

STATEMENT OF SCOPE

WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 129

RELATING TO: Nurse aide training program requirements

RULE TYPE: Permanent

SCOPE TYPE: Original

FINDINGS OF EMERGENCY: N/A

SUMMARY

1. Description of rule objective/s

The objective of this proposed rule is to revise portions of DHS 129 to comply with 2019 Wis. Act 185 (“Act 185”), which amended s. 146.40 (3), Stats., regarding the length of instructional programs for nurse aide training.

2. Existing policies relevant to the rule

Section 146.40 (3), Stats., requires that the Department of Health Services (“the Department”) establish standards, by rule, for the approval of instructional programs for individuals applying to be nurse aides in the state of Wisconsin. Section 146.40 (3g), Stats., requires that the Department establish standards, by rule, for the approval of instructional programs for nurse aides who have successfully completed an instructional program for nurse aides in another state that, when combined with instruction received from another state, provide instruction that is substantially equivalent to instruction received through a program developed under s. 146.40 (3), Stats.

Rules previously promulgated by the Department require that, before a nurse aide can be employed in Wisconsin, they must complete 120 hours of instruction, including 32 clinical hours, through a Department-approved program. See ss. DHS 129.03 (30m) (a) and 129.07 (2) (b). An individual who has completed nurse aide training in another state may be approved if they complete an instructional program—referred by rule as the “45-hour training program in DHS 129.03 (30m) (b)—which, combined with the instruction received in the other state, amounts to receiving substantially the same instruction as Wisconsin’s 120-hour training program.

3. Policies proposed to be included in the rule

Act 185 added an additional requirement in s. 146.40 (3), stating that “[t]he department may not require an instructional program to exceed the federally required minimum total training hours or minimum hours of supervised practical training under 42 CFR 483.152 (a).”

42 CFR 483.152 (a) provides that “[f]or a nurse aide training and competency evaluation to be approved by the State, it must, at a minimum . . . [c]onsist of no less than 75 clock hours of training.” At least 16 hours of those 75 hours must be supervised practical training.

The Department proposes to revise portions of DHS 129 in order to make the required minimum number of training hours consistent with the federally required minimum total training hours under 42 CFR 483.152 (a).

4. Analysis of policy alternative

There are no alternatives to rulemaking. Section 146.40 (3), Stats., as amended by Act 185, requires that the department amend current rules that require a number of training hours in excess of the federally required minimum.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The Department’s authority to promulgate the proposed rule is provided in ss. 146.40 (3) and (3g) and 227.11 (2), Stats.

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

Section 227.11 (2), Stats:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

Section 146.40 (3), Stats.:

Except as provided in sub. (4d), the department shall approve instructional programs for nurse aides that apply for, and satisfy standards for, approval that are promulgated by rule by the department. The department may not require an instructional program to exceed the federally required minimum total training hours or minimum hours of supervised practical training under 42 CFR 483.152 (a). The department shall review the curriculum of each approved instructional program at least once every 24 months following the date of approval to determine whether the program continues to satisfy the standards for approval. Under this subsection, the department may, after providing notice, suspend or

revoke the approval of an instructional program or impose a plan of correction on the program if the program fails to satisfy the standards for approval or operates under conditions that are other than those contained in the application approved by the department.

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

Section 146.40 (3), (3g), and (5), Stats.

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

The Department will spend approximately 100 hours on rulemaking.

7. 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

The proposed rule would affect nurse aide training programs, including the Wisconsin Technical College System, nursing homes, hospitals, home health agencies, hospices and private programs

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

Similar federal regulations are located at 42 CFR 483.150 through 483.156. The federal regulations establish the minimum requirements that must be met by states for the review and approval of nurse aide training and competency evaluation programs. The requirements establish the minimum number of hours of training, qualification of the instructors, curriculum and content of the nurse aide competency evaluation.

9. Anticipated economic impact, locally or statewide

The proposed rules are anticipated to have little to no economic impact if promulgated.

b

Pat Benesh

Division of Quality Assurance

(608) 264-9896