

**STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES**

CHAPTERS: DHS 1, 10, 13, 40, 82, 83, 89, 101, 102, 103, 104, 105, 107, 108, 116, 118, 124, 132, 134, 150, 153, 163, 182, & 251
RELATING TO: Biennial review of administrative rules under s. 227.29, Stats.
RULE TYPE: Permanent
SCOPE TYPE: Original

SUMMARY

1. Description of rule objectives

This Statement of Scope seeks to repeal obsolete rules that the Wisconsin Department of Health Services (“the Department”) identified as being in need of revision throughout the review process required under s. 227.29, Stats., and to make other corrections based upon information provided to the Department by the Legislative Reference Bureau. An overview of proposed changes is provided below.

2. Existing policies relevant to the rule and policies proposed to be included in the rule

DHS 1 – relating to uniform fees, liability, and collections.

- DHS 1.065 (1) (b) identifies the scope as it applies to children’s long-term support parental payment limits, and cites to the community options program waiver under s. 46.27, Stats., which was repealed by 2019 Wis. Act 9. This paragraph should be amended to remove the reference to s. 46.27, Stats.
- DHS 1.065 (3) cites to DHS 1.03 (12) (c) and (21), both of which were repealed as part of CR 19-020. This subsection should be amended to remove references to the repealed rule sections.

DHS 10 – relating to family care.

- DHS 10.11, authority and purpose, contains outdated references to statutory authority. The section should be amended to add s. 46.281 (1n) (b) 1.
- Sections DHS 10.11 (7), 10.12 (8), and 10.74 include references to hospitals in the scope and authority of the rule, which is no longer applicable following the repeal of s. 50.36 (2) by 2007 Wis. Act 20. These subsections should be amended to remove references to hospitals.
- DHS 10.13 contains numerous definitions that conflict with federal and state law. For example, s. DHS 10.13 (3) uses “infirmities of aging,” a phrase that was replaced with “degenerative brain disorder” by 2005 Wis. Act 264, and s. DHS 10.13 (16) includes a definition of “developmental disability” that is inconsistent with s. 51.01 (5) (a), which was amended by 2005 Wis. Act 264. These definitions should be amended for consistency with federal and state law.
- DHS 10.21 (1), contracting, does not include a statutory requirement that the Department may only contract with resource centers that meet the requirements of s. 46.283, Stats. This subsection should be amended to include this statutory requirement.
- DHS 10.23 (3) (a) 2. c. includes a citation to s. DHS 10.72, which was repealed via petition, CR 19-001. This subdivision paragraph should be amended to remove the reference to the repealed rule section.

- DHS 10.23 (6) (a), operational requirements for resource centers, contains outreach and public education requirements that are inconsistent with the Medicaid and CHIP Managed Care Final Rule (CMS 2390-F) information requirements. This paragraph should be amended for consistency with Medicaid managed care rule information requirements.
- DHS 10.32 (1) (a) contains age eligibility conditions that are inconsistent with ss. 46.286 (1) (a) and (3) (a) 1m., Stats. The provision should be revised to clarify that the individual must be 18 years old at the time of application.
- DHS 10.33 (2) and 10.36 (1) contains references to “intermediate” and “comprehensive” levels of care that are inconsistent with s. 46.286 (1) (a). The terminology should be changed to “nursing home” and “non-nursing home” levels.
- DHS 10.36 (2) (b) includes a provision regarding a phase-out date for non-MA eligible persons in accordance with s. 46.286 (3) (d), Stats. The cited statutory provision was repealed by 2007 Wis. Act 20. This paragraph should be stricken, as should the accompanying note.
- DHS 10.42 (2), certification, is inconsistent with Medicaid managed care rule regulations, 42 CFR 438.66(d). The subsection should be revised to require an onsite managed care organization readiness review by the Department before receiving initial family care certification.
- Section DHS 10.43 (2), certification standards, contains standards that are inconsistent with 42 CFR 438.68. The rule should be revised to add time, distance, and network adequacy standards that are consistent with 42 CFR 438.68.
- DHS 10.44, care management organization standards, contains numerous provisions that are inconsistent with 42 CFR 438.334, 42 CFR 438.364, 42 CFR 438.66, 438.68, 42 CFR 438.370, and s. 46.287, Stats.
- DHS 10.51, client rights, DHS 10.52, required notifications, DHS 10.53, grievances, DHS 10.55, fair hearing, and DHS 10.56, continuation of services, contains grievance and appeal procedures that are inconsistent with 42 CFR 438.400, 42 CFR. 438.402, and 42 CFR 438.404, 42 CFR 438.406, 42 CFR 438.408, 42 CFR 438.410, and should be revised for consistency with Medicaid managed care rule regulations.
- DHS 10.62, recovery of correctly paid benefits, contains estate-recovery provisions that are inconsistent with s. 49.496, Stats., and should be revised.

DHS 13 – relating to reporting and investigation of caregiver misconduct. Section DHS 13.05 (4) (c) includes the phrase “infirmities of aging,” which was replaced with “degenerative brain disorder” by 2005 Wis. Act 264. This subsection should be amended consistent with Act 264.

DHS 40 – relating to mental health day treatment services for children. Section DHS 40.07 (2) (a) 2. requires written documentation of each staff member’s qualifications, and cites to DHS 40.09 (2) to (5). DHS 40 was repealed and recreated in CR 19-018, and s. DHS 40.09 (5) no longer exists. This subdivision should be amended to remove reference to subsection (5).

DHS 82 – relating to certified adult family homes. Section DHS 82.06 (2m) includes a provision regarding family care and referral that cites to s. 50.033 (2r) to (2t), which were repealed by 2007 Wis. Act 20. This subsection should be amended to remove these citations.

DHS 83 – relating to community-based residential facilities.

- DHS 83.24 (3) (a) includes “emergency medical technicians” as exempt from the standard precautions training. The phrase “emergency medical technician” was replaced with “emergency medical services practitioner” in 2017 Wis. Act 12, and the paragraph should be amended to use correct terminology.

- DHS 83.30 contains a provision regarding family care information and referral that cites to s. 50.035 (4p), which was repealed by 2019 Wis. Act 9. This section should be amended to remove this reference.

DHS 89 – relating to residential care apartment complexes.

- DHS 89.26 (3) (b) 2., 89.27 (3) (d), 89.34 (12), 89.35 (3), and 89.52 (1) include citations to the long-term community support options program under s. 46.27, which was repealed by 2019 Wis. Act 9. These provisions should be amended to strike this reference.

- DHS 89.29 (1m) contains provisions regarding family care information and referral that cites to “s. 50.034 (5m) to (5p), Stats.” Section 50.034 (5p) which was repealed by 2019 Wis. Act 9. This subsection should be amended to strike the reference to the repealed statutory subsection.

DHS 101 – relating to Medical Assistance; introduction and definitions.

- DHS 101.03 (1) defines “access” and includes an eligibility bar of 18 months that is more restrictive than the 12-month eligibility bar in s. 49.471 (8) (b) 2., Stats., and should be revised.

- DHS 101.03 (6), (7), (23), (65), (96) and (97) contains references to aid to families with dependent children (“AFDC”), a program which is no longer in effect. See 42 USC 1936u-1, s. 49.015 (s), Stats. References should be amended or repealed to conform to federal and state standards.

- DHS 101.03 (8) provides a definition of “agency” that does not include a multicounty consortium under s. 49.78, Stats. The definition should be revised to include multicounty consortium.

- DHS 101.03 (15) provides a definition of “application for Medical Assistance” that is inconsistent with 42 CFR s. 435.907(a), which requires the Department to accept applications made by fax, telephone, and through the internet. The definition should be revised for consistency with these requirements.

- DHS 101.03 (17r), (17t), and (17w), refer to BadgerCare, which has been superseded by BadgerCare Plus under s. 49.471, Stats. These provisions should be amended to update the terminology and citations for BadgerCare Plus.

- DHS 101.03 (20) contains a definition of “budgetable income” that also applies to BadgerCare Plus under s. 49.471, Stats., but is not currently included. The definition should be amended to include s. 49.471, Stats.

- DHS 101.03 (23) contains a definition of “categorically needy” that is limited to eligibility for AFDC and SSI. This definition is inconsistent with federal requirements, such as 42 USC 1396a(a)(10)(A), 42 USC 1396a(e), which apply categorically needy to over 25 groups covered by federal law and the state through the Medicaid and Children’s Health Insurance Program (“CHIP”) State Plans. The definition should be amended for conformity with those federal requirements.

- DHS 101.03 (30) contains a definition of “conditional eligibility,” which does not appear anywhere in ss. DHS 101 to 109. This subsection should be repealed.

- DHS 101.03 (38) defines “deeming,” a process which also applies to BadgerCare Plus, but does not cite to s. 49.471, Stats. This provision should be amended to include a reference to s. 49.471, Stats.

- DHS 101.03 (41) includes the phrase “infirmities of aging,” which was replaced with “degenerative brain disorder” by 2005 Wis. Act 264. This subsection should be amended for consistency with Act 264.
- DHS 101.03 (52) defines “emergency medical condition” in a manner inconsistent with 42 USC 1396(v)(3). This provision should be revised for consistency with the federal definition.
- DHS 101.03 (65) defines “fiscal test group” in a manner inconsistent with 42 CFR 435.603, which does not require persons to be living in the home with other members of the fiscal test group. This provision should be amended for consistency with 42 CFR 435.603.
- DHS 101.03 (78s) includes a definition of “incapacitation” which is obsolete because the Department has opted in its State plan to no longer require a parent to be incapacitated or unemployed to be eligible for Medicaid. This definition should be repealed.
- DHS 101.03 (94r) provides a definition of “medical expenses” that is inconsistent with 42 CFR 435.831(d), which does not limit medical expenses to persons applying for the Medicaid purchase plan (“MAPP”). The definition should be amended for consistency with 42 CFR 435.831(d).
- DHS 101.03 (95) provides a definition of “Medical Assistance” that cites to BadgerCare under s. 49.665, Stats., which is rendered obsolete by BadgerCare Plus under s. 49.471, Stats. The definition should be amended to remove the reference to s. 49.665, Stats.
- DHS 101.03 (96) provides a definition of “Medical Assistance group” that conflicts with budgeting procedures under 42 CFR 435.603. This definition should be amended for consistency with those budgeting policies.
- DHS 101.03 (97) includes a definition of “medically needy” that cites to the non-financial eligibility conditions of AFDC or SSI. This definition is inconsistent with ss. 49.47 (4) (c) 1. and 49.471 (7), Stats. and should be amended to remove the AFDC and SSI references.
- DHS 101.03 (129m) defines “presumptive eligibility” that is restricted to pregnant women, which is inconsistent with presumptive eligibility provisions in ss. 49.471 (5) (b) 2. and 49.473 (3), Stats., and 42 CFR 435.1010. The definition should be amended to include the expanded group to which presumptive eligibility applies.
- DHS 101.03 (149m) defines “qualified providers” and restricts it to determining presumptive eligibility of pregnant women, which is inconsistent with ss. 49.471 (5) (b) 2. and 49.473 (3), and 43 CFR 435.1010. This definition should be amended to include the expanded group that qualified providers can determine presumptive eligibility for.
- DHS 101.03 (152m) defines “remedial expense” and restricts it to MAPP, which is inconsistent with 42 CFR 435.831(e), and the definition should be amended to expand it to other categories.
- DHS 101.03 (170s) defines “standard maintenance allowance” based on s. 49.472 (4) (a) 2., Stats. The term does not appear anywhere in ss. DHS 101 to 109, and s. 49.472 (4) (a) 2., Stats., was repealed by 2017 Wis. Act 59. This subsection should be repealed.
- DHS 101.03 (172s) defines “substantial gainful activity,” which is not used anywhere in ss. DHS 101 to 109. This subsection should be repealed.

DHS 102 – relating to Medical Assistance; application.

- DHS 102.01 (intro.) contains a citation to BadgerCare under s. 49.665, which is obsolete. Additionally, ss. 49.45 to 49.497, Stats., identify additional categories of Medical Assistance which require an application. This provision should be amended to remove the obsolete reference and update for consistency with statutes.
- DHS 102.01 (1) provides that a Medical Assistance application shall be made on a form approved by the Department. 42 CFR 435.907(a) requires the Department to accept applications submitted electronically or by phone in addition to paper forms. This subsection should be amended to include all accepted modes of application.
- DHS 102.01 (4) requires that the Department make information about applying to Medical Assistance in written form or orally. 42 CFR 435.905 requires the Department to make this information available electronically, and specifies more actions that the Department must take to assist individuals who are limited English proficient. This subsection should be amended accordingly.
- DHS 102.01 (5) (a) includes special application provisions for applicants, including that 18 year olds who are not dependents must file separate applications. BadgerCare Plus, s. 49.471, Stats., and budgeting provisions under 42 CFR 435.603(f)(3)(iv) no longer require 18-year-olds who are not dependents to file separate applications; instead, they require persons 19 years or older to do so. This paragraph should be amended to require persons 19 years or older to file separate applications.
- DHS 102.01 (5) (b) provides that unmarried couples who live together and have a child in common should have their eligibility determined together. This is inconsistent with 42 CFR 435.603(f)(1), which requires that eligibility of unmarried parents be determined separately unless one parent is tax dependent on the other. This paragraph should be amended for consistency with 42 CFR 435.603.
- DHS 102.01 (5) (h) contains provisions for determining eligibility for a minor child residing with a non-legally responsible relative. The paragraph is based on BadgerCare under s. 49.665, Stats., which was superseded by BadgerCare Plus under s. 49.471, Stats. BadgerCare Plus does not include these requirements, so the paragraph should be repealed.
- DHS 102.01 (7) includes a requirement that an application form be signed in the presence of an agency representative, but 42 CFR 435.907(a) requires the Department to accept applications submitted electronically and by phone. This section should be amended to remove this requirement.
- DHS 102.03 (1) includes verification requirements for Medical Assistance applicants. It includes an obsolete reference to BadgerCare under s. 49.665, Stats., and is inconsistent with verification exceptions provided in 42 CFR 435.952 and 42 CFR 435.956. This subsection should be amended to remove the reference to BadgerCare and update verification requirements for consistency with federal regulations.
- DHS 102.03 (3) (b) requires that pregnancy be verified when an application is received. This is inconsistent with 42 CFR 435.956(e), which requires acceptance of self-attestation of pregnancy unless the Department has contradictory information. This paragraph should be amended for consistency with 42 CFR 435.956(e).
- DHS 102.03 (3) (c) requires verification of incapacity for Medical Assistance applications. In accordance with 42 CFR 435.4, the Department has opted to exclude requirements for incapacity to be eligible for Medicaid. This paragraph should be repealed.
- DHS 102.03 (3) (d) requires verification of social security numbers for Medical Assistance applications. 42 CFR 435.910 includes some exceptions to this requirement. This paragraph should be amended for consistency with 42 CFR 435.910.

- DHS 102.03 (3) (f) includes verification of citizenship or alien status for Medical Assistance applications. Sections 1902(a)(46)(B) and 1903(x)(2) of the Social Security Act and 42 CFR 432.401(a)(1), 42 CFR 435.407, and 42 CFR 435.910 exempt certain members from having to verify their citizenship status. This paragraph should be amended to reflect current federal regulations.

- DHS 102.04 (1) requires an agency to conduct a personal interview with an applicant. This reference is outdated, as an interview may no longer be required as a condition of eligibility for Medicaid. See 42 CFR 435.907(d). The section should be amended to remove the reference to the interview.

- DHS 102.04 (3) (c) contains references to aid to families with dependent children (“AFDC”), a program which is no longer in effect. See 42 USC 1936u-1, s. 49.015 (s), Stats. References should be amended or repealed to conform to federal and state standards.

- DHS 102.04 (3) (c) and (d) contain renewal of eligibility determination requirements which are inconsistent with 42 CFR 435.916. These paragraphs should be amended to reflect current eligibility regulations.

DHS 103 - relating to Medical Assistance; eligibility.

- DHS 103 contains references to aid to families with dependent children (“AFDC”), a program which is no longer in effect. See 42 USC 1936u-1, s. 49.015 (s), Stats. References should be amended or repealed to conform to federal and state standards.

- DHS 103.01 (1) (a) identifies persons eligible for Medical Assistance, but the list does not include new eligibility groups as provided in ss. 49.453, 49.454, 49.468, 49.471, and 49.473, Stats. The paragraph should be amended to include updated statutory citations and eligibility groups.

- DHS 103.01 (1) (b) explains that presumptive eligibility for pregnant women shall be determined under s. 49.465, Stats. Presumptive eligibility is also potentially available for children, women with breast or cervical cancer, and certain adults. See ss. 49.471 (5) (b) 2., 49.473 (3), Stats., 42 CFR 435.1010. The paragraph should be amended to include these groups.

- DHS 103.03 (1) (f) includes an outdated list of populations that are non-financially eligible for BadgerCare, and does not correctly describe current policies regarding health insurance access and coverage under s. 49.471 (8), Stats. The paragraph should be updated to include all populations that are non-financially eligible for BadgerCare Plus, and for consistency with insurance access and coverage provisions in s. 49.471 (8), Stats.

- DHS 103.03 (2) provides that U.S. citizenship is required for eligibility, with some exceptions. The section does not include citations to, or inclusion of, the groups of non-citizens who are eligible for Medicaid or CHIP under 8 USC s. 1611, 42 USC s. 1396b(v)(4), and 43 CFR 435.406. This subsection should be amended accordingly.

- DHS 103.03 (4) requires all applicants to have social security numbers and to furnish them to the agency upon request, with several exceptions. 42 CFR 435.910 now requires exemption from the social security number for certain immigration and religious reasons. This subsection should be amended for consistency with current federal law and regulations.

- DHS 103.04 (3) (b) includes spend-down provisions. Section 49.471 (7) (b) raised the medically needy income limits for pregnant women and children, and the paragraph should be amended for consistency with the statutes.

- DHS 103.04 (5) and (7) contain provisions regarding “irregular cases” and “special BadgerCare budgeting procedures.” These rules have been superseded by federal modified adjusted gross income group formation and

budgeting procedures. See 42 CFR 435.603. These subsections should be amended to reflect current federal laws and regulations.

- DHS 103.04 (6) includes income limits for BadgerCare that are inconsistent with ss. 49.471 (4) (a) and 49.45 (23) (a), Stats. The subsection should be amended to include correct income limits for BadgerCare Plus identified in statute.

- DHS 103.04 (8) (b) cites to s. 49.472 (3) (b) to identify the asset limit for MAPP eligibility. Section 49.472 (3) (a) added a new income deduction for out-of-pocket medical or remedial expenses, and this paragraph should be amended to include citation to that statutory provision.

- DHS 103.05 (1) (b) to (e) contains definitions of a “child-only case” involving step-parents that have been rendered obsolete under 42 CFR 435.603. These paragraphs should be repealed, and s. DHS 103.05 (1) (intro) and (a) should be consolidated into DHS 103.05 (1).

- DHS 103.05 (5) includes provisions for income limits for child-only Medical Assistance groups. These provisions are inconsistent with federal modified adjusted gross income group formation and budgeting procedures. See 42 CFR 435.603. These subsections should be amended to reflect current federal laws and regulations

- DHS 103.06 (15) (a) 2. provides that independence accounts are exempt from calculating eligibility for MAPP. Section 49.46 (1) (em), Stats., makes independence accounts exempt from all forms of Medicaid, not just MAPP. The subdivision should be amended for consistency with s. 49.46 (1) (em), Stats.

- DHS 103.085 includes conditions for continuation of eligibility for BadgerCare that are inconsistent with s. 49.45 (23b) (2), Stats. This section should be amended to reflect current statutory premium and re-enrollment restriction policies, and to update the outdated Table 103.085.

- DHS 103.087 (1) includes premium calculations that are outdated and in conflict with s. 49.472 (40), Stats. This subsection should be updated with correct premium calculations, and table 103.087 should be repealed .

- DHS 103.11 includes provisions related to presumptive eligibility, which is limited to pregnant women. Presumptive eligibility is also potentially available to additional groups, see ss. 49.471 (5) (b) 2., 49.473 (3), Stats., 42 CFR 435.1102, 42 CFR 435.1103, and 42 CFR 435.1110, and this section should be amended to permit qualified providers to make presumptive eligibility determinations for these groups.

DHS 104 – relating to Medical Assistance; recipient rights and duties. Section DHS 104.01 (12) (a) 1. b. provides that all recipients who are members of a health maintenance organization are exempt from cost sharing, which is not allowed under federal law. See 42 CFR 447.52(h), 42 CFR 447.56(a)(1)(v) and (viii). This subdivision paragraph should be repealed.

DHS 105 – relating to Medical Assistance; provider certification.

- DHS 105.01 (3) contains general conditions for provider participation in Medical Assistance. Requirements in subsection regarding collection of provider information, risk assessment, and onsite visits are inconsistent with 42 CFR 455.104, 42 CFR 455.450, and s. 1902(a)(77) of the Social Security Act. This subsection should be amended for consistency with the federal laws and regulations.

- DHS 105.075 includes a citation to DHS 124.21, which was repealed as part of CR 19-135. This section should be amended to remove the citation to the repealed rule section.

- DHS 105.34 includes a provision requiring rehabilitation agencies to be certified as an outpatient rehabilitation agency, but the references to federal regulations are outdated. The section should be amended to include up-to-date federal regulations, namely 42 CFR 485.50 to 42 CFR 485.74.
- 105.39 (4) (b) 2. includes the term “emergency medical technicians.” The phrase “emergency medical technician” was replaced with “emergency medical services practitioner” in 2017 Wis. Act 12, and the paragraph should be amended to use correct terminology.
- DHS 105.49 contains a provision about Medical Assistance certification for ambulatory surgical centers, and cites to 42 CFR 416.39, which no longer exists. The section should be amended to remove this citation.

DHS 107 – relating to Medical Assistance; covered services.

- DHS 107.06 (3) (b) 1. restricts Medical Assistance coverage for hysterectomies performed solely for the purpose of rendering an individual incapable of reproducing to two circumstances. But federal law prohibits Medicaid coverage for hysterectomies for the sole purpose of sterilization. This subdivision should be repealed.
- DHS 107.065 (2) (a) includes a limitation that a nurse anesthetist must perform services under anesthesiologist’s or physician’s supervision. This requirement is inconsistent with s. 49.46 (2) (a), and this paragraph should be repealed.
- DHS 107.09 (4) (L) includes a reference to s. 46.27, Stats., which was repealed by 2019 Wis. Act 9. This paragraph should be repealed.
- DHS 107.11 (1) (c), (2) and (5), and DHS 107.24 (2) (c) include provisions which require homebound status or that services be provided in the home for home health services. This is inconsistent with Federal Medicaid Home Health Final Rule (CMS-2348-F), which does not allow the Department to require homebound status or provision of services in the home. These provisions should be amended to remove these requirements.
- DHS 107.11, 107.12, 107.112, 107.113, and 107.24 are currently inconsistent with Federal Home Health Final Rule (CMS-2348-F), which allows the Department to implement s. 49.46 (2), Stats., to allow providers acting in the provider’s scope of practice to prescribe or order services. These sections should be amended for consistency with the federal rule.
- DHS 107.13 (2) (a) 6. and 7., (2) (b) and (c) 4., (3) (a) 4. and 7., and (b) require prior authorizations for outpatient psychotherapy services. On October 1, 2017, the Parity in Mental Health and Substance Use Disorder Services Final Rule (81 FR 18390) removed prior authorization requirements for outpatient psychotherapy services. These provisions should be amended or repealed to remove the prior authorization requirements for these services.

DHS 108 – relating to Medical Assistance; general administration.

- DHS 108.02 (9) (d) includes provisions for the Department to withhold payments involving fraud or willful misrepresentation. These provisions are inconsistent with 42 CFR 455.23, and this paragraph should be amended for consistency with federal requirements.
- DHS 108.02 (12) (b) 2. a. contains references to aid to families with dependent children (“AFDC”), a program which is no longer in effect. See 42 USC 1936u-1, s. 49.015 (s), Stats. References should be amended or repealed to conform to federal and state standards.

- DHS 108.02 (10) (intro.) and (d), (11), (12) (a) 2., 4. and 5., (f) 2., and (15) cite to s. 46.27, Stats., which was repealed by 2019 Wis. Act 9. These provisions should either be repealed or amended to remove the references to s. 49.27, Stats., whichever is appropriate.

- DHS 108.03 (4) cites to s DHS 1.07 (2) (c). Chapter DHS 1 was repealed and recreated as part of CR 19-020, and s. DHS 1.07 (2) (c) no longer exists. This subsection should be amended to remove the reference to s. 1.07 (2) (c).

DHS 116 – relating to Wisconsin birth defect prevention and surveillance system.

- DHS 116.02 (2), (3), (4), (11), (12) and (13), 116.04 (1), (2) (a) (intro.), 1. and 2., (b), (c), (3) and (3) (Note), (4) and (5) (c) and (d) make reference to “suspected” birth defects. These provisions are inconsistent with s. 253.12, Stats., which only requires reporting of diagnosed conditions, and should be amended accordingly.

- DHS 116.03 (11) includes a definition of registry that is obsolete and inconsistent with s. 253.12 (3) (a) 1. The definition should be amended to remove the current language and include a citation to s. 253.12 (3) (a) 1.

- DHS 116.04 (3) (a) cites to Appendix B, which identifies the content required for a report. Following 2017 Wis. Act 59, the Department created F-40054: Confidential Birth Defects Registry Report, which includes all of the core data items contained in Appendix B and is available electronically or in paper form. This paragraph should be amended to include a reference to this form, and a note explaining how to access it.

- DHS 116.04 (4) includes a requirement that reports shall be submitted within 15 calendar days after a birth defect is identified. This requirement is burdensome as it is not consistent with the practice of most hospitals. Reports are submitted via the Wisconsin Electronic Disease Surveillance System (WEDSS), and most hospitals submit reports on a monthly basis. This subsection should be amended to require that reports be submitted to the Department on a monthly basis, or within 30 days of identification of the birth defect, whichever is later.

- DHS 116.04 (5) (d) includes provisions about referring a child with a defect to a local health officer or Birth to 3 Program. These provisions conflict with DHS 90.07 (2) and (3), and the paragraph should be amended for consistency with DHS 90.07 (2) and (3).

DHS 118 – relating to trauma care.

- DHS 118.02 (2) (e), 118.03 (13), (14), (16) (h), (28) and (30), 118.06 (3) (b) 1. a. (Note), 118.07 (1) (a) to (c), and 118.09 are outdated because they use “first responder”—a term which was replaced with “emergency medical responder” by 2017 Wis. Act 12. These provisions should be amended to replace “first responder” with “emergency medical responder.”

- DHS 118.02 (2) (a) to (c), 118.03 (11), (16) (g), (25) (intro.), (a) and (b), (28), (29), and (30), 118.06 (3) (b) 1. a. (Note), and 118.07 (1) (b) use variations of “emergency medical technician” or “EMT” that are outdated following 2017 Wis. Act 12, which eliminated most of the variations of EMT from Chapter 256, Stats. These provisions should be amended for consistency with current terminology used in Chapter 256, Stats.

DHS 124 – relating to hospitals.

- DHS 124.09 (6) (b) includes a reference to “emergency medical technicians.” The phrase “emergency medical technician” was replaced with “emergency medical services practitioner” in 2017 Wis. Act 12, and the paragraph should be amended to use correct terminology.

- DHS 124.39 (3) (b) includes a provision regarding the Department's review of an application for critical access hospital status that cites to DHS 124.40, which was repealed as part of CR 19-135. This paragraph should be amended to remove the reference to the repealed rule section.

DHS 132 – relating to nursing homes.

- DHS 132.13 (4) includes the phrase "infirmities of aging," which was replaced with "degenerative brain disorder" by 2005 Wis. Act 264. This subsection should be amended consistent with Act 264.

DHS 134 – relating to facilities serving people with developmental disabilities.

- DHS 134.13 (9) includes the phrase "infirmities of aging," which was replaced with "degenerative brain disorder" by 2005 Wis. Act 264. This subsection should be amended consistent with Act 264.

- DHS 134.52 (2) (c) cites to s. 50.04 (2m), Stats., which was repealed by 2019 Wis. Act 9. This paragraph should be amended to remove this reference.

- DHS 134.68 (2) cites to DHS 124.17 (3), which was repealed as part of CR 19-135. This subsection should be amended to remove this reference.

DHS 150 – relating to grants for the workplace wellness programs. This rule chapter was based on s. 250.21, which includes a sunset provision that "no grants shall be administered under this section after December 31, 2018." Section 250.21 (3), Stats. This rule chapter is obsolete and should be repealed.

DHS 153 – relating to reimbursement for blood products and supplies used in the home care of hemophilia. Section DHS 153.02 (17) cites to s. DWD 11.15, which was repealed in 2002. This subsection should be repealed.

DHS 163 – relating to certification for the identification, removal, and reduction of lead-based paint hazards:

- DHS 163.03 (61) includes a definition of lead-based paint that is in conflict with 40 CFR 745.103. Specifically, s. DHS 163.03 (61) defines "lead-based paint" as containing more than 0.06% lead by weight, or more than 0.7 milligrams lead per square centimeter in the dried film of applied paint. 40 CFR 745.103 defines it as equal to or in excess of 1.0 milligram per square centimeter or 0.5% by weight. This subsection should be amended.

Several of the DHS 163 Appendices have been rendered obsolete or outdated by the repeal of NR 661.04 (2) and subchapter V of Chapter NR 662, and the current rulemaking in CR 19-110. These Appendices should be amended or repealed.

DHS 182 – relating to lead poisoning or lead exposure prevention grants. Section DHS 182.03 (8) and (10) include, respectively, definitions of "lead exposure" and "lead poisoning" that are in conflict with the definitions of those

terms provided in s. 254.11 (9), Stats. These subsections should be amended to be consistent with the statutory definitions.

DHS 251 – relating to county relief programs. Section DHS 251.03 (6) cites to s. 49.053 (1m), Stats., which was repealed by 1995 Wis. Act 27. This subsection should be repealed.

3. Analysis of policy alternative

This Statement of Scope seeks authorization to repeal obsolete rule chapters that the Department identified throughout the rule review process required under s. 227.29, Stats., and to make other corrections based upon information provided to the Department by the Legislative Reference Bureau. No reasonable policy alternatives exist to promulgating the proposed rules.

4. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

DHS 1: The Department is authorized to promulgate rules for determining fees, liability, billing, and collection practices by interpreting ss. 46.03 (18) and 46.10, Stats.

DHS 10: The Department is authorized under ss. 46.281 (1n) (b) 1., 46.286 (4) to (7), 46.287 (2) (a) 1. (intro.), 46.288, 50.02 (2) (d), Stats. to implement a program called family care that is designed to help families arrange for appropriate long-term care services for older family members and for adults with physical or developmental disabilities.

DHS 13: The Department is authorized by ss. 146.40 (4g) and (4r), Stats., to protect clients served in specified Department-regulated programs by establishing a process for reporting allegations of abuse or neglect of a client or misappropriation of client's property to the Department, establishing a process for the investigation of those allegations and establishing the due process rights of persons who are subjects of the investigations.

DHS 40: The Department is authorized by s. 51.42 (7) (b), Stats., to regulate programs providing mental health day treatment services for youth.

DHS 82: The Department is authorized by s. 50.02 (2) (am) 1., Stats., to establish certification standards for the operation of adult family homes in order to protect and promote the health, safety and welfare of persons residing in and receiving care and maintenance in these homes.

DHS 83: The Department is authorized by s. 50.02 (2), Stats., to develop and establish regulations and standards for the care, treatment or services, and health, safety, rights, welfare, and comfort of residents in community-based residential facilities.

DHS 89: The Department is authorized by s. 50.034 (2), Stats., to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities.

DHS 101 to 108: The Department is authorized under ss. 49.45 (10) and 49.665 (4) and (5), Stats., to promulgate rules for the purpose of administering the Medical Assistance program in Wisconsin to finance necessary health care services for qualified persons whose financial resources are inadequate to provide for their health care needs.

DHS 116: The Department is authorized by s. 253.12 (3) (a), Stats., to promulgate rules to implement the Wisconsin birth defect prevention and surveillance system established by s. 253.12, Stats.

DHS 118: The Department is authorized by s. 256.25 (2), Stats., to promulgate rules to develop and implement a statewide trauma care system.

DHS 124: The Department is authorized by s. 50.36 (1) to promulgate rules for the construction, maintenance, and operation of facilities that meet the definition of “hospital” in s. 50.33 (2), Stats., to ensure that hospital patients receive safe and adequate care and treatment and that the health and safety of patients and employees are protected.

DHS 132: The Department is authorized by ss. 49.498 (14), 49.499 (2m), 50.02, 50.03, 50.095 and 50.098, Stats., to promulgate rules to provide conditions of licensure for nursing homes.

DHS 134: The Department is authorized by s. 50.02 (2) and (3), Stats., to provide conditions of licensure for facilities that primarily serve people with developmental disabilities who require active treatment.

DHS 150: The Department is authorized under s. 250.21, Stats., to establish a process for awarding grants from the appropriation under s. 20.435 (1) (bn), Stats., to reimburse small businesses for costs incurred in establishing a workplace wellness program for their employees. However, s. 250.01 (3), Stats., provides that no workplace wellness program grants may be awarded after December 31, 2018, thus rendering this rule obsolete.

DHS 153: The Department is authorized under ss. 49.685 (8) (c), 49.687 (1), Stats., to implement a program for the cost of blood products and supplies for use in the home care of residents of Wisconsin who have hemophilia.

DHS 163: The Department is authorized under ss. 250.04 (7), 250.041, 254.115, 254.15, 254.167, 254.172, 254.176 (1) and (3), 254.178 (2), and 254.179, Stats., to promulgate rules that: (1) govern lead hazard reduction consistent with federal law; (2) establish certification requirements for any person who performs lead hazard reduction or lead management activity; (3) establish requirements for accrediting lead training courses and approval of lead instructors; and (4) establish standards for certifying dwellings as lead-safe or lead-free dwellings.

DHS 182: The Department is authorized by s. 254.151, Stats., to promulgate rules to establish criteria and procedures for the award of annual project grants from appropriation under s. 20.435 (1) (ef), Stats., to local health departments or non-profit agencies working in collaboration with local health departments on projects aimed at preventing lead poisoning or exposure to lead.

DHS 251: The Department is authorized under s. 49.02 (7m), Stats., to provide procedures for a county relief agency to follow to obtain a relief block grant, standards for county relief agencies to follow in making eligibility determinations under s. 49.015, Stats., and procedures for appealing eligibility determinations.

b. Statute/s that authorize/s the promulgation of the proposed rule

DHS 1: Sections 46.03 (18), 46.10, and 227.11 (2), Stats.

DHS 10: Sections 46.281 (1n) (b) 1., 46.286 (4) to (7), 46.287 (2) (a) 1. (intro.), 46.288, 50.02 (2) (d), and 227.11 (2), Stats.

DHS 13: Sections 146.40 (4g) and (4r), and 227.11 (2), Stats.

DHS 40: Section 51.42 (7) (b) and 227.11 (2), Stats.

DHS 82: Sections 50.02 (2) (am) 1. and 227.11 (2), Stats.

DHS 83: Sections 50.02 (2) and 227.11 (2), Stats.

DHS 89: Sections 50.034 (2) and 227.11 (2), Stats.

DHS 101 to 108: Sections 49.45 (10), 49.665 (4) and (5), and 227.11 (2).

DHS 116: Sections 253.12 (3) (a) and 227.11 (2), Stats.

DHS 118: Sections 256.25 (2) and 227.11 (2), Stats.

DHS 124: Section 50.36 (1), 50.33 (2), and 227.11 (2), Stats.

DHS 132: Sections 49.498 (14), 49.499 (2m), 50.02, 50.03, 50.095 and 50.098, and 227.11 (2), Stats.

DHS 134: Sections 50.02 (2) and (3), and 227.11 (2), Stats.

DHS 150: Sections 250.21 and 227.11 (2), Stats.

DHS 153: Sections 49.685 (8) (c), 49.687 (1), and 227.11 (2), Stats.

DHS 163: Sections 250.04 (7), 250.041, 254.115, 254.15, 254.167, 254.172, 254.176 (1) and (3), 254.178 (2), and 254.179, and 227.11 (2), Stats.

DHS 182: Sections 254.151 and 227.11 (2) Stats.

DHS 251: Sections 49.02 (7m) and 227.11 (2), Stats.

c. Statute/s or rule/s that will affect the proposed rule or be affected by it

None.

5. Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources

The estimated amount of time for staff to develop the rule is 2,080 hours.

6. Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule

DHS 1: County health departments.

DHS 10: The Department, Family Care managed care organizations, Family Care members, and ombudsmen.

DHS 13: All specified Department-licensed, certified, approved or registered entities and all persons employed by or under contract with an entity and who have access to the entity's clients and who are under the entity's control.

DHS 40: Certified day treatment program providers and children with mental illness who enroll in day treatment services

DHS 82: Adult family home licensees and residents of adult family homes.

DHS 83: Community-based residential facility licensees and residents of community-based residential facilities.

DHS 89: Residential care apartment complex licenses and tenants of residential care apartment complexes.

DHS 101 to 108: the Department, Medicaid members, managed care organizations, health maintenance organizations, counties, and Medicaid providers including ambulatory surgical centers, durable medical equipment providers, home health providers, nurse anesthetists, occupational therapists, outpatient mental health and substance use disorder providers, personal care providers, physical therapists, physicians, portable x ray providers, private duty nurses, and rehabilitation agencies

DHS 116: Pediatric specialty clinics, physicians, hospitals

DHS 118: Emergency medical services providers and personnel, medical directors, ambulance service providers, hospitals, and health care professionals.

DHS 124: Hospital licensees and hospital patients.

DHS 132: Nursing home licensees and nursing home residents.

DHS 134: Facilities serving people with developmental disabilities and residents of facilities serving people with developmental disabilities.

DHS 150: None. Grants to small businesses under this program are past the sunset date, and no entities are subject to these provisions anymore.

DHS 153: The Department, hemophilia home care providers, and hemophilia home care program members.

DHS 163: Certified lead companies, abatement contractors, lead risk assessors and inspectors, renovation contractors, lead training providers, local health departments, and housing agencies.

DHS 182: Local health departments and non-profit applicants for funding.

DHS 251: The Department and counties.

7. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule

- 8 USC 1611: *see* analysis of proposed policies for s. DHS 103.03 (2).
- 42 USC 1396a(a), 1396b(v)(4): *see* analysis of proposed policies for ss. DHS 101.03 (23) and 103.03 (2).
- 40 CFR 745.103: *see* analysis of proposed policies for s. DHS 163.03 (61).
- 42 CFR 416: *see* analysis of proposed policies for s. DHS 105.49.

- 42 CFR 435.1010: *see* analysis of proposed policies for ss. DHS 101.03 (129m), 101.03 (149m), and 103.01 (1) (b).
- 42 CFR 435.1102, 435.1103, and 435.1110: *see* analysis of proposed policies for s. DHS 103.11.
- 42 CFR 435.4: *see* analysis of proposed policies for s. DHS 102.03 (3) (c).
- 42 CFR 435.406: *see* analysis of proposed policies for s. DHS 103.03 (2).
- 42 CFR 435.407: *see* analysis of proposed policies for s. DHS 102.03 (3) (f).
- 42 CFR 435.603: *see* analysis of proposed policies for ss. DHS 101.03 (65), (96), 102.01 (5) (a) and (b), 103.04 (5) and (7), and 103.05 (1) (b) to (e) and (5).
- 42 CFR 435.831(d) and (e): *see* analysis of proposed policies for s. DHS 101.03 (94r) and (152m).
- 42 CFR 435.905: *see* analysis of proposed policies for s. DHS 102.01 (4).
- 42 CFR 435.907(a): *see* analysis of proposed policies for ss. DHS 101.03 (15), 102.01 (1) and (7), and 102.04 (1).
- 42 CFR 435.910: *see* analysis of proposed policies for ss. DHS 102.03 (3) (d) and (f), and 103.03 (4).
- 42 CFR 435.916: *see* analysis of proposed policies for s. DHS 102.04 (3) (c) and (d).
- 42 CFR 435.952: *see* analysis of proposed policies for s. DHS 102.03 (1).
- 42 CFR 435.956: *see* analysis of proposed policies for s. DHS 102.03 (1) and (3) (b).
- 42 CFR 438.334, 438.364, 438.66, 438.68 and 438.370: *see* analysis of proposed policies for s. DHS 10.44.
- 42 CFR 438.400, 438.402, 438.404, 438.406, 438.408, and 438.410: *see* analysis of proposed policies for ss. DHS 10.51, 10.52, 10.53, 10.55, and 10.56.
- 42 CFR 438.66: *see* analysis of proposed policies for ss. DHS 10.42 (2) and 10.44.
- 42 CFR 438.68: *see* analysis of proposed policies for ss. DHS 10.43 (2) and 10.44.
- 42 CFR 447.52(h) and 447.56(a)(1)(v) and (viii): *see* analysis of proposed policies for s. DHS 104.
- 42 CFR 455.104 and 455.450: *see* analysis of proposed policies for s. DHS 105.01 (3).
- 42 CFR 455.23: *see* analysis of proposed policies for s. DHS 108.02 (9) (d).
- 42 CFR 485.50 to 485.74: *see* analysis of proposed policies for s. DHS 105.34.
- Federal Medicaid Home Health Final Rule (CMS-2348-F): *see* analysis of proposed policies for ss. DHS 107.11 (1) (c), (2) and (5), 107.24 (2) (c), 107.12, 107.24, 107.112, and 107.113.
- Medicaid and CHIP managed care rule (CMS-2390-F): *see* analysis of proposed policies for s. DHS 10.23 (6) (a).
- Parity in Mental Health and Substance Use Disorder Services Final Rule (Parity Rule) (81 FR 18390) : *see* analysis of proposed policies for ss. DHS 107.13 (2) (a) 6. and 7., (2) (b) and (c) 4., (3) (a) 4. and 7., and (b).

8. Anticipated economic impact, locally or statewide

The proposed rules are not anticipated to have an economic impact.

9. Agency contacts

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