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Questions, comments, or corrections should be directed to:

Bruce Hoesly (608) 266-7590

email: bruce.hoesly@legis.wisconsin.gov

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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.

Agriculture, Trade and Consumer Protection

EmR1003 — Rule adopted revising **ss. ATCP 60.15 and 60.20**, relating to somatic cell standards for dairy goat milk.

Finding of Emergency

Recently, the National Conference of Interstate Milk Shippers voted to relax the standard for somatic cells in grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Food and Drug Administration accepted this change and will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States Department of Agriculture is adopting the same standard for grade B goat milk, as part of its standards for “Milk for Manufacturing Purposes and its Production and Processing.”

Wisconsin rules currently establish a limit of 1,000,000 somatic cells per ml in goat milk, which is more stringent than the new national standard of 1,500,000 per ml. The more stringent Wisconsin standard, if not modified to conform to the new national standard, will put Wisconsin dairy goat milk producers at a significant financial, operational, and competitive disadvantage compared to producers in other states.

This emergency rule modifies Wisconsin’s current standard, and makes it consistent with the new national

standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more “permanent” basis. “Permanent” rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of “permanent” rules.

Publication Date: February 4, 2010
Effective Dates: February 4, 2010 through July 3, 2010

Children and Families

Safety and Permanence, Chs. DCF 37–59

EmR0937 — Rule adopted revising **Chapters DCF 56 and 58**, relating to foster care and kinship care.

Finding of Emergency

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

2009 Wisconsin Act 28 assumes that court-ordered kinship care relatives will be applying for a license to operate a foster home beginning after January 1, 2010, and continuing throughout 2010. This rule creates the first two levels of the new levels of care system for foster care. The newly-licensed kinship care relatives will be incorporated into the foster care program. Licensing these relatives will allow the state to claim an additional \$6.5 million in Title IV-E funds for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

Publication Date: December 30, 2009
Effective Dates: January 1, 2010 through May 30, 2010
Hearing Dates: March 17, March 31, April 8, 2010

Commerce

Fee Schedule, Ch. Comm 2

EmR0934 — Rule adopted revising **Chapter Comm 2**, 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. As of December 1, 2009, approximately 1,800 pool modifications have been submitted to the department for review and approval.

4. There are claims that the availability of parts to make the necessary modifications is limited.

5. 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.

6. The department believes that a 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: January 1, 2010
Effective Dates: January 1, 2010 through May 30, 2010
Hearing Date: January 21, 2010

Commerce (3)

Financial Resources for Businesses and Communities, Chs. Comm 104—

1. **EmR0910** — Rule adopted to create **Chapter Comm 100**, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

Exemption From Finding of Emergency

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: June 30, 2009
Effective Dates: June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner
Hearing Date: September 15, 2009

2. **EmR0931** — Rule adopted creating Chapter Comm 136, relating to midwestern disaster area bonds.

Finding of Emergency

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

Between June 14 and July 9, 2008, thirty Wisconsin counties were declared major disaster areas by the President as a result of severe storms, tornados or flooding in 2008 that caused extensive damage to communities, residents, businesses, the economy and critical infrastructure. Subsequently, the federal Heartland Disaster Tax Relief Act of 2008 was enacted, authorizing the Governor of Wisconsin to designate up to \$3,830,112,000 in Qualified Midwestern Disaster Area Bonds, which must be issued before January 1, 2013, for the

purpose of encouraging economic development and recovery in the 30 counties.

To implement the provisions this federal Act, Governor Jim Doyle issued Executive Order #288, directing the Department to promulgate rules for allocating Wisconsin's Qualified Midwestern Disaster Area Bonding Authority, and including the necessary provisions to ensure that bonds are allocated to eligible projects on the basis of providing assistance to areas in the order in which the assistance is most needed. This rule is the result of that directive.

Publication Date: November 9, 2009
Effective Dates: November 9, 2009 through April 7, 2010
Hearing Date: January 25, 2010

3. **EmR1006**— Rule adopted to create **Chapter Comm 137**, relating to reallocations for recovery zone facility bonds as established under the federal American Recovery and Reinvestment Act of 2009, and affecting small businesses.

Exemption From Finding of Emergency

The Legislature, by Section 5 (1) (b) in 2009 Wisconsin Act 112, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: March 5, 2010
Effective Dates: March 5, 2010 through August 1, 2010
(subject to 2009 Wis. Act 112, s. 5)

Corrections (2)

1. **EmR0920** — Rule adopted revising s. **DOC 309.466**, relating to inmate release accounts.

Finding of Emergency

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

Under 2009 WI Act 28, an increased number of inmates are being considered for release. In addition, the department has developed a number of release initiatives to address an inmate's successful transition from incarceration to community life. As part of those initiatives, there are costs associated with that transition, including acquiring housing, employment, and transportation. For example, an inmate must have a social security card, a driver's license or state identification card, the first months rent and security deposit for an apartment, and civilian clothing.

Under the current rule, an inmate may only use release account funds for "adequate clothing for release" and for "out-of-state release transportation." In addition, the rule limits the maximum amount of money which can be saved in the release account to \$500.00. The emergency rule immediately permits the use of release account money for a wide variety of purchases, including fees associated with obtaining a driver's license or state identification card, housing, and a mode of transportation (bus tickets, vehicle, bicycle, etc.). In the past the Department has borne some of these costs, despite an inmate having the money in his or her release account. Given the initiatives of reentry and release, an inmate should be responsible for these expenditures.

In addition, the emergency rule raises the limit on release accounts from \$500.00 to \$5,000.00. Since the current limit was established, the cost of living in the community has risen. The department seeks this change to reflect the significant costs of housing, transportation, and food and other necessities.

If the rule is not created promptly and immediately, the department will not be able to use inmate release account funds to pay for items which inmates need in preparation for their release to the community. The purpose of the emergency rule is to permit inmates to use release account funds for a greater range of expenditures related to their release from incarceration and transition back into the community. 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 need to use inmate funds, not state funds, while permanent rules are being developed.

Publication Date: September 10, 2009
Effective Dates: September 10, 2009
 through February 6, 2010
Extension Through: April 7, 2010
Hearing Date: October 14, 2009

2. **EmR0939** — Rule adopted revising **Chapter DOC 302**, relating to sentence calculations and prison release and to administrative review of inmate classification decisions.

Finding of Emergency

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

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Department is responsible for implementing several of those procedures. Specifically, the department is responsible for implementing the early release programs under: (1) s PAT (2) ERP/CIP (3) CER (4) Risk reduction (5) 75%/85%. In addition, the department is revising section 302.18 to facilitate the review of inmates for purposes of early release.

If the rule is not created promptly and immediately, the Department will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the Department to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009
 through May 29, 2010
Hearing Date: February 25, 2010

Earned Release Review Commission

(Formerly Parole Commission)

EmR0940 — Rule adopted revising **Chapter PAC 1**, relating to the release of inmates through parole or other procedures.

Finding of Emergency

The Wisconsin Earned Release Review Commission finds that an emergency exists and that emergency rules are necessary for the immediate preservation of public peace, health, safety and welfare. A statement of facts constituting the emergency is:

Under 2009 Wisconsin Act 28, the legislature provides for the release of inmates from prison if certain criteria are met. The Earned Release Review Commission (formerly the Parole Commission) is responsible for implementing several of those procedures. Specifically, the commission is responsible for considering the early release of inmates under: (1) section 304.06 (1) (bg)1. and 2., Stats., after the inmate has served the term of confinement of their bifurcated sentence less positive adjustment time, (2) section 304.06 (1) (bg) 3. and 4., Stats., after the inmate has served either 75 % or 85 % of their term of confinement, depending on the offense for which the inmate was sentenced, and (3) section 302.1135 (2) (a), (b), and (c), Stats., based on age or extraordinary health.

If the rule is not created promptly and immediately, the commission will not be able to proceed in reviewing inmates under these various release procedures. This could result in significant delay in the implementation of the statutory provisions which will negatively impact the ability of the department of corrections to manage the inmate population in a safe and effective manner. In addition, a delay will affect the management and control of inmate population levels of correctional facilities with the resources necessary to maintain public safety.

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. 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 the legislatively recognized need to review inmates who meet the requirements under the statutes for potential release while the permanent rules are being developed.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009
 through May 29, 2010
Hearing Date: February 23, 2010

Employee Trust Funds

EmR0938 — Rule adopted revising **Chapters ETF 10, 20 and 40**, relating to the implementation of benefit changes mandated in 2009 Wisconsin Act 28; specifically, domestic partner benefits and the expansion of health insurance coverage to adult dependents up to the age of 27 years.

Finding of Emergency

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

ETF cannot promulgate a permanent rule in compliance with the mandated changes by January 1, 2010, which is the

effective date of the domestic partnership and the health insurance provisions of 2009 Wisconsin Act 28. Without an emergency rule in place, the ability of ETF to enroll and cover participants' domestic partners and to provide health insurance to adult dependents would be seriously impaired. ETF would be unable to provide health insurance and other benefits to domestic partners and adult dependents.

Publication Date: December 28, 2009
Effective Dates: January 1, 2010 through May 30, 2010
Hearing Date: February 12, 2010

Health Services

*Medical Assistance, Chs. DHS 101—
Health, Chs. DHS 110—*

EmR0932 — Rule adopted revising **Chapters DHS 105, 106 and 133**, relating to personal care agencies and providers, and affecting small businesses.

Exemption From Finding of Emergency

The legislature by 2009 Wis. Act 28, Section 9122 (2), provides an exemption from a finding of emergency to adopt these emergency rules.

Publication Date: December 16, 2009
Effective Dates: December 16, 2009 through May 14, 2010
 (Subject to 2009 Wis. Act 28, Section 9122 (2))
Hearing Date: February 3, 2010

Health Services (2)

Health, Chs. DHS 110—

- EmR0928** — Rule adopted to revise **Chapter DHS 163**, relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses.

Finding of Emergency

The Department of Health Services (department) finds that an emergency exists and that the adoption of an emergency rule is necessary for the continuity of regulations relating to lead hazard exposure in Wisconsin. The facts constituting the emergency are as follows:

Under ch. DHS 163, the department, as Wisconsin's public health agency, regulates lead hazard reduction and lead management activities in pre-1978 housing (target housing) and child-occupied facilities. The rules include standards for certification of individuals and companies conducting these activities, accreditation of lead training courses and approval of instructors, and work practices. In addition to the department's authority under chs. 250 and 254, Stats., to regulate lead hazards, the department has authorization from the Environmental Protection Agency (EPA) to regulate lead hazard reduction and management activities in lieu of the EPA administering federal regulations in Wisconsin.

On April 22, 2008, the EPA issued rules under 40 CFR 745 to establish requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; and for renovation work

practices (and associated recordkeeping requirements) that disturb paint in target housing and child-occupied facilities. Under the EPA regulations, beginning on April 22, 2010, persons who perform renovation activities for compensation, including repair and painting activities, that disturb paint in target housing and child-occupied facilities must be certified, properly trained, and follow specific work practices to prevent lead contamination. The EPA will begin accepting applications for certification from individuals and companies on October 22, 2009.

States that promulgate rules that conform to the EPA standards on or before October 22, 2009, may accept applications for certification in lieu of the EPA. Otherwise, on October 22, 2009, the EPA will begin accepting these applications and the associated fees from Wisconsin companies and individuals. Such an occurrence may cause confusion among the regulated community and property owners, and would impede the department's ability to continue to administer a viable lead hazard reduction program if covered persons begin complying with the EPA certification requirements before state requirements are implemented. Promulgating rules before October 22, 2009, will help to avoid any unnecessary complexity for covered persons that may be caused by overlapping state and federal regulations that address lead-based paint hazards in target housing and child-occupied facilities.

Publication Date: October 16, 2009
Effective Dates: October 19, 2009 through March 17, 2010
Hearing Date: November 18, 2009

- EmR1004** — Rule adopted to create **sections DHS 195.145 and 197.145**, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

Finding of Emergency

DHS 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:

Section 101.149 (2) and (3), Stats., requires the owners of lodging establishments, including hotels, tourist rooming houses, and bed and breakfast establishments that were constructed on or before October 1, 2008, or had plans reviewed by the department of commerce before October 1, 2008, to, not later than April 1, 2010, install carbon monoxide detectors in every residential building that has a fuel-burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel-burning appliances in the building have sealed combustion units that are either covered by the manufacturer's warranty against defects or are inspected under rules promulgated by DHS.

Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units for carbon monoxide emissions, and rules that specify the conditions under which DHS may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

Publication Date: March 1, 2010
Effective Dates: April 1, 2010 through August 28, 2010
Hearing Dates: April 21, 23, 27, 28, 30, 2010

(See the Notice in this Register)

Insurance (6)

1. **EmR0918** — Rule adopted to revise **Chapter Ins 6**, relating to exempting commercial umbrella and commercial liability policies covering only hired and non-owned autos from having to offer or include uninsured and underinsured motorist coverage.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Act 28 (2009) modified the requirements for auto insurance in Wisconsin. Most of these new provisions go into effect on November 1, 2009. These modifications did not specifically address the issue of insurers who write commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles (“HNO”) under the policy but do not insure any automobiles owned by the insured.

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles (“HNO”) under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance which is needed to write uninsured (“UM”) and underinsured coverage (“UIM”). Other insurers offering the commercial umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

This issue was addressed in 1997 when an emergency rule was promulgated and modifications to Ins 6.77 were enacted in response to various court cases. In that process, commercial insurers who wrote liability policies that covered only HNO were exempted from the requirement to offer or include UM/UIM coverage. This emergency rule would continue this exemption so that the market for commercial liability insurance and commercial umbrella policies is not disrupted.

Publication Date: September 9, 2009
Effective Dates: November 1, 2009 through March 30, 2010
Hearing Date: December 8, 2009

2. **EmR0925** — Rule adopted to create **section Ins 3.75**, relating to continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES. (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of

election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: October 1, 2009
Effective Dates: October 2, 2009 through October 1, 2010
Hearing Date: December 8, 2009

3. **EmR0927** — Rule adopted to create **Chapter Ins 57**, relating to care management organizations and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Beginning January 1, 2010, care management organizations are required to obtain a permit from the commissioner to provide services under the Family Care program. In order to ensure no gap in services to enrollees, organizations and the office need to complete and accept applications for permits prior to January 1, 2010. Promulgation of this rule will permit the timely filing and review of permittees.

Publication Date: October 9, 2009
Effective Dates: October 10, 2009 through March 10, 2010
Extension Through: May 9, 2010
Hearing Date: December 3, 2009

4. **EmR0930** — Rule adopted to create **section Ins 3.34**, relating to insurance coverage of dependents to age 27 and affecting small business.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the Commissioner is aware that insurers, employers and consumers are interpreting the state mandate inconsistently so without this rule consumers will not be treated similarly when the law becomes effective on January 1, 2010; the Commissioner has received numerous inquiries from insurers, consumers and employers seeking clarity of terms and guidance on interpretation and implementation of the law as many employers are entering open enrollment for the 2010 plan year.

These changes will be effective the day following publication in the official state newspaper and a permanent rule will start the permanent rule process to achieve uniformity in interpretation therefore protecting the public, informing employers, and guiding insurers in the state.

Publication Date: October 30, 2009
Effective Dates: October 31, 2009 through March 29, 2010
Hearing Date: January 14, 2010

5. **EmR0945** — Rule adopted revising **section Ins 3.75**, relating to the continuation of group health insurance policies.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 11, section 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

Publication Date: January 7, 2010
Effective Dates: January 8, 2010 through June 6, 2010

6. **EmR1005** — A rule adopted creating **section Ins 3.36**, relating to treatment of autism spectrum disorders and affecting small business.

Exemption From Finding of Emergency

The Commissioner of Insurance pursuant to s. 632.895 (12m) (f) 2., Stats., need not find that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety or welfare.

Publication Date: March 8, 2010
Effective Dates: March 8, 2010 through August 4, 2010
(subject to s. 632.895 (12m) (f), Stats.)

Natural Resources

Fish, Game, etc., Chs. NR 1—

- EmR0914** — Rule adopted to revise **Chapter NR 10**, relating to hunting and the 2009 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

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

Publication Date: August 22, 2009
Effective Dates: September 1, 2009 through January 28, 2010
Hearing Date: November 4, 2009

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

- EmR0915** — A rule adopted revising **Chapters NR 335 and 336**, relating to grants for dam maintenance, repair, modification, or abandonment and removal.

Finding of Emergency

The substantial increase in bonding for the dam grant programs is a strong message from the legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

Publication Date: August 28, 2009
Effective Dates: August 28, 2009 through January 24, 2010
Extension Through: March 25, 2010

Public Defender Board

- EmR0926** — Rule adopted to create **Chapter PD 8**, Discovery Payments, relating to the maximum fees that the state public defender may pay for copies of discovery materials in criminal proceedings, proceedings under Chapter 980, Wis. Stats., and other proceedings in which the state public defender provides legal representation.

Finding of Emergency

These rules are promulgated under s. 227.24 (1) (a), Stats., because the magnitude of the shortfall in the state public defender's appropriation for transcripts, discovery, and interpreters in both years of the current biennium constitutes

an emergency that requires implementation of a rule earlier than a permanent rule could take effect if the agency were to comply with the applicable notice, hearing, legislative-review, and publication requirements.

The state public defender was initially provided a base budget of \$60,000 in 1995 for discovery payments, which at that time consisted mostly of photocopies and some photographs. In the 1999–2001 budget act, this appropriation was increased to \$150,000, based on a presumptive rate for photocopies of \$0.20 per page. In the 2001–2003 biennial budget act, this appropriation was subjected to a five percent funding reduction, leaving a base budget for discovery payments of \$142,500.

The public defender received discovery bills totaling \$717,000 for the fiscal year that ended June 30, 2009. Although discovery costs are caseload driven, this represents a nearly five-fold increase since 2001 and is due primarily to two factors. First, in the past many counties and municipalities did not bill the state public defender for copies of discovery materials. Because local budgets have come under increasing pressure, most now do so. Second, 2005 Wisconsin Act 60 resulted in more widespread use of audio and video recordings of interrogations by law enforcement, copies of which must be provided to the defense.

The public defender board’s requests for cost-to-continue budget increases for discovery payments in 2007–2009 and in 2009–2011 were not funded. Instead, the FY 2009–2011 budget act reduced this appropriation by 1%, leaving a base budget of \$141,100, and directed the board to promulgate rules to address the funding shortfall.

Publication Date: October 3, 2009
Effective Dates: October 3, 2009 through March 1, 2010
Extension Through: April 30, 2010
Hearing Date: November 16, 2009

Public Instruction (4)

1. **EmR0916** — A rule adopted revising **ss. PI 35.03 and 35.05**, relating to establishing a fee under the Milwaukee Parental Choice Program.

Exemption From Finding of Emergency

Pursuant to Section 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 1, 2009
Effective Dates: September 1, 2009 through January 28, 2010
Extension Through: March 29, 2010

(Except Section 1)

Effective Dates: October 1, 2009 through February 27, 2010
Hearing Date: October 26, 2009

2. **EmR0921** — Rule adopted to create **Chapter PI 15**, relating to revenue limit exemptions for energy efficiencies.

Exemption From Finding of Emergency

Pursuant to Section 9139 (2x) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 4, 2009
Effective Dates: September 4, 2009 through January 31, 2010
Extension Through: April 1, 2010
Hearing Date: November 9, 2009

3. **EmR0933** — Rule adopted to create **Chapter PI 39**, relating to grants for tribal language revitalization.

Finding of Emergency

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

The tribal language revitalization grant program under s. 115.745, Stats., was created under 2009 Wisconsin Act 28. The Act became effective June 30, 2009, and appropriated \$247,500 annually beginning in the 2009–10 school year. In order for school districts to develop applications and for the department to review the applications and grant awards in time for the program to operate in the second semester of the school year, rules must be in place as soon as possible to establish application criteria and procedures.

Publication Date: December 15, 2009
Effective Dates: December 15, 2009 through May 13, 2010
Hearing Date: January 15, 2010

4. **EmR0936** — Rule adopted to create **section PI 8.01 (4)**, relating to waiver of school hours.

Finding of Emergency

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

2009 Wisconsin Act 42 requires the department to promulgate rules establishing criteria for waiving the requirement to schedule at least the number of hours of direct pupil instruction specified under s. 121.02 (1) (f) 2. if school is closed for a reason specified in s. 115.01 (10) (a) 2. or 3. The Act became effective October 21, 2009. Therefore, rules must be in place as soon as possible to establish the waiver procedure and criteria for the current school year.

Publication Date: December 21, 2009
Effective Dates: December 21, 2009 through May 19, 2010
Hearing Date: February 1, 2010

Public Service Commission

- EmR0919** — Rule adopted to create **Chapter PSC 172**, relating to the police and fire protection fee created under 2009 Wisconsin Act 28.

Finding of Emergency

The Commission finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of

the public peace, health, safety, or welfare. The police and fire protection fee, which must go into effect September 1, 2009, (2009 Wisconsin Act 28 section 9441) will be used to replace shared revenue payments for such services. To ensure the public peace, health, safety, and welfare of the citizens of Wisconsin, it is vital for funding of police and fire protection services to continue smoothly, quickly, and unimpeded. Thus, it is necessary for the rule administering the fee to be implemented as soon as possible.

Publication Date: September 11, 2009
Effective Dates: September 11, 2009 through February 7, 2010
Extension Through: April 18, 2010
Hearing Date: December 2, 2009

Regulation and Licensing (2)

1. **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 Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Dates: November 26, 2008
 April 13, 2009

2. **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 Dates: September 10, 2008 through the date on which the final rules take effect
Hearing Date: November 26, 2008

Revenue (6)

1. **EmR0924** — Rule adopted revising **Chapter Tax 11**, relating to sale and use tax.

Finding of Emergency

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

The changes made by the emergency rule must be effective October 1, 2009, to be in conformity with the Streamlined Sales and Use Tax Agreement. In order to meet this deadline, it is necessary to promulgate this rule as an emergency rule.

Publication Date: September 30, 2009
Effective Dates: October 1, 2009 through February 27, 2010
Extension Through: April 28, 2010
Hearing Dates: December 1 and 15, 2009

2. **EmR0929** — Rule adopted to create sections **Tax 2.85 and 11.90**, relating to failure to produce records.

Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the adoption of penalties for failure to produce records.

It is necessary to promulgate this rule order to provide guidance so that the penalties can be administered in a fair and consistent manner.

Publication Date: October 19, 2009
Effective Dates: October 19, 2009 through March 17, 2010
Hearing Dates: December 10 and 21, 2009

3. **EmR0935** — Rule adopted to create **section Tax 1.16**, relating to the financial record matching program.

Finding of Emergency

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

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of the financial record matching program.

It is necessary to promulgate this rule order to provide procedures so that the program can be administered in a fair and consistent manner.

Publication Date: December 22, 2009
Effective Dates: December 22, 2009 through May 20, 2010
Hearing Date: February 11, 2010

4. **EmR0943** — Rule adopted to revise **Chapter Tax 2**, relating to apportionment and nexus.

Finding of Emergency

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

In 2009, the Wisconsin Legislature enacted Acts 2 and 28, both of which contained substantial changes to Wisconsin's corporation franchise and income tax laws. Most of these changes are effective retroactively to taxable years beginning on or after January 1, 2009. Emergency rules are needed to add certainty about the scope and application of the newly enacted statutes as soon as possible so that taxpayers can file their returns accordingly.

Publication Date: December 31, 2009
Effective Dates: December 31, 2009 through May 29, 2010
Hearing Date: February 25, 2010

5. **EmR1001** — Rule adopted revising **Chapter Tax 2**, relating to combined reporting for corporation franchise and income tax purposes.

Finding of Emergency

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

The function of the Wisconsin Department of Revenue is to administer the Wisconsin tax laws. These laws, and tax policy for raising revenue, are determined by the State Legislature. The State Legislature recently enacted numerous items of tax legislation, affecting individuals and businesses alike. Some of these apply retroactively to January 1, 2009. Emergency rules are needed, not only to address the risk of revenue loss, but to add more clarity and certainty about the scope and application of the newly enacted statutes.

Publication Date: January 15, 2010
Effective Dates: January 15, 2010 through June 13, 2010
Hearing Date: February 25, 2010

6. **EmR1002** — Rule adopted to create **section Tax 1.17**, relating to the ambulatory surgical center assessment.

Exemption From Finding of Emergency

The legislature by Section 9143 (4u) of 2009 Wisconsin Act 28 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: January 19, 2010
Effective Dates: January 19, 2010 through June 16, 2010
 (Subject to 2009 Wis. Act 28, Section 9143 (4u))
Hearing Date: February 11, 2010

Veterans Affairs (2)

1. **EmR0911** — Rule adopted to revise section VA 2.01, relating to the assistance to needy veterans grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs 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 facts constituting the emergency is: The economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define “vision care and to limit the eligibility, by available funding, for “dental care”, “hearing care”, and “vision care”. These eligibility limitations, which address the cost, type and frequency of care available under the program, will allow more veterans in need to access the limited resources of this program.

Publication Date: July 1, 2009
Effective Dates: July 1, 2009 through November 27, 2009
Extension Through: March 27, 2010
Hearing Date: August 14, 2009

2. **EmR0944** — Rule adopted to amend **section VA 2.02 (2)**, relating to the veterans tuition reimbursement program.

Finding of Emergency

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

The removal of the existing deadline for completing and receiving an application for the tuition fee reimbursement program has left the department unable to budget the available resources for this program to ensure maximum coverage for eligible veterans throughout the fiscal year. The department is requesting emergency rules to ensure applications can be processed in a responsive manner and to allow the department to properly manage the program's biennial budget and ensure the welfare of all eligible veterans. The emergency rule will address the need for an application deadline while the department completes the promulgation for a permanent rule for the program.

Publication Date: January 4, 2010
Effective Dates: January 4, 2010 through June 2, 2010
Hearing Date: March 10, 2010

Workforce Development (2)

Public Works Construction Contracts, Chs. DWD 290–294

1. **EmR0941** — Rule adopted to create **section DWD 290.20**, relating to the thresholds for the requirement of prevailing wage rates.

Finding of Emergency

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

The most recent state budget legislation, 2009 Wisconsin Act 28, contained amendments to the state laws which require

the payment of prevailing wage rates for work done on projects of public works and , in a new statute, for work done on private projects which receive more than \$1,000,000 of public direct financial assistance. The new provisions become effective on January 1, 2010.

The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with the wage rates established by the determination. Under the law as it existed before the enactment of 2009 Act 28, a prevailing wage rate determination was required for any project with an estimated cost of at least \$48,000 (for a single-trade project) or \$234,000 (for a multi-trade project). Act 28 changes these amounts to an estimated project cost of at least \$25,000. Act 28 has also created a new statute, s. 66.0904, Stats., which requires that a private developer obtain and comply with a prevailing wage rate determination for a private project that receives at least \$1,000,000 in direct financial assistance from a local governmental unit.

The state and local governmental units and private developers who may be subject to these new requirements of the prevailing wage laws need immediate guidance as to the manner in which the Department will apply the January 1, 2010 effective date to new projects. This rule provides that guidance by establishing that the new threshold requirements will apply to projects for which a request for bids is issued or a contract is negotiated after January 1, 2010.

Publication Date: December 29, 2009
Effective Dates: January 1, 2010 through
 May 30, 2010

2. **EmR0942** — Rule adopted to amend **section DWD 293.02**, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

Finding of Emergency

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

The adjustment of the thresholds for the application of the project payment and performance assurance bond requirements 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 the need for obtaining bonding 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 rule-making process.

Publication Date: December 29, 2009
Effective Dates: January 1, 2010 through
 May 30, 2010
Hearing Date: March 31, 2010

(See the Notice in this Register)

Scope Statements

Commerce

Elevators, Escalators and Lift Devices, Ch. Comm 18

Subject

Revises Chapter Comm 18, relating to conveyance systems, elevators, escalators and lift devices.

Objectives of the Rule

The objective of the potential rulemaking project is to clarify and update Chapter Comm 18. This update may be incorporated into more than one rule package and may include revisions to other chapters affected by the proposal.

In keeping with the statutory requirement to use nationally recognized standards, the update of chapter Comm 18 may include incorporating by reference the 2010 edition of the ASME A17.1, *Safety Code for Elevators and Escalators*, and the 2008 edition of the ASME A18.1, *Safety Standard for Platform Lifts and Stairway Chairlifts*. In addition, sister ASME elevator standards such as A17.2, *Guide for Inspection of Elevators, Escalators and Moving Walks*, A17.6, *Standard for Elevator Suspension, Compensation and Governor Systems*, and A17.7, *Performance Based Safety Code for Elevators and Escalators*, may be included.

Policy Analysis

Currently, chapter Comm 18 applies to the design, installation and inspection of conveyance systems, elevators, escalators and lifts in public buildings, places of employment and one- and 2-family dwellings. Effective January 1, 2009, the last update of chapter Comm 18 references the 2007 edition of the ASME A17.1, *Safety Code for Elevators and Escalators*, and the 2005 edition of the ASME A18.1, *Safety Standard for Platform Lifts and Stairway Chairlifts*. Under the code, the department uses several compliance strategies including the review of plans for installation of new elevators and escalators, acceptance inspection of new conveyance systems, periodic inspection of existing conveyance systems and issuance of permits to operate.

This rule project will update the state conveyance code to the latest editions of the ASME A17.1, ASME A18.1, and other related ASME elevator and lift standards while creating administrative rules in keeping with the statutory mandates for the protection of public health and safety.

The alternative of not updating the rule would result in chapter Comm 18 not being up-to-date with current nationally recognized standards for the design, installation and operation of conveyance systems, elevators, escalators and lift devices.

Statutory Authority

Chapter 101, Stats.

Comparison with Federal Regulations

An Internet-based search of the *Code of Federal Regulations* (CFR) and the *Federal Register* did not find any federal regulations relating to the activities to be regulated under the rule.

Entities Affected by the Rule

The rule will affect any building, structure or premises where the installation of an elevator, escalator or lift device will be undertaken. Also, the rulemaking project will affect any designer, installer or inspector of conveyance systems along with owners and frequenters of buildings, structures or premises where elevators, escalators or lift devices are installed. Any entity involved with the conveyance industry will be affected.

Estimate of Time Needed to Develop the Rule

The staff time needed to develop the rules is expected to be about 1,000 hours, depending upon the associated complexity. This includes research, rule drafting, and processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to develop the rules.

Health Services

Community Services, Chs. DHS 30—

Subject

Revises Chapter DHS 40, relating to mental health day treatment services for children.

Objectives of the Rule

To update ch. DHS 40 to current practice, trends, and advances in admission criteria, treatment planning, treatment, and discharge planning in mental health day treatment services for children.

Policy Analysis

Mental health day treatment services for children include non-residential care provided on prescription of a physician in a clinically supervised setting that provides case management and integrated individual, family and group counseling, therapy, or other services designed to alleviate emotional or behavioral problems of children due to mental illness or severe emotional disturbance. Chapter DHS 40 was promulgated to establish standard definitions, program criteria and patient characteristics for mental health day treatment services for children. In addition to specifying program certification and operational requirements, the rule specifies services requirements, including admission, assessment, treatment planning, treatment, and discharge planning.

The current rule was promulgated in 1996. It is out of date in terms of how children are viewed diagnostically and how they meet admission requirements. Children do not fit neatly into diagnostic boxes, and often have other related mental health issues that need to be considered and addressed. The current rule specifies the standards for 3 levels of day treatment programming, but these levels have become blurred over the years. Children have been admitted to level I services who were more appropriate for level II services, and, therefore, may not have received the services that they needed. In addition, there have been advances in other community treatment program options for children (e.g., Comprehensive Community Services (CCS), Coordinated

Services Teams (CST), crisis programs, and others) that should be considered before a child is admitted into day treatment. Under proposed rules, the department intends to address these admissions criteria.

The department also intends to address treatment concerns regarding children and families with AODA issues, and to also provide family therapy in the home. Trauma–informed care will be considered when evaluating and treating children. In recent years, to better address behavioral problems, positive behavioral supports interventions have been developed to reduce the use of seclusion and restraint.

Children with mental illness and their families may be affected by the rule changes in terms of admission criteria; treatment planning that includes trauma–informed care, and better strategies to deal with behavioral problems.

Chapter DHS 40 and the proposed changes are not intended to regulate other forms of day services for children such as those operated by alcohol and other drug abuse treatment programs under ch. DHS 75.

Statutory Authority

Sections 51.42 (7) (b) and 227.11(2), Stats.

Comparison with Federal Regulations

There are no federal regulations or rules that govern mental health day treatment programs for children.

Entities Affected by the Rule

The existing 51 day treatment programs, which include school–based, community–based and hospital–based programs.

Estimate of Time Needed to Develop the Rule

An estimated total of 400 hours of staff time may be needed to update ch. DHS 40.

Medical Examining Board

Subject

Creates a rule in Chapter Med 18 that will require informed consent from patients that will be undergoing chelation therapy for off–label purposes of treatment. The informed consent documentation will be amended by the board from the current form used for chelation therapy in Missouri.

Objectives of the Rule

Adding a rule that would require any practitioner of Ethylenediaminetetraacetic Acid (EDTA) chelation therapy to obtain documentation of informed consent from the patient for all uses other than those approved by the Federal Drug Administration (FDA).

Policy Analysis

Chelation refers to a method of removing excess heavy metals from the body by injecting chelating agents, which bind with molecules of calcium, lead, zinc, iron, and other metals and combines with them chemically so that they are excreted, usually via the kidneys. Currently, the only FDA–approved use of chelation therapy is for heavy metal poisoning. Since heavy metals poisoning can be responsible for major diseases, in alternative therapy, chelation has been used to treat heart disease, cancer, gangrene, thyroid disorders, multiple sclerosis, muscular dystrophy, psoriasis,

diabetes, arthritis, Alzheimer’s disease, and the improvement of memory, sight, hearing, and smell.

Although EDTA binds harmful, toxic metals like mercury, lead, and cadmium, it also binds some essential nutrients of the body, such as copper, iron, calcium, zinc, and magnesium. Large amounts of zinc are lost during chelation. Zinc deficiency can cause impaired immune function and other harmful effects. Supplements of zinc are generally given to patients undergoing chelation, but it is not known whether this is adequate to prevent deficiency. Also, chelation therapy does not replace proper nutrition, exercise, and appropriate medications or surgery for specific diseases or conditions.

The need for this rule is to provide a safeguard to the public. To date, there has been no credible study showing chelation therapy to be of benefit against heart disease or any condition other than heavy metal poisoning. Alternative uses of chelation therapy have also not been recommended by the American Medical Association, the American Osteopathic Association, the American College of Cardiology, the American Heart Association, nor any other recognized independent medical association.

Statutory Authority

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

Comparison with Federal Regulations

As set forth in Title 21, code of Federal Regulations, Section 312: a licensed physician can use chelation therapy for an unapproved use in investigational or research work. FDA clearance is required for such work.

Entities Affected by the Rule

M.D.s, D.O.s, and others licensed to practice medical procedures.

Estimate of Time Needed to Develop the Rule

It is estimated that 160 hours will be needed to promulgate the rule.

Regulation and Licensing

Subject

Creates Chapter RL 185, relating to regulating mixed martial arts fighting contests.

Objectives of the Rule

The Department of Regulation and Licensing seeks to institute new rules regulating mixed martial arts fighting contests pursuant to 2009 Wisconsin Act 111. Currently, there are no rules in place that regulate the sport in Wisconsin, resulting in several unregulated mixed martial arts events conducted throughout the state every year.

Policy Analysis

This is a new area of regulation established by 2009 Wisconsin Act 111. The Act, which was enacted on February 4, 2010, amended ch. 444, Stats., updating the boxing statute and adding the sport of mixed martial arts. The newly enacted statute directs the department to promulgate rules to govern mixed martial arts in the following areas: qualifications for referees and judges, requirements for health examinations of combatants, and mandatory drug testing and use policies. The department recognizes the need to set safety standards for conducting mixed martial arts contests, in keeping with 2009 Wisconsin Act 111, that will provide guidance for combatants, promoters, and officials.

Statutory Authority

Sections 227.11 (2), 440.03 (1), 440.03 (1m), 444.01, 444.02, 444.03, 444.035, 444.06, 444.095, 444.11, 444.12, 444.13, 444.14, 444.15 and 444.18, Stats.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Licensed professionals, applicants, employers of licensed

professionals, and entities engaged in promoting and conducting mixed martial arts contests, i.e., promoters, clubs, combatants, and officials.

Estimate of Time Needed to Develop the Rule

It is estimated that 1000 hours in state employee time and compensation for the actual and necessary expenses of the advisory committee members, appointed by the Secretary, incurred in the performance of their duties.

Submittal of Rules to Legislative Council Clearinghouse

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

Administration **CR 10-027**

On March 1, 2010, the Department of Administration submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Adm 80, relating to administrative procedures for the Wisconsin Covenant Scholars program.

2009 Wisconsin Act 28 requires the Department of Administration (DOA) to promulgate rules for the implementation of the Wisconsin Covenant Scholars Program and to submit proposed rules to Legislative Council staff no later than the first day of the twelfth month beginning after the effective date of the bill. The Act also requires DOA to promulgate rules establishing criteria for designation as a Wisconsin Covenant Scholar by the Office of the Wisconsin Covenant Scholars Program (OWCSP).

2007 Wisconsin Act 20 created s. 39.437, Wis. Stats., which provides grants to Wisconsin Covenant Scholars who are enrolled at least half-time at an eligible in-state institution. HEAB administers this program with the assistance of the OWCSP under s. 39.437, Wis. Stats.

Agency Procedure for Promulgation

A public hearing will be held on March 29, 2010. The Office of the Wisconsin Covenant is primarily responsible for the promulgation of the proposed rule.

Contact Information

If you have any questions regarding the proposed rule, please contact:

Shannon Loreda, Director
Office of the Wisconsin Covenant
P.O. Box 7869
Madison, WI 53707-7869
Phone: (608) 261-8652
E-Mail: Shannon.loredo@wisconsin.gov

Children and Families *Safety and Permanence, Chs. DCF 37-59* **CR 10-028**

On March 1, 2010, the Department of Children and Families submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule creates Chapter DCF 35, relating to home visitation to prevent child abuse and neglect.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 6, 2010. The organizational unit responsible for the promulgation of the proposed rules is the Division of Safety and Permanence.

Contact Information

Elaine Pridgen
Phone: (608) 267-9403
Email: elaine.pridgen@wisconsin.gov

Insurance **CR 10-026**

On February 25, 2010, the Office of the Commissioner of Insurance submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule revises section Ins 2.81, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 14, 2010.

Contact Information

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

Inger Williams
OCI, Public Information and Communications
Phone: (608) 264-8110

For additional information, please contact:

James W. Harris, OCI Legal Unit
Phone: (608) 267-2833
Email: james.harris@wisconsin.gov

Workforce Development *Public Works Construction Contracts, Chs. DWD 290-294* **CR 10-029**

On February 26, 2010, the Department of Workforce Development submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises section DWD 293.02, relating to the adjustment of thresholds for payment and performance assurance requirements.

Section 779.14, Stats., sets the cost thresholds for the payment and performance assurance bond requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14 (1s), Stats., requires the Department to biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

Chapter DWD 293, Wis. Adm. Code, provides the threshold amounts for various payment and performance assurance bond requirements that apply to contracts issued by state or local governments for the performance of labor or

furnishing of materials for a public improvement or public work. This rule adjusts these thresholds to reflect a 6.82% increase in construction costs from December 2007 to December 2009.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 31, 2010. The DWD Equal Rights Division is the organizational unit that is primarily responsible for promulgation of the rule.

Contact Information

Howard Bernstein, Legal Counsel, DWD

Phone: (608) 266-9427

Email: howard.bernstein@dwd.wisconsin.gov

Rule–Making Notices

Notice of Hearing

Administration

CR 10–027

NOTICE IS HEREBY GIVEN that pursuant to ss. 16.004 (1), 39.437 (5), and 227.11 (2) (a), Stats., the Department of Administration will hold public hearings on the proposed rule order to create Chapter Adm 80, relating to the administrative procedures for the Wisconsin Covenant Scholars Program.

Hearing Information

A public hearing will be held as follows:

Date: March 29, 2010 — Monday
Time: 11:00 AM
Location: Wisconsin Dept. of Administration
 101 East Wilson Street
 Conference Room 4B
 Madison, Wisconsin

Appearance at Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearing and present comments on the proposed rule. Persons appearing may make an oral presentation but are also urged to submit facts, opinions and arguments in writing as well. Facts, opinions and arguments may be submitted in writing without a personal appearance by mail addressed to: Shannon Loreda, Office of the Wisconsin Covenant, P.O. Box 7869, Madison, WI 53707–7869. Comments may also be made using the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov>. The deadline for submitting comments to the Department is **4:30 p.m. on April 5, 2010**.

Analysis Prepared by Department of Administration

Statute interpreted

Sections 16.257 and 39.437, Stats.

Statutory authority

Sections 16.257 and 39.437 (5), Stats.

Explanation of statutory authority

The proposed rules define the various aspects of the Wisconsin Covenant Scholars Program authorized by s. 39.437, Stats., as created by 2007 Wis. Act 20, as to the awarding of grants to Wisconsin Covenant Scholars.

Related statutes or rules

Section HEA 1.02, Wis. Adm. Code.

Plain language analysis

The 2007 Wisconsin Act 20 created s. 39.437 which provides grants to Wisconsin Covenant Scholars who are enrolled at least half–time at an eligible in–state institution. The Wisconsin Higher Educational Aids Board (HEAB) administers this program with the assistance of the Office of the Wisconsin Covenant Scholars Program under s. 39.437. The proposed rules define the various aspects of the Wisconsin Covenant Scholars grant program including the

award criteria which begins when students sign the Wisconsin Covenant pledge in middle school and continues through their postsecondary education, as well as the distribution process, and institutional and partner responsibilities.

Comparison with federal regulations

These rules are not intended to address any proposed or existing federal regulations.

Comparison with rules in adjacent states

Indiana:

The Twenty–first Century Scholars Program began in 1990 as Indiana’s way of raising the educational aspirations of low– and moderate–income families. The program aims to ensure that all Indiana families can afford a college education for their children.

Income–eligible 6th, 7th and 8th graders who enroll in the program and fulfill a pledge of good citizenship to the state are guaranteed the cost of four years of undergraduate college tuition at any participating public college or university in Indiana (also includes private, proprietary and Ivy Tech State College). Once enrolled, increase in family income does not affect a student’s eligibility to participate in the program. Students must attend full–time.

The administrative rules for this program present similar requirements for award distribution, such as FAFSA filing, and eligibility as they pertain to the Twenty–first Century Scholars Program.

Iowa:

The All Iowa Opportunity Scholarship is a state–funded program that provides scholarships to students who do well in high school and demonstrate financial need. The Opportunity Scholarship is administered by the Iowa College Student Aid Commission. In 2007, Governor Culver budgeted \$1.5 million for the Scholarship, of which \$500,000 is directed toward Iowa foster children.

Students attending eligible Iowa colleges and universities may receive awards of up to the average tuition and fee rate established for students attending a Regent University. Priority will be given to students who participated in the Federal TRIO Programs, graduated from alternative high schools, and to homeless youth. Opportunity Scholarships are renewable for a second year if the student is attending an Iowa community college, as long as they meet academic standards.

The administrative rules for this program present similar requirements for award distribution, such as FAFSA filing, and eligibility as they pertain to the All Iowa Opportunity Scholarship. An amendment to the state statute is currently pending to modify the current eligibility requirements.

Summary of factual data and analytical methodologies

The proposed rules were drafted by the Office of the Wisconsin Covenant in collaboration with the Office of the Governor and the Higher Educational Aids Board, and with support from program partners. With an anticipated enrollment of approximately 68,000 to 70,000 ranging from eighth grade students through college students, the rules took into consideration estimated completion rate, financial aid eligibility, unmet need and annual allocation of funds.

Small Business Impact

The proposed rules have no effect on small business in Wisconsin.

Fiscal Estimate

This rule establishes the eligibility requirements and process by which Wisconsin high school students may be designated as Covenant Scholars and receive a state funded award for post-secondary education expenses.

The Wisconsin Covenant Scholars Program will be administered by the Office of the Wisconsin Covenant (office) with the assistance of the Higher Educational Aids Board (HEAB). Additional information and data will be provided by high schools throughout Wisconsin and Wisconsin institutions of higher education.

State fiscal effect

The office estimates that it will receive 20,000 annual applications and verification forms for the Covenant program. Once received, existing staff of the office will verify the documents and designate students as Wisconsin Covenant Scholars. The office maintains an existing data base that is capable of tracking the estimated 70,000 participating students through their high school years. This verification and designation process and the tracking system will comprise a major part of the workload of the office but require no additional resources.

The office will also track the progress and continued eligibility of participating Scholars through their post-secondary careers using input provided by the Higher Education Aids Board. HEAB will annotate existing databases to identify Covenant Scholars. Because, no additional data will be collected, this effort can be absorbed within existing HEAB staff and resources.

This rule also requires the University of Wisconsin System, the Wisconsin Association of Independent Colleges and Universities, the Wisconsin Technical College System and the Department of Public Instruction to submit to the Office an annual report describing the nature of the support they provide to Covenant Scholars and the outcomes of that support. It is not anticipated that this report will be so detailed or burdensome that it requires additional resources for any of the reporting agencies.

This rule creates the Wisconsin Covenant College Access Network Council with representatives from major educational institutions in Wisconsin and additional representation from the business and non-profit communities. Representatives of these institutions will be expected to participate, without compensation, as part of their normal duties within the education system.

Local fiscal effect

Annually, the principal of each Wisconsin high school or principal's designee will submit the names of student Covenant applicants to the office along with a form verifying eligibility. High school officials have indicated to the office that this application and their verification of the application information can be conducted within the existing staffing and resources of the high schools.

Text of Proposed Rule

SECTION 1. Chapter Adm 80 is created to read:

Chapter Adm 80

Wisconsin Covenant Scholars Program

Adm 80.01 Purpose. The purpose of this chapter is to define the various aspects of the Wisconsin covenant scholars program authorized by s. 39.437, Stats., as created by 2007 Wis. Act 20, as to the awarding of grants to Wisconsin covenant scholars, and to implement s. 16.257 Stats.

Adm 80.02 Definitions. In this chapter and s. 39.437, Stats:

- (1) "Board" means the higher educational aids board.
- (2) "Eligible institution" means a public or private, non-profit, accredited institution of higher education or a tribally controlled college in Wisconsin which is eligible to participate in the grant program authorized under s. 39.30, Stats.
- (3) "Grant" means a grant awarded under the Wisconsin Covenant Scholars Program, unless otherwise specified.
- (4) "Half-time enrollment" means enrollment in at least six academic credits per semester or the quarterly or special term equivalent as determined by the educational institution.
- (5) "Full-time enrollment" means enrollment in at least twelve academic credits per semester or the quarterly or special term equivalent as determined by the educational institution.

(6) "Office" means the office of the Wisconsin Covenant Scholars Program.

(7) "Scholar" means a student determined to be eligible to receive a monetary award under the Wisconsin covenant scholar program.

- (8) "High school" refers to grades nine through twelve.
- (9) "Serious misdemeanor" means a misdemeanor involving bodily harm or a dangerous weapon.

Adm 80.03 Designation of Scholar. (1) To be designated as a Wisconsin covenant scholar by the office for the purpose of grant eligibility, a student must do all of the following:

(a) Enroll in the Wisconsin Covenant Scholars Program by submitting the appropriate paperwork to the office by September 30th of the student's freshman year in high school.

- (b) Meet the following eligibility requirements:
1. Receive a diploma from a Wisconsin high school.
 2. Maintain approximately a B average while in high school. The approximate B average shall be calculated in one of the following ways:

a. the student has a career cumulative grade point average (GPA) of 2.85 or higher on a 4.0 scale; or

b. the student earned a GPA of 3.0 or higher on a 4.0 scale for at least 5 semesters and never earned less than a 2.0 in any semester; or

c. the student earned a GPA of 3.25 or higher on a 4.0 scale during the first semester of senior year and has shown consistent improvement since the beginning of high school.

3. Complete course credit that will prepare the student for the college or university the student intends to attend, which shall be shown in one of the following ways:

a. the student shows admission to at least one eligible institution; or

b. the student lists 3 eligible institutions at which the student intends to apply and confirms that the student's coursework meets or exceeds the course requirements for the colleges or universities listed.

4. Demonstrate good citizenship and engage in activities that support the community. To show that the student has demonstrated good citizenship and engaged in activities that support the community, the student shall meet both of the following requirements:

a. the student must not have been convicted of a felony or serious misdemeanor and, if the student was suspended during high school, the student must provide two letters of recommendation which show substantial personal growth following the suspension from school faculty or other community members; and

b. the student was involved in one of the following activities:

i. extra curricular activities that contain an element of community service and can document at least 30 hours of service; or

ii. a school sponsored service learning experience that meets a high school graduation requirement; or

iii. a service learning experience that was designed by the student, and the results of which were shared with the student's teachers.

5. Show that the student submitted a Free Application for Federal Student Aid (FAFSA) on or before April 1 of his/her senior year of high school.

a. Extensions for extenuating circumstances may be made solely at the discretion of the office.

6. Apply and do all that is necessary to gain admission to an eligible institution, which shall be shown in one of the following ways:

a. has been admitted to at least one eligible institution; or

b. plans to apply to at least 3 eligible institutions and meets those institutions' admission guidelines.

(c) Complete the Wisconsin Covenant Scholar verification form, consistent with the Wisconsin Covenant Scholar verification instructions, and submit the form to the office by April 1st of the student's senior year of high school. The form must be signed by the school principal or the principal's designee to be considered valid.

(2) By April 15th of each year, the office will submit to the board a list of scholars eligible for grant consideration.

(a) The current Wisconsin covenant scholar verification instructions and form will be available on the office's website (www.wisconsin covenant.wi.gov) by August 1st of each year and must be completed and sent to the office by April 1 of the following year. In addition, the current Wisconsin covenant scholar verification instructions and form will be mailed to students who have enrolled in the Wisconsin covenant scholars program under sub. (1) (a) by October 31 of their senior year of high school.

Adm 80.04 Scholar Qualifications for Award. (1) A scholar who meets the requirements of s. Adm 80.03 shall receive an award only if all of the following apply:

(a) The scholar is eligible for in–state tuition under guidelines to be issued by the office; and

(b) The scholar is admitted to an eligible institution and enrolled, within one academic year of high school graduation, in a program eligible for federal student aid under Title IV of the federal Higher Education Act leading to an undergraduate degree, diploma, or certificate from an eligible institution. Board staff may make exceptions to the one year enrollment

requirement on a case–by–case basis due to health, military service or other personal reasons.

Adm 80.05 Continuing Scholar Eligibility. (1) The scholar may receive the grant award for no more than the equivalent of eight semesters. The equivalent may include a combination of traditional semesters, summer terms or other measurements of academic year. The eight semesters need not be continuous, but the student is eligible for the grant only within five academic years of his or her high school graduation.

(2) The scholar may not receive a grant in any semester in which the student is not enrolled at least half–time.

(3) Eligibility for the grant awards ceases if:

(a) The scholar does not maintain acceptable academic standards as prescribed by the student's institution of higher education; or

(b) The scholar does not file an updated Free Application for Federal Student Aid (FAFSA) annually; or

(c) The student does not enroll in accordance with s. Adm 80.04 (1) (b); or

(d) The scholar is convicted of a felony or serious misdemeanor.

Adm 80.06 Terms of Grants. (1) Eligible institutions shall enter into a five–year contract with the board using the established financial aid distribution process. Annual program funds for the Wisconsin Covenant Scholars grant program will be allocated through these contracts for a period of five academic years following the high school graduation of each class of Wisconsin Covenant Scholars.

(2) Grant amounts will be determined by the Estimated Family Contribution (EFC) calculated by the Free Application for Federal Student Aid (FAFSA) based on the following designations:

(a) For students attending an eligible institution full time:

1. Scholars with an EFC of \$0 will receive \$1,000 yearly grant for the first two years of postsecondary education. For the second two years of postsecondary education, the office shall develop and submit to the board a formula for awarding grants for the upcoming academic years to scholars enrolled in an eligible institution. This award amount assumes that the Wisconsin Covenant Foundation will continue to grant \$1,500 per year for the first two years of postsecondary education for students with an EFC of \$0. If the Wisconsin Covenant Foundation does not award at least \$1,500 per year for the first two years of postsecondary education, then students with a \$0 EFC will receive \$1,500 per year for the first two years of postsecondary education.

2. Scholars with an EFC of \$1 to \$3,499 will receive \$1,500 yearly grant for the first two years of postsecondary education. For the second two years of postsecondary education, the office shall develop and submit to the board a formula for awarding grants for the upcoming academic years to scholars enrolled in an eligible institution.

3. Scholars with an EFC of \$3,500 to \$11,999 will receive \$1,000 yearly grant for the first two years of postsecondary education. For the second two years of postsecondary education, the office shall develop and submit to the board a formula for awarding grants for the upcoming academic years to scholars enrolled in an eligible institution.

4. Scholars with an EFC of \$12,000 or greater will receive \$250 yearly grant for the first two years of postsecondary education. For the second two years of postsecondary education, the office shall develop and submit to the board a

formula for awarding grants for the upcoming academic years to scholars enrolled in an eligible institution.

(b) For students attending an eligible institution part time:

1. Scholars with an EFC of \$0 to \$3,499 will receive \$750 yearly grant for the first two years of postsecondary education. For the second two years of postsecondary education, the office shall develop and submit to the board a formula for awarding grants for the upcoming academic years to scholars enrolled in an eligible institution.

2. Scholars with an EFC of \$3,500 to \$11,999 will receive \$500 yearly grant for the first two years of postsecondary education. For the second two years of postsecondary education, the office shall develop and submit to the board a formula for awarding grants for the upcoming academic years to scholars enrolled in an institution.

3. Scholars with an EFC of \$12,000 or greater will receive \$125 yearly grant for the first two years of postsecondary education. For the second two years of postsecondary education, the office shall develop and submit to the board a formula for awarding grants for the upcoming academic years to scholars enrolled in an eligible institution.

Adm 80.07 High School Responsibilities. (1) On or before January 31 of each year, the office will provide to each high school principal or principal's designee a list of students who are eligible for verification in that year. By April 5 of each year, each high school principal or principal's designee is required to provide a list of students who completed the pledge and have been verified via a form provided by the office, as well as those students who did not present a form for verification.

Adm 80.08 Institutional and Partner Responsibilities. (1) Each eligible institution shall ensure that the Wisconsin Covenant Scholars grant does not replace other need-based federal, state, or institutional grant assistance in the package of financial aid offered to the scholar by the institution.

(2) Funds shall be returned to the board, using the board's established Return of Funds policy HEA 1.07 for scholars who withdraw, drop out or fail to enroll.

(3) To help make the Wisconsin Covenant a reality for Wisconsin students and their families, the University of Wisconsin System, the Wisconsin Association of Independent Colleges and Universities, the Wisconsin Technical College System, and the Department of Public Instruction shall work together to ensure:

(a) There is a place for each Covenant Scholar in higher education. The respective systems will work to prioritize the entrance of the Covenant Scholars into their systems and identify a place for each Scholar in the higher education system of their choice.

(b) Covenant Scholars can access available financial resources including but not limited to scholarships, grants, loans, and work that will put higher education within reach for each Covenant Scholar.

(c) Support for the Covenant Scholars in middle and high school to help them achieve their goals through the continuation, expansion, or establishment of pre-college programming, mentoring, tutoring, and other local supports.

(4) The University of Wisconsin System, the Wisconsin Association of Independent Colleges and Universities, the Wisconsin Technical College System, and the Department of Public Instruction will report annually to the office detailing the nature of support the system is providing for the Covenant

Scholars as well the outcomes of this support. This report is intended to connect college access programs with students who have signed the pledge or students who have been designated Wisconsin Covenant Scholars and to highlight best practices of college access programming statewide. The office will work in conjunction with the reporting agencies regarding the annual goals and substance of the report.

Adm 80.09 Wisconsin Covenant College Access Network Council. (1) Pursuant to s. 16.257, the office shall establish a Wisconsin Covenant College Access Network Council charged with coordinating statewide college access programs and organizations in an effort to minimize duplication of effort and maximize student pursuit of postsecondary education.

(a) The members of this council shall include:

1. Director, Office of the Wisconsin Covenant;
2. President, University of Wisconsin System;
3. President, Wisconsin Technical College System;
4. President, Wisconsin Association of Independent Colleges and Universities;
5. Superintendent, Wisconsin Department of Public Instruction;
6. Executive Secretary, Higher Education Aids Board

(b) In addition, the council shall appoint associate members representing the following each of the following:

1. A non-profit organization with significant college access programming; and
2. A non-profit organization that provides significant funding for college access programming; and
3. A representative from the business community

Adm 80.10 Reporting System. (1) The reporting system contemplated by s. 39.437 (5) (a), Stats., is established under s. HEA 1.02 and administered by the board. The board will share this information on an annual basis with the office.

Agency Contact Person

Shannon Loreda
Office of the Wisconsin Covenant
101 E. Wilson Street
P.O. Box 7869
Madison, WI 53707-7869
Phone: 608-261-8652
Email: shannon.loredo@wisconsin.gov

Notice of Hearing

Barbering and Cosmetology Examining Board CR 10-014

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Barbering and Cosmetology Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), Stats., the Barbering and Cosmetology Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise Chapter BC 7, relating to examinations for barbers and cosmetologists, aestheticians, electrologists, manicurists, and managers.

Hearing Information

Date: May 3, 2010
Time: 10:00 AM
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, 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 **May 3, 2010**, 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, Division of Board Services, 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 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), Stats.

Explanation of agency authority

The Barbering and Cosmetology Examining Board is granted the authority under ss. 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), and 454.07, Stats., to conduct examinations as a requirement for licensure.

Plain language analysis

This proposed rule–making amends ch. BC 7, Examinations, to modify some of the provisions to conform to current practice and to clean up redundant language to make the rules easier to read and use.

SECTION 1 repeals a section that specified detailed requirements for the scheduling and administration of the required examinations. The section is recreated to allow the board to prepare, administer and grade examinations or to approve an examination prepared, administered and graded by a test service provider. The section also requires the board to ensure there is an appeal process for applicants who fail the examination.

SECTION 2 repeals a provision that simply said examinations shall test for entry level competence. It is recreated to require the board to determine the subject matters that will be tested and to design the test for minimum competence.

SECTION 3 amends the current requirement that the board furnish upon request information describing the competencies that will be tested. The board will now be required to make that information generally available.

SECTION 4 combines into one provision the requirement that an applicant for a barber or cosmetologist, aesthetician, electrologist, or manicurist license is required to take a written and practical examination. This section also amends a provision to make it clear that a manager must only complete a written examination.

SECTION 5 repeals the provisions that became unnecessary after its substance was combined into one section in SECTION 4.

SECTION 6 combines into one provision the requirement that a passing score shall be based on the board’s determination of what is minimum competence.

SECTION 7 repeals the provisions that became unnecessary after its substance was combined into one section in SECTION 6.

SECTION 8 amends a provision to grant the board the authority to deny a license or to withhold an examination score to an applicant who gives or receives unauthorized assistance during the examination.

SECTION 9 repeals a provision that requires two examiners to confer before issuing a failing score in the practical examination and that required the board to provide the examinee with a written description of the reasons for that failure. This section is recreated to require the board to provide an applicant a report of the reasons for failure.

SECTION 10 repeals two provisions, the first of which is the section that contained specific requirements to be followed when an applicant requested a review of a failed examination. The provision provided that applicants could review the examination and write comments, questions or claims of error regarding any question in the examination. Those notes had to remain with the proctor to be used later at a potential hearing. The board was required to review the applicant’s claims. The second repealed provision contained the process by which an applicant would appeal and ultimately request a hearing on a claim of error. The right to request an appeal was moved to s. BC 7.01 (2).

The provisions allowing review of examination questions had to be repealed because the questions themselves are proprietary intellectual property under law.

SECTION 11 renumbers a provision to make the order of the rule provisions follow in a logical manner.

SECTION 12 repeals a provision that conflicted with the current s. BC 7.09 (3).

SECTION 13 clarifies that the rule that scores of retake examinations be combined with examination parts previously posted is applicable to all applicants and not just barbers and cosmetologists. This includes the substance of the provision repealed in SECTION 12.

Comparison with federal regulations

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states

Illinois:

Statutes and rules for barbering and cosmetology are found in Illinois Administrative Code Title 168 Part 1175 (see: <http://www.ilga.gov/commission/jcar/admincode/068/0680117sections.html>). The provisions are silent on the issues outlined herein.

Iowa:

Statutes and rules for barbering and cosmetology are found in Iowa Code Chapter 157 Cosmetology and Chapter 158 Barbering:

<http://coolice.legis.state.ia.us/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=82=#157.3>

<http://coolice.legis.state.ia.us/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=82#158.3>

Iowa Administrative Code Chapter 21 Barbering & Chapter 60 Cosmetology:

http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac_6/a645iac_a645_c60v1.pdf

http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac_6/a645iac_a645_c21v1.pdf

There are no provisions regarding the means by which passing scores shall be determined, failure of practical examinations or examination review.

Michigan:

Statutes and rules for Barbering and Cosmetology are found in:

Cosmetology Law Book:

<http://www.dleg.state.mi.us/bcsc/forms/cos/coslawbk.pdf>

Barbering Law Book:

<http://www.dleg.state.mi.us/bcsc/forms/barb/bclawbk.pdf>

There are no provisions regarding the means by which passing scores shall be determined, failure of practical examinations or examination review.

Minnesota:

Statutes and rules for Barbering and Cosmetology are found in:

Minnesota Statutes 2007 Chapter 154.003–154.26 Barbers & 154.40–154.54 Cosmetology.

https://www.revisor.leg.state.mn.us/bin/getpub.php?pubt ype=STAT_CHAP&year=current&chapter and

Barber Rules Chapter 2100 & Cosmetology Rules Chapters 2105 and 2110:

<https://www.revisor.leg.state.mn.us/data/revisor/rule/curr ent/2100/2100.pdf><https://www.revisor.leg.state.mn.us/data/r evisor/rule/current/2105/2105.pdf>

<https://www.revisor.leg.state.mn.us/data/revisor/rule/curr ent/2105/2105.pdf>

There are no provisions in the cosmetology laws on the issues outlined herein.

Barber Rule 2100.3000 outlines the requirements for examination grading and requires that the grading criteria for the written part be established at the time each examination is written (and as such, may vary), however, there is a minimum passing score of 55. The practical examination requires a minimum passing score of 75 (on a 100 point scale) for the haircut and oral portions of the examination and a minimum of 75 for the remaining portions of the examination. Failure to meet the minimum of any of these three requirements constitutes failure of the whole and requires retesting after completion of two additional months and 300 additional hours of practice.

Barber Rule 2100.0700 addresses examination grading for barber apprentices. The rules and requirements mirror those set for barbers, however, the minimum passing score is 70.

Barber Rule 2100.3200 relates to failed examinations and requires an apprentice who fails to satisfactorily pass an examination for a certificate of registration to practice as a registered barber to practice an additional two months and 300 hours to be eligible to retake the examination.

Summary of factual data and analytical methodologies

The comparison information with the rules in adjacent states was obtained directly from contact with those states via email or telephone correspondence, as well as a survey and review of their laws and rules. Additionally, information was obtained from examination specialists within the department relative to changes in the industry related to the examination process. Specifically, many states, including Wisconsin, have gone from creating and administering their own examinations “in house,” to the national trend of using examination vendors who create the examination, maintain all proprietary interests in the examination, and then serve as a vendor to administer the examination.

Additional consideration was given to the age of the rules as they presently exist, the shortcomings presented by the rules which no longer accurately reflect current practices, as well as other challenges created by current provisions. The last consideration contributing to the proposed changes relate to examination scoring. Under the rules as they presently exist, an applicant is able to fail two–thirds (2/3) of the examination and still be eligible to receive an unrestricted license to practice.

The proposed changes here are a result of all of the above information and considerations, and are designed to remedy the identified problems.

Analysis and supporting documents used to determine effect on small business

The proposed rule changes will have no fiscal effect at all. The changes are remedial in nature and relate only to administrative measure untied to any fiscal expenditure.

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.

Anticipated costs incurred by private sector

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

Small Business Impact

These proposed rules were reviewed and discussed by the department’s Small Business Review Advisory Committee and determined that the rules will not have any 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 hector.colon@drl.state.wi.us, or by calling (608) 266–8608.

Fiscal Estimate

The department finds that the proposed rule will have no significant fiscal impact.

Agency Contact Person

Pamela Haack, Paralegal
Dept. of Regulation and Licensing
P.O. Box 8935
1400 East Washington Avenue, Room 152
Madison, WI 53708
Phone: 608–266–0495
Email: pamela.haack@wisconsin.gov

Notice of Hearing
Children and Families
Safety and Permanence, Chs. DCF 37–59
CR 10–028

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.983 (2) and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold a public hearing to consider proposed rules creating Chapter DCF 35, relating to home visitation to prevent child abuse and neglect and affecting small businesses.

Hearing Information

April 6, 2010 MADISON
 Tuesday GEF 1 Building
 1:30 p.m. 201 E. Washington Avenue, H206

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is wheelchair accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Copies of Proposed Rule

A copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen, Office of Legal Counsel
 Department of Children and Families
 201 E. Washington Avenue
 Madison, WI 53707
 Phone: (608) 267–9403
 Email: dcfpublichearing@wisconsin.gov

Submission of Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **April 7, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Children and Families

Statutory authority

Sections 48.983 (2) and 227.11 (2) (a), Stats.

Statutes interpreted

Section 48.983, Stats.

Related statutes or rules

NA.

Explanation of agency authority

Under s. 48.983, Stats., as affected by 2009 Wisconsin Acts 28 and 82, a county, private agency, or Indian tribe may apply to the department for an annual grant that will be used to operate a home visiting program to prevent child abuse and neglect and promote healthy birth outcomes.

The home visiting program will provide case management services that will begin when a woman who is eligible for Medical Assistance is pregnant if an assessment indicates the presence of risk factors for poor birth outcomes or child abuse and neglect. Services will generally continue until the child is 3 years old. One of the purposes for which the grant may be used is to reimburse a case management provider for the amount of the allowable charges under the Medical Assistance program that is not reimbursed by the federal government. The grants may also be used for flexible funds for appropriate expenses of each participating family, worker training activities, and a grantee's start-up costs and capacity building.

The minimum amount of a grant is \$10,000. The county, private agency, or Indian tribe shall agree to match at least 25% of the grant amount annually in funds or in-kind contributions. The department shall determine the amount of a grant awarded to a county, private agency, or Indian tribe in excess of \$10,000 based on the need for a grant, as determined by a formula that the department shall promulgate by rule. The formula shall determine need based on the number of births that are funded by Medical Assistance in that county, the area in which that private agency is providing services, or the reservation of that Indian tribe and on the rate of poor birth outcomes, including infant mortality, premature births, low birth weights, and racial or ethnic disproportionality in the rates of those outcomes, in that county, the area in which that private agency is providing services, or the reservation of that Indian tribe.

Summary of the proposed rule

The minimum amount of a grant is \$10,000. The department shall determine the amount of an initial grant awarded to a county, private agency, or Indian tribe in excess of the minimum amount based the following weighted criteria applied to the population in that county, the area in which the private agency is providing services, or the reservation of that Indian tribe:

- The number of births that are funded by Medical Assistance shall be weighted 40%.
- The rates of poor birth outcomes shall be considered as follows:
 - The infant mortality rate shall be weighted 10%.
 - The premature birth rate shall be weighted 10%.
 - The rate of low birth weights shall be weighted 10%.
- The level of racial or ethnic disproportionality in poor birth outcomes shall be weighted 30%, with each factor weighted 10%.

Summary of factual data and analytical methodologies

Despite a steady decline in the white infant mortality rate over the last 20 years, the black infant mortality rate has essentially remained the same.

The UW–Extension website has a directory of home visiting programs in Wisconsin at <http://www.uwex.edu/ces/flp/homevisit/directory/index.cfm>.

Comparison with rules in adjacent states

Other states fund home visiting programs with purposes that include promoting healthy birth outcomes and preventing child abuse and neglect. The formulas for distributing the funds are not in rule.

Comparison with federal regulations

None.

Analysis used to determine effect on small businesses

Private agencies are eligible to apply for a grant.

Small Business Impact

The proposed rule will affect small businesses as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of businesses.

Fiscal Estimate**State fiscal effect**

None.

Local government fiscal effect

None.

Long-range fiscal implications

None.

Agency Contact Person

Kim Eithun
Division of Safety and Permanence
Phone: (608) 261-7836
Email: kim.eithun@wisconsin.gov

Notice of Hearings**Health Services****Health, Chs. DHS 110—****EmR1004, CR 10-015**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 250.04 (1), (2) (a), and (7), 254.74 (1) and (1g), and 254.85 (1), and (2), Stats., the Department of Health Services will hold a public hearing on emergency rules and proposed permanent rules to consider revisions to Chapters DHS 195 and 197, relating to carbon monoxide detectors in hotels, motels, tourist rooming houses and bed and breakfast establishments, and affecting small businesses.

Hearing Information**Date and Time**

April 21, 2010
10:00am to 2:00pm

Location

Southeastern Regional Office
Conference Room
819 N. 6th Street, Room 40
Milwaukee, WI 53202

April 23, 2010
10:00am to 2:00pm

State of Wisconsin
Dept. of Health Services
1 W. Wilson Street
Room B139
Madison, WI 53703

April 27, 2010
10:00am to 2:00pm

Northern Regional Office
Conference Room
2187 North Stevens Street
Suite C
Rhineland, WI 54501

April 28, 2010
10:00am to 2:00pm

Northeastern Regional Office
Conference Room
200 North Jefferson Street
Room 152A
Green Bay, WI 54301

April 30, 2010
10:00am to 2:00pm

Western Regional Office
Conference room 123
610 Gibson Street
Eau Claire, WI 54701

Accessibility**English**

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting James Kaplanek at 608-261-8361. You must make your request at least 7 days before the activity.

Spanish

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con James Kaplanek al número 608-261-8361. Debe someter su petición por lo menos 7 días de antes de la actividad.

Hmong

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau James Kaplanek ntawm 608-261-8361. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnuv ua ntej qhov hauj lwm ntawd.

Copies of the Proposed Rule

A copy of the rules may be obtained from the department at no charge by downloading the documents from www.adminrules.wisconsin.gov or by contacting:

James Kaplanek
Bureau of Environmental and Occupational Health
Phone: 608-261-8361
Email: kaplajh@dhs.state.wi.us

Submission of Written Comments

Comments may be submitted to the agency contact person listed above or to the Wisconsin Administrative Rules Website at www.adminrules.wisconsin.gov until **April 30, 2010**, 4:30 p.m.

Analysis Prepared by Department of Health Services**Statute interpreted**

Sections 101.149 (1), (2), (3), (5) and (8), 254.72 and 254.78, Stats.

Statutory authority

Sections 227.11 (2) (a), 250.04 (1), (2) (a), and (7), 254.74 (1) and (1g), and 254.85 (1), and (2), Stats.

Explanation of agency authority

- Section 227.11 (2) (a), Stats., permits state agencies to exercise general rulemaking authority to interpret the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.
- Section 250.04 (1), (2) (a), and (7), Stats., designates DHS as having general responsibility for the public's health, gives DHS all powers necessary to fulfill its duties, and authorizes DHS to enforce and promulgate rules and orders governing the duties of local public health departments that effect public health.
- Section 254.74 (1) (a) and (d), Stats., provides DHS with authority to administer and enforce laws relating to lodging and food protection and any other laws relating to public health and safety in hotels, motels, tourist rooming houses, and bread and breakfast establishments.
- Section 254.74 (1) (am), Stats., requires DHS to promulgate rules under which DHS would conduct inspections of sealed combustion units as required under s. 101.149 (5) (c), Stats. and issue orders for compliance as specified under s. 101.149 (8) (a), Stats.
- Section 254.74 (1g), Stats., requires DHS to inspect hotels, motels, tourist rooming houses, and bed and breakfast establishments to ensure compliance with s. 101.149 (2) and (3), Stats.
- Section 254.85 (1), and (2), Stats., authorizes DHS to enter the premises of lodging establishments to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed for enforcement of rules or statutes, and to issue orders to protect the public health safety and welfare.

Related statute or rule

Section 101.49, Stats., and ss. Comm 21.097 and 62.1200.

Plain language analysis

Lodging establishments (hotels, tourist rooming houses, and bed and breakfast establishments) are required under s. 101.149 (2) and (3), Stats., to install and maintain carbon monoxide detectors in every residential building that has a fuel–burning appliance, unless, pursuant to s. 101.149 (5), Stats., the building does not have an attached garage and all fuel–burning appliances in the building have sealed combustion units that are either covered by the manufacturer's warranty against defects or are inspected as provided under rules promulgated by DHS under s. 254.74 (1) (am), Stats. Under s. 254.74 (1g), Stats., DHS is required to inspect lodging establishments to ensure compliance with s. 101.149 (2) and (3), Stats. Under s. 254.74 (1) (am), Stats, DHS is required to promulgate rules, in consultation with DHS of commerce, under which it shall conduct regular inspections of sealed combustion units for carbon monoxide emissions, except when a sealed combustion unit is covered by a manufacturer's warranty against defects, and rules that specify the conditions under which it may issue orders to correct violations of s. 101.149 (2) or (3), Stats.

Pursuant to ss. 101.01 (15), 101.63 (1), and 101.149 (6) (b), the department of commerce promulgated Comm 21.097 and 62.1200 (2), which limit the s. 101.149 (5), Stats., exception

by requiring lodging establishments to install carbon monoxide detectors without exception in all new residential buildings constructed on or after October 1, 2008, according to specifications set out in the rules.

DHS's proposed rules require lodging establishments to comply with the carbon monoxide detector installation and maintenance requirements of s. 101.149 (2) and (3), Stats., and s. Comm. 21.097 and 62.1200 (2). Consistent with ss. Comm. 21.097 and 62.1200 (2), the rules require installation of carbon monoxide detectors without exception in all new residential buildings constructed on or after October 1, 2008. With respect to any residential building for which construction was initiated or the plans were submitted to the department of commerce before October 1, 2008, and in which the operator has not installed a carbon monoxide detector, pursuant to the exception under s. 101.149 (5), Stats., the rules require the operator to arrange for the annual professional inspection of each fuel–burning appliance, which is not under warranty, including its vents and chimneys, for carbon monoxide emissions.

The rules require DHS to conduct regular inspections of lodging establishments to ensure compliance with the requirements for the installation and maintenance of carbon monoxide detectors. The rules prescribe the procedures under which DHS may issue orders to an establishment to correct a violation of the installation and maintenance requirements under s. 101.149 (2) and (3), Stats. The rules also require DHS to conduct regular inspections of facilities to ensure compliance with the requirement that sealed combustion appliances be inspected for carbon monoxide emissions in residential buildings where carbon monoxide detectors have not been installed pursuant to the exception under s. 101.149 (5), Stats. If DHS determines upon inspection that a sealed combustion unit has not been inspected as required, DHS will order the establishment to have an inspection conducted within 30 days of the order. If the establishment fails to conduct the inspection, DHS will arrange for the inspection by an agent qualified to conduct the inspection. The costs of the DHS agent's inspection would be paid by the facility.

Comparison with federal regulation

An internet–based search of the code of federal regulations and the federal register did not identify any federal requirements for the installation and maintenance of carbon monoxide detectors in residential buildings.

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

Illinois under Public Act 094–0741, the Carbon Monoxide Alarm Detector Act, has required the installation of carbon monoxide detectors in all occupancies and structures which have sleeping rooms since January 1, 2007.

Iowa:

Iowa requires the installation of carbon monoxide detectors in foster care facilities.

Michigan:

Michigan has not enacted a state–wide carbon monoxide detector regulation; however, the City of Pontiac has implemented a rule requiring carbon monoxide detectors in dwelling units and rental units, which has been phased in since 2004.

Minnesota:

Minnesota statute, 299F.50, requires carbon monoxide detectors in newly–constructed single family homes and

multifamily apartments units beginning January 1, 2007, existing single family homes as of August 1, 2008, and existing multi–family and apartment buildings as of August 1, 2009.

Summary of factual data and analytical methodologies

In developing the rules, the DHS reviewed the language of 2007 Act 205 in relation to the specific circumstances presented by the facilities DHS regulates. DHS consulted with the department of commerce and industry representatives from the Association of Plumbing, Heating, and Cooling Contractors, and obtained considerable information from carbon monoxide alarm manufacturers and the Wisconsin Innkeepers Association. DHS used the following data sources for its analysis:

- Criteria adopted by DHS and approved by the Wisconsin Small Business Regulatory Review Board to determine whether DHS’s proposed rules would have a significant economic impact on a substantial number of small businesses. Pursuant to DHS’s criteria, a proposed rule would have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index or revenues are reduced by more than the prior year’s consumer price index. For the purposes of this rulemaking, 2008 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2008 is 3.8 percent.
- The 2002 Economic Census – Geographic Series (Wisconsin), which is compiled by the U.S. Census Bureau every 5 years for each year ending in “2” and “7” and contains the latest available economic data compiled on businesses located in Wisconsin. (The U.S. Census Bureau’s data release schedule for the 2007 Economic Census – Geographic Series is November 2009–July 2010.) The data includes the annual sales reported by Wisconsin businesses classified as hotels and motels, “all other traveler accommodations,” which would include tourist rooming houses, and bed and breakfast establishments. It should be noted, however, that the number of businesses reporting in each category is much lower than the actual number of facilities DHS regulated in 2009.
- Information relating to carbon monoxide or carbon monoxide detectors published by the following agencies:
 - The Environmental Protection Agency (EPA): <http://www.epa.gov/iaq/pubs/coftst.html>
 - The National Fire Protection Association (NFPA): <http://www.nfpa.org/itemDetail.asp?categoryID=280&itemID=18270&URL=Research+&+Reports/Fact+sheets/Home+safety/Carbon+monoxide+poisonin&cookie%5Ftest=1>
 - The Centers for Disease Control (CDC): <http://www.cdc.gov/co/studies.htm>
 - The U.S. Consumer Product Safety Commission (CPSC): <http://www.cpsc.gov>
 - The Wisconsin Department of Commerce–Building and Safety Division <http://www.commerce.wi.gov>
 - Kidde: <http://www.kiddeus.com>
 - First Alert: <http://www.firstalert.com>

Analysis and supporting documents used to determine effect on small business

DHS reviewed the statutory requirements and analyzed the costs to DHS to conduct inspections and the costs to lodging establishments to conduct inspections. To determine the costs of the rule to lodging establishments for inspections of fuel burning appliances, DHS gathered cost information from HVAC service companies. The cost information collected ranges between \$150–\$200 per inspection, not including travel time or the additional cost if more than one unit needs inspection. DHS used the high end of that range, the sales data from 2002 Economic Census–Wisconsin Geographic Services, and the 2008 CPI data from the U.S. Department of Labor, Bureau of Labor Statistics, to estimate the annualized cost for the inspections, per establishment.

In addition, DHS accessed federal agency websites for information on carbon monoxide detectors and carbon monoxide poisoning. DHS also reviewed rules of the department of commerce, which has broad authority to protect public health, safety, and welfare by promulgating comprehensive requirements for design, construction, use and maintenance of public buildings and places of employment. DHS adopted language from the department of commerce rules to aid in consistency and continuity for the lodging industry, which is regulated by DHS and the department of commerce.

Small Business Impact

The proposed rules do not include responsibilities for facilities different from those under s. 101.149, Stats., except to require the installation of carbon monoxide detectors in new buildings, as required under ss. Comm. 21.095 and 62.1200, and to require lodging establishments that have not installed carbon monoxide detectors in residential buildings constructed or approved by the department of commerce before October 1, 2008, which have sealed combustion fuel burning appliances and no attached garages, to arrange for annual professional inspections of the fuel burning appliances, vents and chimneys, which are not under warranty. If DHS determines upon inspection that a sealed combustion unit has not been inspected as required, DHS will order the establishment to conduct an inspection within 30 days of the order. If the establishment fails to conduct the inspection, DHS will arrange for the inspection by an agent qualified to conduct the inspection. The costs of the DHS agent’s inspection would be paid by the facility at an approximate minimum cost range of \$150 – \$200, not including travel time or the additional cost if more than one unit needs inspection.

Lodging establishments would not be affected financially by the requirement to conduct inspections of sealed combustion appliances for carbon monoxide emissions with respect to residential buildings constructed on or after October 1, 2008 because under ss. Comm 62.1200 and 21.097, residential buildings constructed for lodging establishments on or after October 1, 2008, must, without exception, install and maintain interconnected hard–wired carbon monoxide detectors that have battery secondary power supplies.

DHS regulates hotels, motels, and tourist rooming houses under ch. DHS 195 and bed and breakfast establishments under ch. DHS 197. The lodging establishments regulated by DHS range in size from large hotels owned by national or multinational corporations to single tourist rooming houses that are owned by families or individuals and bed and breakfast establishments that are the owners’ personal

residences. Upon reviewing the U.S. Census – North American Industry Classification System (NAICS) accommodations industry information, and applying DHS’s criteria for determining the economic impact on small businesses, DHS has concluded that a substantial number of businesses, or at least 10% of the businesses that would be affected by the proposed rules, are “small businesses” as defined under s. 227.114, Stats. However, DHS has determined that the rules would not have a significant economic impact on small businesses because per establishment operating expenditures are not increased, nor are revenues reduced, more than the 2008 CPI of 3.8%.

Hotels and motels (NAICS industry code 72111) are reported by the 2002 Economic Census as including 1,070 establishments with annual sales of \$1,154,024,000; an average of \$1,078,000 in sales per establishment. Based on a cost of \$200 for an inspection, the estimated annual aggregate cost to hotels and motels under the rule is \$214,000, or .02% of annual sales per establishment. Annual costs for individual establishments may vary depending on a number of factors including number of fuel burning appliances to be inspected, the inspector’s travel time, and the region of the state.

Tourist rooming houses (or “all other traveler accommodation” under NAICS industry code 721199) are reported by the 2002 Economic Census as including 55 establishments. The 2002 Economic Census does not present annual sales data for this classification. Therefore, DHS cannot estimate the economic impact on these establishments of the requirement to inspect fuel burning appliances for carbon monoxide emissions. Annual costs for individual establishments may vary depending on a number of factors including number of fuel burning appliances to be inspected, the inspector’s travel time, and the region of the state.

Bed and breakfast establishments (or bed and breakfast inns under NAICS industry code 721191) are reported by the 2002 Economic Census as including 81 establishments with annual sales of \$16,171,000; an average of \$199,642 per establishment. Based on a cost of \$200 for an inspection, the

estimated annual minimum aggregate cost to bed and breakfast establishments under the rule is \$16,200, or .1% of annual sales per establishment. Annual costs for individual establishments may vary depending on a number of factors including number of fuel burning appliances to be inspected, the inspector’s travel time, and the region of the state.

While the DHS has attempted to provide information on the approximate costs to businesses regulated under ch. DHS 195 and 197, the cost imposed upon all these businesses is difficult to determine. As noted above, the 2002 Economic Census does not include all the establishments DHS regulates under DHS chs. 195 and 197. Moreover, DHS does not have any data on the number of hotels, motels, tourist rooming houses, and bed and breakfast establishments that have not installed carbon monoxide detectors or the number of sealed combustion appliances for which inspections would be required.

It may be less costly in the long–run, and safer, for an establishment to install and carbon monoxide detectors as specified under s. 101.149 (2) and (3), Stats. Carbon monoxide is known as a “senseless killer,” because it is a colorless, odorless gas that can cause sudden poisoning, which is often difficult to diagnose since the symptoms (shortness of breath, nausea, headaches, and dizziness) frequently mimic illnesses such as food poisoning or the flu. According to the Environmental Protection Agency, hundreds of people die from accidental carbon monoxide poisoning each year, and a majority of these deaths are caused by malfunctioning or improperly used fuel–burning appliances. The best way to avoid carbon monoxide poisoning is through prevention techniques. A battery operated and plug in type of carbon monoxide detector costs on average \$20 – \$50. Carbon monoxide detectors, which generally have warranties that are good for at least 5 years, are a cost effective way to protect the safety of individuals in hotels, motels, tourist rooming houses and bed and breakfast establishments.

CHART — DETAILING THE COSTS

<p>Cost to Lodging Establishment for Inspections of Sealed Combustion Units</p>	<p>Average cost for an inspection of a sealed combustion unit is \$150–\$200, not including transportation. Costs may vary due to the number of units that may need inspection and the region of the state.</p>
<p>Cost to Lodging Establishment to Install Carbon Monoxide Alarms</p>	<p>Retail price of a single Kidde battery only carbon monoxide alarm (Kidde mdl#21006672) is \$19.97. The cost of a single AC/DC Kidde carbon monoxide alarm (Kidde mdl#21006927) is \$29.97. The cost of a single Plug–in digital carbon monoxide alarm complete with a 9–volt backup (Kidde mdl#KN–COPP–3) is \$49.87. The average warranty for a battery–operated or plug–in detector is 5 years. Batteries would need to be replaced every 6 months to one year.</p> <p>Retail price for a single hard–wired (120 volt) carbon monoxide alarm with a 9–volt battery backup (Kidde Mdl#21006406) is \$29.97. Installation and wiring would cost about \$200, or more depending upon the number of detectors and retrofitting. A single hard–wired (120 volt) 3–pin wire plug adapter (FA CO5120BN) costs \$30.00, and installation and wiring would cost \$500 or more depending upon the numbers of detectors and retrofitting. Prices at wholesale and competing brands may be lower. First Alert manufactures the “OneLink” wireless Carbon Monoxide/smoke Alarm system. In this system, one alarm activates a series of carbon monoxide/smoke detectors (up to 18 detectors). Each alarm (SC0501CN–3ST) costs \$90. The cost of installation by an electrical contractor could range from \$500–\$2,000 depending on the size and design of the building, the number of sleeping rooms and floors, and the location and number of fuel burning appliances.</p> <p>Another type of device is a combined carbon monoxide and smoke alarm with an A/C voice alert and a 9–volt battery. The cost of a single combination detector (Kidde mdl#KN–COSM–IB) is \$48.96.</p> <p>Prices at wholesale may be lower. Prices may vary among competing brands. DHS is not endorsing any particular brand of carbon monoxide detectors.</p>

Small Business Regulatory Coordinator

Rosie Greer
 Phone: 608–266–1279
 Email: rosie.greer@dhs.wisconsin.gov

Fiscal Estimate**Summary**

The proposed rules require the Department to regularly conduct inspections of lodging establishments to ensure compliance with s. 101.149 (2) and (3), Stats. Inspections are not required if facilities install and maintain carbon monoxide detectors under s. 101.149 (2) and (3), Stats. The inspections are also not required if the sealed combustion units are under manufacturer’s warranty against defects. Costs to the Department under the proposed rules would include the cost to prepare, review and solicit bids for HVAC Qualifiers, individuals qualified to conduct inspections of fuel burning appliances, vents, and chimneys. DHS will add the inspection of lodging establishments for compliance with these rules as part of its regular inspection program. The costs of this additional workload can be absorbed by the Department.

The proposed rules do not include responsibilities for facilities different from those under s. 101.149, Stats., except to require lodging establishments with fuel burning appliances that are constructed before October 1, 2008, to arrange for annual professional inspections of the establishment’s fuel burning appliances, vents and chimneys. If an establishment is determined not to have had the required inspection, the Department will order the establishment to conduct an inspection within 30 days of the order. If the inspection does not occur within 30 days then DHS will arrange for the inspection by an agent qualified to conduct the inspection. The costs of the DHS–ordered agent inspection would be paid by the facility. The costs to an establishment for an annual inspection conducted by a HVAC qualifier would be at the approximate minimum cost range of \$150 – \$200, not including transportation and would be dependent on the number of units needing inspection.

Establishments constructed after October 1, 2008, would not be affected by the rules because under Comm 62.1200 hotels, motels, and tourist rooming houses, and under s. Comm 21.097, bed and breakfast establishments constructed on or after October 1, 2008, where fuel burning appliances are installed must, without exception, install and maintain interconnected hard–wired carbon monoxide detectors that have battery secondary power supplies.

A copy of the full fiscal estimate may be obtained from the department’s contact person listed below upon request.

State fiscal effect

Indeterminate. Increase costs — may be possible to absorb within agency’s budget.

Local government fiscal effect

None.

Private sector fiscal effect

Indeterminate. Increase costs — will not have significant economic impact on a substantial number of small businesses.

Long–range fiscal implications

None known.

Agency Contact Person

James Kaplanek
 Bureau of Environmental and Occupational Health
 Phone: 608–261–8361
 Email: kaplajh@dhs.state.wi.us

Notice of Hearing

**Marriage and Family Therapy, Professional
 Counseling and Social Work Examining Board
 CR 10–013**

NOTICE IS HEREBY GIVEN that pursuant to authority in ss. 15.08 (5) (b), 227.11 (2) and 457.033, Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board will hold a public hearing at the time and place indicated below to consider an order to revise section MPSW 1.11, relating to psychometric testing.

Hearing Information

Date: April 13, 2010
Time: 9:30 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, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708–8935, or by email to pamela.haack@wisconsin.gov. Written comments must be received by **April 16, 2010**, 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, Division of Board Services, 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 457.033, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) and 457.033, Stats.

Explanation of agency authority

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board and the Psychology Examining Board are authorized to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under this chapter is qualified to perform.

Related statute or rule

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

Plain language analysis

This proposed rule-making order by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, in collaboration with the Psychology Examining Board, amends s. MPSW 1.11 regarding psychometric testing. Psychometric testing is currently defined and authorized under s. 457.033, Stats., as a measurement tool for assessing psychological characteristics, such as intelligence, aptitude, and emotional disturbance, in which a sample of an examinee's behavior is obtained and evaluated and scored using a standardized process. Two examples of fairly well known psychometric tests are the Minnesota Multiphasic Personality Inventory (MMPI) and the Rorschach Ink Blot test.

Under ch. 457, Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board and the Psychology Examining Board are required to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under ch. 457, Stats., is qualified to perform. The statute also directs that the resulting administrative rules are to be consistent with guidelines of the American Psychological Association or other nationally recognized guidelines. Both examining boards have collaborated in this rule-making process to develop the proposed rule amendments.

The examining boards found that the existing rules do not adequately delineate between what is considered psychometric testing and instruments used by mental health therapists in initial evaluations or evaluating progress in therapy. In addition, the board found that the existing rule was overly restrictive in determining who may provide training in the use of psychometric tests and the requirements for licensed mental health therapists to obtain permission as to what tests (including in what settings and with which populations) they may use. Accordingly, the amended rules will clarify the following: 1) the definition of psychometric testing; 2) who may use psychometric tests and other testing instruments; and 3) who may supervise individuals that use psychometric tests.

SECTION 1 of the proposed rule amends the definition of psychometric testing with language which clarifies that the testing is a procedure for measuring not only psychological features but for measuring the "behavioral and interpersonal characteristics" of an examinee who is subjected to the testing. SECTION 1 strikes out a portion of the current rule regarding which test instruments do not constitute psychometric testing and restates and reinserts that language into SECTION 2.

SECTION 2 of the proposed rule creates additional language to clarify that psychometric testing does not apply to those test instruments which are solely used to screen for problems, assist in treatment planning, clarify treatment goals, plan intervention or monitor progress in treatment. This additional area of non-applicability is stated in newly created s. MPSW 1.11 (1) (a). SECTION 2 also reinserts the original language from SECTION 1 regarding those test instruments which do not constitute psychometric testing.

SECTION 3 of the proposed rule adds language to clarify the qualification of an individual who is deemed to be an appropriate user of psychometric testing. Specifically, this section clarifies that the user must have requisite knowledge, skills and abilities, training and experience.

SECTION 4 of the proposed rule creates new language which describes the requisite functions which the appropriate user must be able to perform in order to use psychometric tests.

SECTION 5 of the proposed rule states who may use psychometric testing. This section specifies licensed psychologists, persons acting under the supervision of a licensed psychologist, and licensees of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (licensed marriage and family therapists, licensed professional counselors and licensed clinical social workers) who meet the requirements of current s. MPSW 1.11 (3) (a) and (b) and those licensees acting under their supervision. This latter provision creates a new category of persons who may use psychometric testing provided that they are licensed by the board and supervised by licensees who meet the qualifications in s. MPSW 1.11 (3) (a) and (b).

SECTION 6 of the proposed rule repeals the current restriction in s. MPSW 1.11 (3) to conform to the changes in the proposed s. MPSW 1.11 (2m). The proposed rule further amends the existing rule to require that the training must be from a regionally accredited program. SECTION 6 of the proposed rule amends s. MPSW 1.11 (3) (b) to require compliance with the requirements for use of psychometric tests in the amended provisions of s. MPSW 1.11 (2). This change will insure that the licensee who is deemed qualified to perform testing has the ability to independently select, administer, score and interpret the tests as well as to use the test results in the appropriate cultural context, the examinee's life and the purpose for which it is given. A licensee may engage in psychometric testing only if the appropriate section of the board has received and approved the information demonstrating the licensee's generic and specific qualifications to perform psychometric testing.

SECTION 6 of the proposed rule also changes the method of proof required to verify that a person is qualified to perform psychometric testing by replacing the affidavit requirement with an official declaration from a professional qualified to supervise psychometric testing. The repeal of the current provisions and replacement with the amended language will facilitate the board's ability to make informed decisions based upon full and accurate information provided in a non-overly restrictive format. The affidavit form required under the existing rule has been found to be cumbersome for providers due to the legal requirement that the document be notarized. However, those persons who have been previously qualified based upon submission of an affidavit under the existing rule would not be required to comply with the new requirement of submitting an official declaration; this would in effect be a "grandparenting" provision for those who were previously deemed qualified. The amended language will also clarify what information is required of the professional who is verifying the abilities of the person seeking to perform testing. As result of the rule modifications, it is anticipated that use of an official declaration which contains the required information will facilitate the board's determination of who is qualified to perform psychometric testing and will better serve the public interests.

SECTION 7 repeals the current restriction that only licensed psychologists may supervise persons performing psychometric testing. This change is consistent with the intent of the rule-making to expand the category of licensees who are qualified to perform psychometric testing.

SECTION 8 amends s. MPSW 1.11 (5) to clarify that the psychometric testing instrument may not be used for assessment purposes except by those who meet the graduate level training requirements and who have the demonstrated ability to perform the testing competently appropriate to the practice setting and area of practice. The proposed language also restricts the use of the testing for screening or referral purposes.

Comparison with federal regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states

Illinois:

Marriage and Family Therapy: There are no statutory limitations on marriage and family therapists for provision of psychometric testing. The only exception being that ethical practice requires marriage and family therapists to limit their practice to the areas in which they are competent.

Under Illinois administrative code governing the practice of marriage and family therapists, s. 1283.100 Professional Conduct:

- a) A therapist must not perform, nor pretend to be able to perform, professional services beyond his/her scope of practice...

Psychology: State law includes definitions of psychological testing as well as neurophysiological testing as part of the definition of clinical psychology; however appears only to restrict the provision of “clinical psychological services” to licensed psychologists. Clinical psychological services refers to any services listed under the definition of the practice of psychology, and only if the terms “psychological,” “psychologic,” or “psychology” are attached to the service. By extension, psychological testing would be prohibited however, psychometric testing would not.

Under Illinois statutes s. 225 ILCS 15, Clinical Psychologist Practice Act (5) “Clinical psychology” means the independent evaluation, classification and treatment of mental, emotional, behavioral or nervous disorders or conditions, developmental disabilities, alcoholism and substance abuse, disorders of habit or conduct, the psychological aspects of physical illness. ***The practice of clinical psychology includes*** psychoeducational evaluation, therapy, remediation and consultation, ***the use of psychological and neuropsychological testing***, assessment, psychotherapy, psychoanalysis, hypnosis, biofeedback, and behavioral modification when any of these are used for the purpose of preventing or eliminating psychopathology, or for the amelioration of psychological disorders of individuals or groups. “Clinical psychology” does not include the use of hypnosis by unlicensed persons pursuant to Section 3.

- (6) A person represents himself to be a “clinical psychologist” within the meaning of this Act when he or she holds himself out to the public by any title or description of services incorporating the words “psychological,” “psychologic,” “psychologist,” “psychology,” or “clinical psychologist” or under such title or description offers to render or renders clinical psychological services as defined in paragraph (7) of this Section to individuals, corporations, or the public for remuneration.

- (7) “Clinical psychological services” refers to any services under paragraph (5) of this Section if the words “psychological,” “psychologic,” “psychologist,” “psychology” or “clinical psychologist” are used to describe such services by the person or organization offering to render or rendering them.

Professional Counselors: There are no statutory limitations on professional counselors for provision of psychometric testing. The only exception being that ethical practice requires professional counselors to limit their practice to the areas in which they are competent.

Under Illinois administrative code governing professional counselors:

s. 1375.225 Unprofessional Conduct:

“Different tests demand different levels of competence for administration, scoring and interpretation. ***Members must have the appropriate education and training for each specific test and recognize the limits of their competence and perform only those functions for which they are prepared.*** In particular, members using computer-based test interpretations must be trained in the concept being measured and the specific instrument being used prior to using this type of computer application.”
(*emphasis added*)

Iowa:

Psychology: Testing may be part of the definition of practice of psychology (from IA Stats. s.154B.1 Definitions) “*Practice of psychology*” means... *Application of Principles includes... measuring and testing personality, intelligence, aptitudes, public opinion, attitudes, and skills...* but there is no explicit mention.

The Iowa Psychology Practice/Title restrictions restrict the use of “psychology, psychological” to licensed psychologists, but the restrictions do not appear to restrict psychometric testing. They would clearly restrict the offering of “psychological testing.” Iowa appears to give broad authority to mental health licensees (identified as marriage and family therapists, counselors and social workers) to act within the bounds of their credential under the scope of practice.

(s. 154 B.4 Acts Prohibited and 154 B.5 Scope of Chapter)

Michigan:

Psychology: As per contact with the Michigan Board of Psychology, psychological testing is a part of psychology practice act. In other words, Michigan law limits psychological testing to psychologists.

Furthermore, according to the Board Chair of Michigan, Dane Ver Morris, the State attorney’s general’s office has advised the LPC Board that psychological testing falls outside the scope of the statutory definition of counseling. Thus, the Board is precluded from proposing administrative rules that would allow test administration.

Under Michigan statute s. 333.18201 Definitions; principles of construction:

- (b) “Practice of psychology” means the rendering to individuals, groups, organizations, or the public of services involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior for the purposes of the diagnosis, assessment related to diagnosis, prevention, amelioration, or treatment of mental or emotional disorders, disabilities or behavioral adjustment problems by means of

psychotherapy, counseling, behavior modification, hypnosis, biofeedback techniques, *psychological tests*, or other verbal or behavioral means... (emphasis added)

Counseling: Michigan law governing counselors specifically excludes the practice of psychology from that of the practice of counselors; therefore, psychological testing is excluded from counselor practice.

Under Michigan Statute s. 333.18101 Definitions.

- (i) Evaluation and appraisal techniques. As used in this subparagraph, “appraisal techniques” means selecting, administering, scoring, and interpreting instruments and procedures designed to assess an individual’s aptitudes, interests, attitudes, abilities, achievements, and personal characteristics for development purposes **and not for psychodiagnostic purposes.**
- (d) “Practice of counseling” or “counseling” means the rendering to individuals, groups, families, organizations, or the general public a service involving the application of clinical counseling principles, methods, or procedures for the purpose of achieving social, personal, career, and emotional development and with the goal of promoting and enhancing healthy self actualizing and satisfying lifestyles whether the services are rendered in an educational, business, health, private practice, or human services setting. **The practice of counseling does not include the practice of psychology** except for those preventive techniques, counseling techniques, or behavior modification techniques for which the licensed professional counselor or limited licensed counselor has been specifically trained... (Emphasis added)

Marriage and Family Therapy: Michigan law restricts access to administration and interpretation of psychologists; does however allow some testing under State statute governing the definition of Marriage and Family Therapy.

333.16901 Definitions; principles of construction.

- (c) “Practice of marriage and family therapy” means the providing of guidance, testing, discussions, therapy, instruction, or advice that is intended to avoid, eliminate, relieve, manage, or resolve marital or family conflict or discord, to create, improve, or restore marital or family harmony, or to prepare couples for marriage. **Practice of marriage and family therapy does not include the administration and interpretation of psychological tests except for those tests that are consistent with the individual’s education and training and with the code of ethics for licensed marriage and family therapists.** (Emphasis added)

Social Work: Michigan law governing social work separates social work practice at the baccalaureate level and master’s level, as does Wisconsin. Baccalaureate practice is very restrictive in scope whereas master’s level practice includes clinical mental health treatment (e.g. psychotherapy). While Michigan law does not mention psychological testing for master’s level social work, there is a specific prohibition for such testing at the baccalaureate level.

Under Michigan Statute s. 333.18501 Definitions; scope.

- (1) As used in this part:
- (b) “Licensed bachelor’s social worker” means an individual licensed under this article to engage in the practice of social work at the bachelor’s level.

- (c) “Licensed master’s social worker” means an individual licensed under this article to engage in the practice of social work at the master’s level.

- (f) “Practice of social work at the bachelor’s level” means, subject to subsections (2) and (4), all of the following applied within the scope of social work values, ethics, principles, and skills:

- (iv) **The administration of assessment checklists that do not require special training and that do not require interpretation.**

- (g) “Practice of social work at the master’s level” means, subject to subsection (5), all of the following applied within the scope of social work values, ethics, principles, and advanced skills:

- (i) The advanced application of the knowledge of human development and behavior and social, economic, and cultural institutions.

- (ii) The advanced application of macro social work processes and systems to improve the social or health services of communities, groups, or organizations through planned interventions.

- (iii) The application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. Treatment methods include the provision of advanced social work case management and casework and individual, couple, family, or group counseling and psychotherapy whether in private practice or other settings.

(4) The practice of social work at the bachelor’s level does not include the practice of medicine or the practice of osteopathic medicine and surgery, including, but not limited to, the prescribing of drugs, the administration of electroconvulsive therapy, the practice of psychotherapy, and other advanced clinical skills pursuant to section 18501(g)(iii) **or the administration or interpretation of psychological tests**, except as otherwise provided in subdivision (f)(iv).

(5) The practice of social work at the master’s level does not include the practice of medicine or the practice of osteopathic medicine and surgery, including, but not limited to, the prescribing of drugs or administration of electroconvulsive therapy.

Minnesota:

Marriage & Family Therapy: Psychometric or psychological testing is not mentioned in statutes or administrative rules governing marriage and family therapists. Minnesota’s administrative code governing marriage and family therapist’s code of conduct states that therapists may not provide services that the therapist is not trained to perform.

5300.0350 CODE OF ETHICS.

Subpart. 4.

A. A therapist must not perform, nor pretend to be able to perform, professional services beyond the therapist’s field or fields of competence.

Professional Counselors: Psychometric or psychological testing is not mentioned in statutes defining scope of practice, however testing is defined and administration of testing is described under board of behavioral health rules (governing professional counselors — see below). In addition, licensing

statutes exclude services that a counselor is not trained to perform as outside the scope of practice.

As per 148B.50 Subdivision (5)(b), stats., Licensing professional counseling does not include activities or services undertaken by persons listed in section 148B.592, ***or the performance of any act that licensed professional counselors are not educated and trained to perform.***

As per s. 2150.7505 DEFINITIONS, Subp. 26. Standardized tests, Admin. Code: “Standardized test” means a test that is administered, recorded, and scored in a uniform and objective manner, is interpreted by means of normative data, and includes a manual or other published information that fully describes its development, rationale, validity, reliability, and normative data.

As per s. 2150.7565 ASSESSMENTS, TESTS, REPORTS, Subpart 2. Administration and interpretation of tests, Admin. Code: Providers shall use tests as described in items A to E:

A. Standardized tests shall be used preferentially over nonstandardized tests.

B. All tests must be administered and responses must be recorded, scored, and interpreted based on practice of scientific foundations.

C. If a test is used in a nonstandard manner, the limitations of the test and the reasons for its nonstandard use must be clearly stated in the report.

D. A test’s reliability, validity, and normative data must be taken into account in its selection, use, and interpretation.

E. The reliability and validity of test statements and interpretations in reports are the responsibility of the provider, including when automated testing services are used.

Psychology: Psychometric testing may be part of the definition of practice of psychology (from MN Stats. s. 148.89 Definitions Subd. 5.) “*Practice of psychology*” means...assessment, including psychological testing and other means of evaluating personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning...

Social Work: Psychometric or psychological testing is not mentioned in statutes defining scope of practice for social work; however testing is broadly mentioned under administrative rules, describing “assessment or diagnosis instruments” (see below). In addition, administrative rules governing conduct prevent social workers from providing services they are not adequately trained to provide.

As per Social Work Admin. Code, s. 8740.0320 PRACTICE REQUIREMENTS. Subp. 2. Assessment or diagnosis instruments. A social worker shall not use an assessment or diagnostic instrument without adequate training. A social worker shall follow standard and accepted procedures for using an assessment or diagnostic instrument. A social worker shall inform a client of the purpose before administering the instrument and shall make the results available to the client.

As per social work admin. Code, s. 8740.315 COMPETENCE. Subp. 2. Limits on practice. A social worker shall limit practice to the permissible scope of practice for the social worker’s license and competence.

Summary of factual data and analytical methodologies

Under ch. 457, Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

(Joint Board) and the Psychology Examining Board (PEB) are required to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under ch. 457, Stats., is qualified to perform. Existing administrative rules governing psychometric testing further restricts authorization to provide psychometric testing to license holders pursuant to s. MPSW 1.11, Wis. Adm. Code. The statute also directs that the resulting administrative rules are to be consistent with guidelines of the American Psychological Association (APA) or other nationally recognized guidelines. The original rules as drafted were in accordance with APA guidelines and the proposed revisions do not substantially deviate from the underlying educational and experience requirements. In addition, to preserve the statutory requirement for joint promulgation, a small number of board members were appointed from the Joint Board and PEB to work together between scheduled board meetings to work on the proposed rules and the policy changes they entailed. The proposed rule changes drafts were brought before both examining boards for review and approval. Board members “appointed” were Bruce Kuehl, Professional Member of the MFT Section of the Joint Board, George Kamps, Professional Member of the Social Worker Section of the Joint Board and Dr. Bruce Erdmann, Professional Member of the PEB.

Other factual data cited elsewhere includes:

1. Number of License Holders of the Joint Board issued psychometric testing authorization since 2001: 23 (4 clinical social workers and 19 professional counselors. Numbers derived from physical authorization letters on file within the DRL

2. Number of Active License Holders Eligible for Psychometric Testing Authorization: 6,529 (Sept 2009 active license holder counts for license marriage and family therapists, professional counselors and clinical social workers)

Analysis and supporting documents used to determine effect on small business

The proposed changes should not cause substantial negative effect on licensees operating in small business settings in terms of incurring increased operating costs or any additional operational difficulties, nor should the rule cause any appreciable changes to small business in general. The board’s change to the rule affects a small portion of practitioners and clarifies the rule in the following areas: 1) the definition of psychometric testing; 2) who may use psychometric tests and other testing instruments; and 3) who may supervise individuals that use psychometric tests. The proposed rules should have little, if any, appreciable impact on small business as the rule does not increase or decrease the educational or practice requirement to receive approval to conduct psychometric testing. Further, since 2001, the board has issued only 24 such authorizations to a pool of 6,524 eligible license holders (Sept 2009 — active license holder counts of marriage and family therapists, professional counselors and clinical social workers).

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.

Anticipated costs incurred by private sector

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

Small Business Impact

These proposed rules were reviewed by the department's Small Business Review Advisory Committee and it was determined that the rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

The Department's Regulatory Review Coordinator may be contacted by calling 608-266-8608 or by email at hector.colon@wisconsin.gov.

Fiscal Estimate

The department estimates that this rule will require staff time in the Division of Board Services. The total one-time salary and fringe costs are estimated at \$575.

Agency Contact Person

Pamela Haack, Paralegal
Department of Regulation and Licensing
1400 East Washington Avenue, Room 152
P.O. Box 8935
Madison, Wisconsin 53708
Phone: 608-266-0495
Email: pamela.haack@wisconsin.gov

Notice of Hearing Public Defender Board CR 10-022

The State of Wisconsin Public Defender Board (SPD) announces that it will hold a public hearing on the creation of Chapter PD 8, Discovery Payments, relating to the maximum fees that the state public defender may pay for copies of discovery materials in criminal proceedings, proceedings under Wis. Stat. Chapter 980, and other proceedings in which the state public defender provides legal representation.

Hearing Information

The State Public Defender will hold a public hearing at the time and place shown below:

Date: March 29, 2010 — Monday
Time: 9:00 am to noon
Location: SPD Administrative Office
Banoul Conference Room
315 N. Henry Street, 2nd Floor
Madison WI 53703

Handicap accessibility is in the rear of the building. If you require communication accommodation at the hearing, please call Kathy Pakes, (608) 261-0087, at least 10 days prior to the hearing date.

Appearances at Hearing and Submission of Written Comments

Interested persons are invited to attend the hearing and comment on the rule. Persons appearing may make an oral presentation and are requested to submit their comments in writing. Written comments on the rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received by Monday March 29. Written comments should be addressed to: Kathy Pakes, SPD, PO Box 7923, Madison, WI 53707-7923, or by email: pakesk@opd.wi.gov.

Copies of Proposed Rule

To view the rule online, go to: <http://www.wisspd.org/PropAdminRulesPD8.pdf>.

To view the rule fiscal note online, go to: <http://www.wisspd.org/FiscEstPropPD8.pdf>.

You may contact Kathy Pakes at pakesk@opd.wi.gov or by telephone at (608) 266-0087 to request a copy (at no cost) of the rule and fiscal note be sent to you by U.S. mail. Copies of the rule and fiscal note will also be available, at no cost, at the hearing.

Analysis Prepared by the State Public Defender Board

Statutes interpreted

Sections 971.23, 977.02 (9), 977.05, 977.08, 980.036 (10), Stats.

Statutory authority

Sections 227.24, 971.23 (10), 977.02 (9), 980.036 (10), Stats.

Explanation of agency authority

Section 977.02 (9), Stats., effective July 1, 2009, directs the state public defender board to promulgate rules "establishing the maximum fees that the state public defender may pay for copies, in any format, of materials that are subject to discovery in cases in which the state public defender or counsel assigned under s. 977.08 provides legal representation."

Related statute or rule

None

Plain language analysis

The state public defender appoints attorneys to represent financially eligible persons in cases where they have a constitutional or a statutory right to an attorney at state expense. See Chapter 977, Stats. Sections 971.23 and 980.036, Stats., require a district attorney or other prosecuting attorney to disclose certain materials and information, referred to generally as "discovery materials," to an opposing party or his or her counsel within specified time limits. Subsections 971.23 (10) and 980.036 (10), Stats., require the state public defender to pay for the copies of discovery materials disclosed to appointed counsel if the provider charges a fee for them.

This rule implements the 2009 Wisconsin Act 28 requirement that the state public defender board promulgate administrative rules establishing the maximum fees that the state public defender may pay for copies of discovery materials in any format.

This rulemaking authority responds to two problems that the state public defender has encountered regarding the specific appropriation for transcripts, interpreter fees, and discovery costs: 1) this appropriation has been insufficient since Fiscal Year 2001-2002, and 2) the counties and municipalities have charged different amounts for similar items, such as photocopies and DVDs, resulting in disputes over the reasonableness of some of the bills submitted to the state public defender.

The rule provides notice to the counties and municipalities of the applicable fees that will be paid, ensure consistency among all providers of discovery materials, and establish a procedure for the state public defender to follow if the applicable appropriation is depleted before the end of the biennium. The rules:

- Establish maximum rates for the common formats in which the state public defender presently receives discovery materials;
- Specify that the state public defender does not pay for the labor costs, postage costs, transmittal costs, or other ancillary costs related to compiling, preparing, or providing discovery materials to the attorneys, staff or private, appointed under s. 977.08;
- Provide the state public defender with the authority to reduce or suspend payments for discovery materials when the applicable appropriation is insufficient to continue payments at the maximum rate; and
- Specify that the state public defender may set a maximum rate not to exceed the actual, necessary, and direct cost of producing discovery materials that are provided in a format not directly addressed in the rule.

Comparison with federal regulations

There are no existing or proposed federal regulations that address the activities of the proposed rules.

Comparisons with rules in adjacent states

In general, most states require prosecutors to provide copies of all discovery materials under mandatory discovery laws.

Minnesota and Iowa have implemented statewide public defender programs, but only Minnesota has a statute relating to public defenders and discovery costs. Specifically, Minnesota statutes section 611.271 (2008) states that when discovery materials are requested by a public defender, no fee can be charged for police reports, photographs, copies of existing grand jury transcripts, audiotapes, videotapes, copies of existing transcripts of audiotapes or videotapes, and, in child protection cases, reports prepared by local welfare agencies. Iowa public defenders, on the other hand, are charged for most discovery materials obtained from the prosecutor. The cost of discovery varies depending on the county prosecutor.

In Michigan and Illinois, the individual counties themselves establish public defender programs. In Michigan counties, the public defenders do not typically pay for any discovery costs. When they do have to pay, the public defenders only pay for the cost of copies and not the cost of labor. In the Illinois counties surveyed, when the public defenders receive discovery from the prosecutor, they do not pay any fees.

Summary of factual data and analytical methodologies

Pursuant to s. 977.02 (9), Stats., the public defender board “shall consider information regarding the actual, necessary, and direct cost of producing copies of materials that are subject to discovery” when establishing the maximum fees that the public defender may pay for them.

A significant portion of the direct cost of any copy is the media (e.g., the paper or the blank disc) on which it is provided.

In its biennial budget request for FY 2009–2011, the public defender board requested funding to increase the rate to be paid for paper discovery materials from \$0.20 to \$0.25 per page. This request was neither included in the Governor’s budget, nor added to the budget bill by the legislature. The state public defender board interprets the omission of the requested funding as tacit agreement that \$0.20 per page meets or exceeds the “actual, necessary and direct cost” criteria for paper copies of discovery materials. Compare

FedEx/Kinko’s current retail price of \$0.08 each for up to 100 letter– or legal–size copies, and \$0.07 each for 101 to 1,000 copies. The Department of Justice charges \$0.15 per page for paper copies furnished in response to a public records request under ch. 19, Stats. Under the proposed rule, the state public defender would continue to pay up to \$0.20 per page, or \$0.35 per double–sided page.

The charges submitted for discovery materials provided in electronic formats vary greatly among the state’s prosecutors and law enforcement agencies. For example, bills for a single compact disc (CD) range from \$3 to \$35. The retail cost of blank CDs and digital videodiscs (DVDs) is currently less than \$0.80 each. Large suppliers such as Corporate Express offer discounts to governmental units, bringing the unit cost down to less than \$0.40 each. The Department of Justice charges \$1.00 per disc for copies furnished in response to a public records request under ch. 19, Stats. Under the proposed rule, the state public defender would pay up to \$5.00 per disc.

The charges submitted for copies of photographs range from \$1.50 to \$25.00 for digital prints, from \$1.00 to \$2.00 for black and white photos, and from \$0.35 to \$2.00 for color photos. The retail cost of photograph reproductions depends upon their size. Walgreen’s, a national retailer, charges \$0.19 each for less than 100 4x6 prints, \$0.15 each for 100 or more 4x6 prints, \$1.59 each for 5x7 prints and \$2.99 each for 8x10 prints. The Camera Company in Madison charges \$0.43 each for photos up to 4x6. Under the proposed rule, the state public defender would pay up to \$0.50 each for copies of photos that are 5x7 and smaller, and \$1.00 each for copies of larger photos.

The charges submitted for copies of audio and video tapes also vary greatly. Bills for a single video tape range from \$5.00 to \$46.00, and for a single audio tape from \$1.00 to \$25.00. If purchased from a state contract office supply vendor, blank audio cassette tapes range in price from \$0.42 to \$1.07 each and blank VHS video tape prices range from \$1.22 to \$3.00 each. If purchased from a retailer (Best Buy), a four–pack of audio cassette tapes costs \$5.99 (\$1.50 each), and a four–pack of VHS video tapes costs \$10.99 (\$2.75 each). Under the proposed rule, the state public defender would pay up to \$5.00 per tape.

Analysis and supporting documents used to determine effect on small business

The impact on counties and municipalities that provide copies of discovery materials is unknown.

Small Business Impact

Small businesses are not affected by the rule.

Fiscal Estimate

Summary

The State Public Defender (SPD) is statutorily authorized and required to appoint attorneys to represent indigent defendants in criminal proceedings. The SPD plays a major role in ensuring that the Wisconsin justice system complies with the right to counsel provided by both the state and federal constitutions. Any legislation that creates a new criminal offense or expands the definition of an existing criminal offense has the potential to increase SPD costs.

These administrative rules do not create a new offense, expand the scope of any criminal offense, or change any criminal penalties. The rules provide maximum rates that the SPD will pay for discovery materials, such as photocopies of police reports and audio or video recordings of interrogations.

In the vast majority of cases in which the SPD provides representation, the appointed attorney must obtain and review discovery materials as part of adequate case preparation.

The SPD does not anticipate any significant fiscal impact from these rules. The SPD has a separate appropriation for discovery, interpreters, and transcripts. For the last few years, this appropriation has been insufficient to pay the necessary costs incurred by the SPD in the course of providing representation. The deficit in this appropriation has been growing, as more counties and municipalities have been recording interrogations of defendants and then billing the SPD for copies of the recordings. In some counties, these rules will lower the costs of each individual recording; however, the number of jurisdictions providing the recordings may continue to increase.

The SPD has been paying all counties \$0.20 per page for photocopies provided as discovery materials. The SPD has been paying varying amounts for other forms of discovery, such as DVDs and CDs. Some bills for recordings come from municipalities and others from counties. The SPD does not have data to estimate the specific impact of these rules on individual municipalities and counties. However, because the SPD's annual appropriation for transcript, discovery and interpreter payments was not changed as a result of this provision of 2009 Wis Act 28, the biennial budget bill, it appears that the legislative intent is that these rules will neither increase nor decrease the SPD's total payments for discovery materials.

Long-range fiscal implications

The rules provide a mechanism for the SPD Board to reduce the maximum rates if the appropriation in question is depleted in two consecutive years (following adoption of the rules). Thus, the rules arguably provide a safety valve to limit the total payment obligations of the SPD for discovery. The rules may also help to resolve issues that might otherwise arise regarding the rates that counties and municipalities may charge for new formats in which they provide discovery materials.

Agency Contact Person

Questions regarding these rules may be directed to:

Kathy Pakes
315 N. Henry Street, 2nd Floor
Madison, WI 53703
Phone: (608) 266-0087
Email: pakesk@opd.wi.gov

Notice of Hearing

Workforce Development

Public Works Construction Contracts, Chs. DWD 290-294

EmR0942, CR 10-029

NOTICE IS HEREBY GIVEN that pursuant to sections 779.14 (1s) and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider emergency rules and permanent rules to amend section DWD 293.02, relating to the adjustment of thresholds for the application of payment and performance assurance requirements and affecting small businesses.

Hearing Information

March 31, 2010

Wednesday
1:30 p.m.

MADISON

G.E.F. 1 Building, B103
201 E. Washington Avenue

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Copies of Proposed Rules

The proposed rules are available at the web site <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

Howard Bernstein
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946

Appearances at Hearing and Submission of Written Comments

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **April 2, 2010**, will be given the same consideration as testimony presented at the hearing.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Sections 779.14 (1s) and 227.11, Stats.

Statutes interpreted

Section 779.14, Stats.

Explanation of agency authority

Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14 (1s), Stats., requires the Department to biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

Summary of the proposed rule

Chapter DWD 293 provides adjusted thresholds for various payment and performance assurance requirements

that apply to contracts with state or local governments for the performance of labor or furnishing of materials for a public improvement or public work. In accordance with the requirement of the statute, this rule adjusts the thresholds to reflect a 6.82% increase in construction costs from December 2007 to December 2009. These adjusted thresholds have been adopted in an emergency rule which became effective on January 1, 2010; this rule would adopt the same thresholds on a permanent basis.

Summary of analytical methodology

Section DWD 293.01, Wis. Adm. Code, provides that the Department will adjust the required bond thresholds on the basis of the change in the construction cost index as published in the *Engineering News–Record*, a national construction trade publication. The thresholds are rounded to the nearest thousand.

Comparison to federal regulations

The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. This threshold is in the statute and is rarely adjusted.

Comparison of payment and performance bond thresholds in adjacent states

Minnesota:

Minnesota has a public contractors' performance and payment bond requirement that applies to a contract that exceeds \$75,000.

Illinois:

Illinois requires a bond if a contract for a public work exceeds \$5,000. Neither state appears to have a mechanism for adjustment of the thresholds, other than statutory amendment.

Michigan:

Michigan has a performance bond requirement without a clear statutory threshold.

Iowa:

The Department did not find a performance bond requirement for public works contracts in Iowa.

Small Business Impact

The rule affects construction companies, many of whom are small businesses. No reporting, bookkeeping, or other professional skills are required for compliance with the rule.

There does not appear to be any adverse impact on small businesses, because the adjustment of the thresholds for the application of the payment and performance bond requirements prevents these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

Fiscal Estimate

For the same reason as in the paragraph above, this proposed rule does not appear to create any adverse fiscal impact on state or local government or on those businesses that are subject to the rule.

Agency Contact Person

Howard Bernstein, Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707–7946
Phone: (608) 266–9427
Email: Howard.Bernstein@dwd.wisconsin.gov

Submittal of Proposed Rules to the Legislature

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

Agriculture, Trade and Consumer Protection

CR 09-023

A rule-making order to revise Chapter ATCP 149, relating to the potato marketing order.

Commerce

Fee Schedule, Ch. Comm 2

CR 09-116

A rule-making order to revise section Comm 2.68, relating to fees for plan review and inspection of public swimming pools and water attractions and affecting small business.

Health Services

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

CR 10-003

A rule-making order to revise Chapter DHS 19, relating to reduction or waiver of penalties for voluntary self-disclosure by a small business of actual or potential violations of rules or guidelines, and affecting small businesses.

Health Services

Community Services, Chs. DHS 30—

CR 09-061

A rule-making order to revise Chapter DHS 85, relating to non-profit corporations and unincorporated associations as guardians.

Insurance

CR 09-095

A rule-making order to create section Ins 3.34, relating to coverage of dependents to age 27.

Natural Resources

*Environmental Protection — Air Pollution Control,
Chs. NR 400—*

CR 09-088

A rule-making order to revise Chapters NR 404, 438, and 484, relating to ambient air quality standards for ozone and lead, and new reporting requirements for lead compounds.

Public Defender Board

CR 09-067

A rule-making order to revise Chapter PD 1, relating to the certification of private attorneys to accept appointments to provide legal representation for state public defender clients.

Public Defender Board

CR 09-068

A rule-making order to revise Chapters PD 2, 3, and 6, relating to representation by the state public defender of persons detained under chs. 51 or 55, Stats., or subject to involuntary administration of psychotropic medication without a predetermination of financial eligibility.

Public Instruction

CR 09-106

A rule-making order to create Chapter PI 39, relating to grants for tribal language revitalization.

Public Service Commission

CR 09-086

A rule-making order to create Chapter PSC 172, relating to a police and fire protection fee imposed on all voice communications connections.

Transportation

CR 09-113

A rule-making order to create Chapter Trans 148, relating to electronic recording and release of liens by non-individual creditors.

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.

Commerce

Uniform Dwelling, Chs. Comm 20-25

CR 09-072

Rule revises section Comm 22.31 (2) (b), relating to approved software to show compliance with Uniform Dwelling Code thermal envelope requirements.
Effective 4-1-10.

Natural Resources

Fish, Game, etc., Chs. NR 1-

CR 09-083

Rule revises section NR 25.06 (2) (e) 2., relating to commercial fishing for lake whitefish in outlying waters and affecting small business.
Effective 4-1-10.

Corrections

CR 09-075

Rule creates section DOC 309.466, relating to inmate release accounts.
Effective 4-1-10.

Pharmacy Examining Board

CR 09-099

Rule creates section Phar 7.095, relating to remote dispensing sites.
Effective 4-1-10.

Public Notices

Department of Health Services

Medical Assistance Reimbursement to Hospitals

Pay For Performance Payment Plan for State Fiscal Year 2010–2011

The State of Wisconsin reimburses hospitals for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin State Statutes. This program, administered by the State's Department of Health Services (Department), is called Medicaid or Medical Assistance.

The Department is proposing to modify inpatient hospital pay for performance measures and associated payment rates for state fiscal year 2010. The pay for performance measures are projected to distribute \$5,000,000 all funds in state fiscal year 2010, composed of \$2,100,000 general purpose revenue (GPR) and \$2,900,000 federal funds (FED).

Copies of Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 537001-0309

State Contact

Krista Willing, Section Chief
Hospital Rate Setting
Phone: (608) 266-2469
Fax: (608) 266-1096
Email: KristaE.Willing@wisconsin.gov

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is kristae.willing@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed pay for performance measures based on comments received.

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