentist must submit the same information required of non–foreign trained dentists listed in s. DE 2.01 (1) (a) to (d) and (g).

SECTION 5 amends the endorsement licensure provision in s. DE 2.04 (1) (a), to enable foreign trained dentists to qualify for a license through endorsement. Currently, a foreign trained dentist cannot qualify for a license through endorsement because they do not meet the requirement that the applicant graduated from an accredited school of dentistry. This rule enables a foreign trained dentist to qualify for a license through endorsement if he or she submits evidence satisfactory to the board that he or she has graduated from a foreign dental school and has successfully completed an accredited postgraduate program in advanced education in general dentistry or an accredited general dental practice residency. All other requirements for qualifying for a license through endorsement remain in effect for all applicants.

SECTION 6 repeals ch. DE 4, Educational Programs Meeting Licensing and Certification Requirements. Chapter DE 4 consists of ss. DE 4.01 and 4.02. Section DE 4.01 states that the board shall approve ADA CODA accredited educational programs. That is already established in statute. It also allows the board to approve other programs. This rule repeals the board’s ability to approve other programs.

Section DE 4.02 gives the board the authority to approve evaluation programs for foreign trained dentists. Repealing this provision takes away that authority from the board. The repeal of this provision is consistent with this proposed rule–making order. This rule–making order deletes the language in s. DE 2.01 (1) (e) that states that a foreign trained dentist meets the educational requirements for a license if verification is provided from a “board approved foreign graduate evaluation program of successful completion of the evaluation course.” By deleting that language, s. DE 4.02 becomes obsolete for licensure purposes and should be repealed. This rule–making order replaces that deleted language by requiring a foreign trained applicant to have completed an ADA CODA approved program.

Comparison with federal regulations

There are no existing or proposed federal regulations.

Comparison with rules in adjacent states**Iowa:**

Iowa requires attendance of at least 2 years at a CODA accredited school. No DDS or DMD is required, but the dean of the school attended must verify the same level of didactic and clinical education has been achieved as a graduate of the dental school. A diploma, degree, or certificate must be awarded upon completion.

Illinois:

A minimum of two academic years of general dental clinical training at a school in the United States or Canada approved by the department (CODA) approved school is required. However, an accredited advanced dental education program approved by the department.

Michigan:

Michigan requires completion of, at minimum, a 2 year program in an ADA approved school. No DDS or DMD is required. The individual must be confirmed by the dean of the school attended.

Minnesota:

A 2001 law makes international graduates eligible to take the clinical examination (e.g., CRDTS) if education is determined to be equivalent to a CODA accredited dental education program. International Credentialing Associates, Inc., (ICA) is the equivalency evaluation company the board uses. Minnesota accepts completion of an advanced program in dentistry (CODA approved) in lieu of ICA evaluation.

Summary of factual data and analytical methodologies

The board reviewed its current rules and the rules of other states. A considerable amount of time was spent during board meetings examining how foreign trained dentists are credentialed. This involved an analysis of the available evaluation programs that are operational in other states. The board also examined the process of accrediting postgraduate residency training programs. Representatives of the American Dental Association presented information to the board regarding its accreditation standards and procedures, and a significant amount of time was spent discussing how best to credential foreign trained dentists.

Analysis and supporting documents used to determine effect on small business

No new reports or forms are required under the rule. The impact on small businesses is anticipated to be positive due to the increase in the number of dentists available for hire. Nearly all dental practices in Wisconsin are small businesses.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Small Business Impact

These proposed rules will have no 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@wisconsin.gov, or by calling 608–266–8608.

Fiscal Estimate**Summary**

The department estimates that this rule will require staff time in the Office of Legal Counsel, Office of Examinations,

and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$9,732. The total on–going salary and fringe costs are estimated at \$1,146.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at pamela.haack@wisconsin.gov.

Notice of Hearing

Insurance

CR 09–004

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance (OCI) will hold a public hearing to consider the adoption of a proposed rulemaking order revising sections Ins 17.01 (3), 17.28 (3) (c) and (6), Wis. Adm. Code, relating to fiscal year 2010 fund fees, provider classifications, and mediation panel fees and affecting small business.

Hearing Information

Date: March 2, 2009

Time: 10:00 a.m., or as soon thereafter as the matter may be reached

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

Submission of Written Comments

Written comments can be mailed to:

Theresa L. Wedekind
Legal Unit – OCI Rule Comment for Rule Ins 1701
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707–7873

Written comments can be hand delivered to:

Theresa L. Wedekind
OCI Rule Comment for Rule Ins 1701
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703–3474

Comments can be emailed to:

Theresa L. Wedekind
theresa.wedekind@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

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

Copies of Proposed Rule and Agency Contact Person

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, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264–8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707–7873.

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

Statutes interpreted

Sections 655.27 (3), and 655.61, Wis. Stats.

Statutory authority

Sections 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Wis. Stats.

Explanation of agency authority

The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund and the annual fee due for the operation of the medical mediation panel.

Related statutes or rules

None

Plain language summary

This rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2009. These fees represent a 9.9% increase from fees paid for the 2008–09 fiscal year. The board approved these fees at its meeting on December 17, 2008, based on the recommendation of the board’s actuarial and underwriting committee and reports of the fund’s actuaries.

This rule includes additions to the Insurance Services Office (ISO) code listing to address new classification specialties. ISO codes are the numerical designation for a health care provider’s specialty and are used to classify the provider for assessment purposes.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board’s actuarial and underwriting committee. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at \$25.00 for physicians and \$5.00 per occupied bed for hospitals, representing an increase of \$7.00 per physician and \$2.50 per occupied bed for hospitals from 2008–09 fiscal year mediation panel fees.

Comparison with federal regulations

To the fund board’s and OCI’s knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

Comparison of rules in adjacent states

To the fund board’s and OCI’s knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

Summary of factual data and analytical methodologies

None. This rule establishes annual fund fees pursuant to the requirements of the above–noted Wisconsin statutes.

Analysis and supporting documentation used to determine rule's effect on small businesses

This increase in fund fees and mediation panel fees will have an affect on some small businesses in Wisconsin; particularly those that employ physicians and other health care professionals. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities. These increases will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. However, these increases will not have a significant effect nor should it negatively affect the small business's ability to compete with other providers.

Small Business Impact

This rule will have little or no effect on small businesses. The increase contained in the proposed rule will require providers to pay an increased fund fee and mediation panel fee which will increase the operational expenses for the providers. However, this increase is not considered to be significant and will have no effect on the provider's competitive abilities.

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***Summary***

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1 based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its December 17, 2008 meeting.

The Fund is a unique fund; there are no other funds like it in the country. The Fund provides unlimited liability coverage and participation is mandatory. These two features make this Fund unique compared to funds in other states. The only persons who will be affected by this rule change are the Fund participants themselves as the IPFCF is fully funded through assessments paid by Fund participants.

There is no effect on GPR.

State fiscal effect

None.

Local government fiscal effect

None.

Fiscal effect on private sector

The increase in fees promulgated by this rule does not result in a significant fiscal effect on the private sector. Although a health care provider may pass this increase on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

Fund sources affected

SEG.

Long-range fiscal implications

None.

Notice of Hearing
Medical Examining Board
CR 09-005

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 448.04 (1) (i) 3., Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Med 20.05 (title), and to create s. Med 20.055, relating to temporary certificates for respiratory care practitioners who are certified in other jurisdictions.

Hearing Information

Date: March 18, 2009
Time: 8:30 a.m.
Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at the Hearing and Submission of Written Comments

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 Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, email at pamela.haack@wisconsin.gov. Comments must be received on or before March 30, 2009, to be included in the record of rule-making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at pamela.haack@wisconsin.gov.

Analysis prepared by the Department of Regulation and Licensing.***Statutes interpreted***

Sections 448.04 (1) (i) 2. and 448.40 (1), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 448.04 (1) (i) 3., Stats.

Explanation of agency authority

The Medical Examining Board has the authority under s. 448.40, Stats., to promulgate rules establishing minimum standards for the practice of respiratory care, including the issuance of temporary certificates for respiratory care practitioners.

Related statute or rule

Section 448.04 (1) (i), Stats., and s. Med 20.05.

Plain language analysis

This proposed rule-making will conform ch. Med 20, relating to respiratory care practitioners, to the provisions enacted by 2007 Wisconsin Act 54, which created a

temporary certificate for the practice of respiratory care. The temporary certificate to practice respiratory care authorized by this Act is available to a limited category of applicants who have passed the national examination and are licensed in another state. The Act allows for a maximum of three months of practice under the temporary certificate, which cannot be renewed. The proposed rule addresses the high demand for health care professionals such as respiratory care practitioners and makes it easier for hospitals, especially those along Wisconsin's borders, to recruit and hire qualified applicants that are licensed in neighboring states in a timely manner. Currently, the temporary certificate is only available to graduates who have not passed the national examination.

SECTION 1 amends the title to s. Med 20.05.

SECTION 2 creates s. Med 20.055 relating to the requirements for issuance of a temporary certificate for applicants who are certified to practice in another jurisdiction.

Comparison with federal regulations

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states

Iowa:

None.

Illinois:

There is a six month temporary license available for pending applicants until the next available examination is taken.

Michigan:

A temporary license is available for up to four years if the applicant has practiced as a full–time respiratory care practitioner for four years immediately preceding the date of application in certain, specified settings. A letter of recommendation from a Medical Director is also required.

Minnesota:

A temporary permit is issued and is valid until the board meets to decide on the application. A temporary permit is also available until the next available examination.

Summary of factual data and analytical methodologies

The proposed rules will conform a respiratory care practitioners rule to recent statutory changes brought about by 2007 Wisconsin Act 54, which created s. 448.04 (1) (i) 3., Stats.

Analysis and supporting documents used to determine effect on small business

The Medical Examining Board did not consult supporting documents other than 2005 Wisconsin Act 195. It is merely updating its rules based on the legislative change.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule–making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Small Business Impact

These proposed rules will have no 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@wisconsin.gov, or by calling 608–266–8608.

Fiscal Estimate

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$3,500. The total on–going salary and fringe costs are estimated at \$600.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at pamela.haack@wisconsin.gov.

Notice of Hearing

Medical Examining Board

CR 09–006

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2), 448.05 (5) and 448.40, Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise ss. Med 8.08 and 8.10 (3), relating to prescribing limitations for physician assistants.

Hearing Information

Date: March 18, 2009

Time: 8:40 a.m.

Location: 1400 East Washington Avenue
(Enter at 55 North Dickinson Street)
Room 121A
Madison, Wisconsin

Appearances at the Hearing and Submission of Written Comments

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 Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, email at pamela.haack@wisconsin.gov. Comments must be received on or before March 30, 2009, to be included in the record of rule–making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at pamela.haack@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing

Statutes interpreted

Section 448.21 (3), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 448.05 (5) and 448.40, Stats.

Explanation of agency authority

The Medical Examining Board is granted the authority under s. 448.40, Stats., to promulgate rules establishing licensing and practice standards for physician assistants for the purpose of protecting the public health, safety and welfare.

Related statutes or rules

Sections 448.04 (1) (f) and 448.05 (5) (a), Stats., and Chapter Med 8, Wis. Adm. Code.

Plain language analysis

This proposed rule-making will change the countersignature requirement of the physician assistant prescribing rule which currently provides that the supervising physician must countersign the prescription or patient record within 72 hours or one week, depending on the practice site. Based on the advances in physician assistants' licensure and prescriptive authority, including a record of safe prescribing, co-signature of every prescription is no longer needed. The proposed rule will allow for more flexibility between the physician and physician assistant by allowing the supervising physician to determine the method and frequency of the review based upon the prescriptive practice, the experience of the physician assistant and the patients' needs. In addition, the proposed rule re-conceptualizes the required written guidelines for prescribing to include the categories of drugs for which prescriptive authority has been authorized and the technological advancement in electronic communications and recordkeeping.

SECTION 1 amends rules to reflect the prescribing or dispensing of a drug pursuant to written guidelines for supervised prescriptive practice.

SECTION 2 repeals rules which currently provide that the supervising physician must countersign the prescription or patient record within 72 hours or one week, based on the advances in physician assistant licensure and prescriptive authority.

SECTION 3 creates rules to allow for more flexibility between the physician and physician assistant by allowing the supervising physician to determine the method and frequency of the review based upon prescriptive practice, experience of the physician assistant, and patient needs.

SECTION 4 amends rules to incorporate the technological advancement in electronic communications.

Comparison with federal regulations

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states***Iowa:***

Physician assistants may prescribe non-controlled and controlled substances (except schedule II depressants). They may dispense under certain conditions. Physician assistants who prescribe controlled medications must register with the DEA.

Supervision: A physician need not be physically present, but must be readily available by telecommunication.

Illinois:

A physician may delegate prescriptive authority for non-controlled and schedules III–V medications to physician assistants, with periodic review by the supervising physician. A physician must file notice of delegation of prescriptive authority to the physician assistant with the Department of Professional Regulation. The physician and physician assistant adopt written guidelines for prescribing. Physician

assistants who prescribe controlled substances must register with state controlled substance authority and the DEA.

Supervision: Physical presence of a physician is not required. The physician must be able to consult by radio, telephone, or telecommunications. The supervising physician may designate an alternate supervising physician in accordance with statutes. Physicians within a practice group of the supervising physician may supervise the physician assistant with respect to their patients without being deemed an alternate supervising physician.

Michigan:

Physician assistants may prescribe non-controlled and schedules III–V medications as delegated by a supervising physician. Physician assistants may prescribe a 7-day supply of schedule II drugs as discharge medications. Supervising physicians' and physician assistants' names must be indicated on the prescription. Physician assistant prescribers of controlled medications must register with the DEA.

Supervision: A physician must be continuously available for direct communication in person or by radio, telephone, or telecommunication and must regularly review the physician assistant's performance and patient records, consult, and educate.

Minnesota:

Physician assistants may prescribe controlled (schedules II–V) and non-controlled drugs. The physician reviews prescribing by the physician assistant weekly. Physician assistants authorized to prescribe controlled medications must register with the DEA.

Supervision: Physical presence of a physician is not required. The physician assistant and supervising physician must be able to be in touch via telecommunication.

Summary of factual data and analytical methodologies

The Wisconsin Council on Physician Assistants initiated this rule by a request to the Medical Examining Board. The board's attorney drafted the rule in accordance with instructions from the Council. Council members sought the collaborative support of several groups and individuals interested in the rules governing prescribing by physician assistants and discussed the rule thoroughly at Council meetings. The Council examined the experience of other states, particularly that of Minnesota.

Analysis and supporting documents used to determine effect on small business

It is anticipated that the impact on small businesses will be positive because of the additional flexibility built into the supervisory relationship. The guidelines, which govern the relationship between the physician and the physician assistant, remain in place though the form will change slightly to include a section outlining the categories of drugs the physician assistant may prescribe.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Small Business Impact

These proposed rules will have no 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@wisconsin.gov, or by calling 608–266–8608.

Fiscal Estimate

The department estimates that this rule will require staff time in the Office of Legal Counsel. The total one–time salary and fringe costs are estimated at \$4,300. The total on–going salary and fringe costs are estimated at \$2,400.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at pamela.haack@wisconsin.gov.

Notice of Hearing Regulation and Licensing CR 09–008

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2), 461.02 (7) and 461.06, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to create Chapter RL 186, relating to the registration and regulation of professional employer organizations and groups.

Hearing Information

Date: March 2, 2009
Time: 10:00 a.m.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing and Submission of Written Comments

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 Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708, email at pamela.haack@wisconsin.gov. Comments must be received by March 20, 2009, to be included in the record of rule–making proceedings.

Copies of Proposed Rule

Copies of this proposed rule are available upon request to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at pamela.haack@wisconsin.gov.

Analysis Prepared by the Department of Regulation and Licensing.

Statutes interpreted

Ch. 461, Stats., and 2007 Wisconsin Act 189.

Statutory authority

Sections 227.11 (2), 461.02 (7) and 461.06, Stats.

Explanation of agency authority

The Department of Regulation and Licensing is required under 2007 Wisconsin Act 189 to promulgate rules to implement the requirements under ch. 461, Stats., relating to the registration of professional employer organizations and groups.

Related statute or rule

There are no other statutes or rules other than those listed above.

Plain language analysis

This proposed rule–making order creates new rules relating to the registration of professional employer organizations and groups. The rules contain provisions for the application and renewal of registrations and grounds for discipline of registrants.

SECTION 1 creates the following provisions:

1. Definitions for the terms “applicant,” “client,” “controlling person,” “department,” “electronic record,” “electronic signature,” “professional employer group,” “professional employer organization” and “registrant.”

2. Application requirements for initial and renewal registrations, including requirements for limited and alternative registrations and verification of the financial capability of applicants.

3. Grounds for discipline of professional employer organizations and groups.

Comparison with federal regulations

There is no existing or proposed federal regulation that relates to the regulation of professional employer organizations or groups.

Comparison with rules in adjacent states

Iowa:

Iowa has no specific professional employer organization license required.

Illinois:

A license is required from the Division of Insurance to operate a professional employer organization under the Employee Leasing Company Act s215.113 (ILCS). Professional employer organizations are known as employee leasing companies.

Michigan:

Michigan has no specific professional employer organization license required.

Minnesota:

Professional employer organizations must register with the Department of Commerce relating to their ability to sponsor workers’ compensation insurance policies under s79.255 (MN Stats.).

Summary of factual data and analytical methodologies

Small and medium sized businesses outsource to professional employer organizations everything from administering the payroll and paying employment related taxes, to risk management, recruiting, providing health benefits and securing workers’ compensation coverage according to the National Association of Professional Employer Organizations (NAPEO), the leading trade association for the profession, who also report that about 700 professional employer organizations are operating in 50 states; the average client of NAPEO members is a small business with an average of 19 employees; and larger businesses are signing up more and more.

Analysis and supporting documents used to determine effect on small business

According to statistics provided by NAPEO, between 1980 and 2000, the number of labor laws and regulations grew by almost two–thirds according to the federal Small Business Administration, which also estimated that owners of small and mid–sized businesses spent up to 25% of their time on employment–related paperwork. Professional employer organizations assume much of that responsibility and helps companies comply with all the related regulations. Additional statistics indicate that professional employer organizations provided enhanced access to employee benefits for 2–3 million working Americans because of the savings and benefits they provide to small businesses. Further, because the average client of NAPEO’s member professional employer organizations has only 19 worksite employees, without professional employer organization relationships, NAPEO member employees would not have protection under COBRA, ADA or the FMLA. NAPEO also reports that professional employer organizations help tens of thousands of companies provide benefits such as health care plans, 401K tax–free savings accounts and other perks to working Americans. An estimated 95 percent of workers in a professional employer organization arrangement have access to a pension plan, and workers with access to a 401K dropped from 28 percent to 19 percent. Lastly, NAPEO indicates that professional employer organizations help improve the work environment and make it safer in that they focus on workplace risk management, safety programs and good human resources practices. Professional employer organizations arrange coverage for workers’ compensation with major insurance carriers and manage the claims as well.

Small Business Impact

These proposed rules will have no 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@wisconsin.gov, or by calling 608–266–8608.

Fiscal Estimate

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, Division of Board Services, and the Division of Professional Credentialing. The total one–time salary and fringe costs are estimated at \$45,466. The total on–going salary and fringe costs are estimated at \$29,340 with supplies and services costs of \$12,500.

Anticipated costs incurred by private sector

The department finds that this rule has no significant fiscal effect on the private sector.

Agency Contact Person

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–266–0495; email at pamela.haack@wisconsin.gov.

Notice of Hearing

University of Wisconsin System CR 08–099

NOTICE IS HEREBY GIVEN that pursuant to ss. 36.11 (1), (2), and (8), and 36.35, Stats., the Board of Regents of the

University of Wisconsin System will hold a public hearing to consider the proposed revision to Chapter UWS 18, relating to student nonacademic misconduct, and conduct on land under the control of the Board of Regents.

Hearing Information

Date: March 5, 2009 (Thursday)

Time: 7:00 P.M.

Location: Room 280, Zelazo Center
UW–Milwaukee campus
2419 E. Kenwood Boulevard
Milwaukee, Wisconsin

Persons with disabilities requesting an accommodation to attend are asked to contact Judith Temby in advance of the hearing at (608) 262–2324.

Copies of Proposed Rule

Copies of the text of the rule may be obtained at no charge from the Office of the Board of Regents, 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706 or on the internet at <http://www.wisconsin.edu/admincode>.

Submission of Written Comments

Comments may be submitted to: Jane S. Radue, Assistant Director, UW System Office of Operations Review and Audit; 780 Regent Street, Suite 210, Madison, WI 53715, E–mail: jradue@uwsa.edu. The deadline for written comments is 4:30 p.m. on March 13, 2009.

Analysis Prepared by the Board of Regents of the University of Wisconsin System

Statutes interpreted

Sections 36.11(1), (2) and (8), and 36.35, Stats.

Statutory authority

Sections 36.11(1), (2) and (8), and 36.35, Stats.

Explanation of agency authority

Sections 36.11(1), (2), and (8) give the Board of Regents police power over all property owned by the Board, and authority to adopt rules regulating conduct and parking on university lands. Section 36.35, Stats., authorizes the Board and its designees to discipline students for misconduct, and directs the Board to promulgate rules governing student conduct and procedures for the administration of violations.

Related statutes or rules

None.

Plain language analysis

As a result of a recent review of ch. UWS 17, relating to student nonacademic misconduct, the board is considering changes in the rules to address issues on campuses and in the broader university community that have arisen since the rules were last significantly revised in May 1996. Specifically, some conduct, such as hazing, falsification of ID cards, and illegal use of alcohol or controlled substances, is not adequately addressed in the current rule. The availability of electronic communications may improve and streamline notice and communication during the disciplinary process by allowing certain notifications to occur electronically rather than by personal delivery or first–class mail as currently provided. In addition, it is also desirable to clarify at this time certain terms in the provisions relating to disciplinary sanctions for nonacademic misconduct, including situations in which the misconduct occurs away from the campus but which adversely affects a substantial university interest. The proposed rule also seeks to improve the effectiveness of the

disciplinary hearing process, while preserving and protecting students' due process rights.

Chapter UWS 18 addresses operation of motor vehicles, parking, and other conduct on land under the control of the Board of Regents. The board proposes several amendments to better organize the chapter, and to clarify the scope of prohibitions related to particular kinds of conduct on campus, such as bicycle riding, selling and soliciting goods and services, smoking within 25 feet of residence halls, using sound–amplifying equipment, and using computers. In the proposed rule, prohibitions on certain types of conduct are grouped according to categories that will make the rule easier to read and understand.

Comparison with federal regulations

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

Comparison with rules in adjacent states

Public universities in Illinois, Iowa, Michigan, and Minnesota each have administrative policies relating to student non–academic misconduct and conduct on property under the control of the university.

Summary of factual data and analytical methodologies

There were no factual data or analytical methodologies used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business

The proposed rules affect only faculty, staff, and students of the University of Wisconsin System, and other persons using University of Wisconsin lands. They have no effect on small business.

Small Business Impact

The proposed rules will have no effect on small business.

Fiscal Estimate

The proposed rules will have no fiscal effect.

Agency Contact Persons

Anne E. Bilder, Senior System Legal Counsel
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1220 Linden Drive
Madison, Wisconsin 53706
Telephone: (608) 265–3094
Email: abilder@uwsa.edu

Jane S. Radue, Assistant Director
Office of Operations Review and Audit
UW System Administration
780 Regent Street — Suite 210
Madison, Wisconsin 53715
Telephone: (608) 263–4396
E–mail: jradue@uwsa.edu.

Submittal of Proposed Rules to the Legislature

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

Commerce

*Financial Resources for Businesses and Communities,
Chs. Comm 104—
Housing Assistance, Chs. Comm 150—*

CR 08-096

A rule-making order revising Chapters Comm 108 and 154, relating to emergency assistance grants in the Community Development Block Grant (CDBG) Program.

Health Services

Community Services, Chs. DHS 30—

CR 08-097

A rule-making order revising Chapter DHS 97, relating to inmate complaints.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

CR 08-089

A rule-making order revising sections MPSW 3.09 and 3.13, relating to practice hours and internship for social workers.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 08-062

A rule-making order revising sections NR 47.005, 47.007 and 47.008, and creating subch. XII of Chapter NR 47, relating to the administration of the urban forestry catastrophic storm grant program.

Natural Resources

*Environmental Protection — Wis. Pollutant Discharge
Elimination System, Chs. NR 200—*

CR 08-076

A rule-making order revising Chapter NR 219, relating to approved analytical methods.

Regulation and Licensing

CR 08-094

A rule-making order revising section RL 161.04, relating to examinations for substance abuse professionals.

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 06-080

Creates Chapter DHS 35, relating to outpatient mental health clinics.
Effective 4-1-09.

Insurance

CR 07-108

Revises section Ins 2.19, relating to sales of life insurance and annuities to the military and affecting small business.
Effective 4-1-09.

Public Notices

Department of Health Services

State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 08-09

(Medical Assistance Reimbursement of Nursing Homes)

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health Services, is called Medical Assistance (MA) or Medicaid. Federal Statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services (CMS).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective March 1, 2009.

The proposed changes would update the payment system and make a payment-related policy change.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA residents is approximately \$75,000 all funds, (\$44,000 FFP), excluding patient liability.

The proposed change is being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed change is as follows:

Create Sections 2.760 and 3.657 to provide 75 facilities to receive \$1,000 each as a prevention incentive for participating in a program to reduce pressure sores.

Copies of the Proposed Changes:

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Long Term Care
Attention: Nursing Home Medicaid Payment Plan
P.O. Box xxx
Madison, WI 53701-xxxx

or by faxing James Cobb at 608-264-7720.

Written Comments/Meetings:

Written comments on the proposed changes may be sent to the Division of Long Term Care at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room B274 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received.

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