

Publication Date: November 3, 2008
Effective: November 3, 2008 through April 1, 2009
Hearing Date: January 27, 2009
Extension Through: June 30, 2009

**ORDER OF THE DEPARTMENT OF HEALTH SERVICES
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Health Services hereby adopts emergency rules to amend s. HFS 10.23 (2) (d) 2., relating to confidentiality requirements of the Family Care program that prohibit benefit specialists from disclosing personally identifying information about a client without the client's informed consent, unless required by law.

FINDING OF EMERGENCY

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

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

Amending s. HFS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

SUMMARY OF EMERGENCY RULE

Statutes interpreted: Sections 46.90, 55.02, 55.043, Stats.

Statutory authority: Sections 46.288 (1) and 227.11 (2) (a), Stats.

Explanation of agency authority:

The department's responsibilities for adult protective services are outlined under s. 55.02, Stats., and include requirements for the department to develop and operate a coordinated, statewide system for protective services and protective placements in cooperation with county departments. Section 55.01 (6r), Stats., defines protective services to include identification of individuals in need of services to keep the individual safe from abuse, neglect or financial exploitation.

The department is required under s. 46.288 (1), Stats., to promulgate as rules prescribing the standards for performance by resource centers and for certification of care management organizations, including requirements for maintaining quality assurance and quality improvement. Section 227.11 (2) (a), Stats., provides the department, as a state agency, with general rulemaking authority interpreting the provisions of any statute enforced or administered by the department if the department considers it necessary to effectuate the purpose of the statute.

Related statute or rule:

See the "Statutes interpreted" and "Statutory authority" sections of this emergency order.

Plain language analysis:

Chapter HFS 10 is the department's rule that guides the implementation of the department's Family Care program. Included in these provisions are standards for confidentiality which prohibit disability benefit specialists from disclosing personally identifying information about a client without the client's consent unless required by law. Because disability benefit specialists are permissive reporters, and thus not required to report abuse, neglect, or financial exploitation of elder

adults and adults at risk under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., s. HFS 10.23 (2) (d) 2., effectively prevents disability benefit specialists from making such disclosures.

In this emergency order the department has revised s. HFS 10.23 (2) (d) 2., by adding language that would permit disability benefit specialists to report abuse, neglect, or financial exploitation of elder adults or adults-at-risk without violating that section's non-disclosure provisions.

Amending s. HFS 10.23 (2) (d) 2., to allow disability benefit specialists to report abuse, neglect, or financial exploitation under ss. 46.90 (4) (ar) and 55.043 (1m) (br), Stats., would help to ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the abuse, neglect and exploitation response systems outlined under ss. 46.90 and 55.043, Stats.

Summary of, and comparison with, existing or proposed federal regulations:

42 USC 3058i (b) 8 (A) directs the state Unit on Aging (DHS-Bureau of Aging and Disability Resources) to promote the development of an elder abuse, neglect, and exploitation (ANE) to, among other requirements, include administrative procedures as may be necessary or appropriate to ensure that the state will deal effectively with ANE cases in the state and, to coordinate the programs with other state and local programs and services for the protection of vulnerable adults, including adult protective services.

Comparison with rules in adjacent states:

Illinois: Illinois does not have a program similar to Family Care.

Iowa: Iowa does not have a program similar to Family Care.

Michigan: Michigan does not have a program similar to Family Care.

Minnesota: Minnesota does not have a program similar to Family Care.

Summary of factual data and analytical methodologies:

In response to questions concerning the role of resource center disability benefit specialists in protective services, the department reviewed and analyzed its administrative rules and policies and determined that changes were needed to ensure that its administrative rules reflect its responsibilities to coordinate and maintain a protective service system for elder adults and adults-at-risk.

Analysis and supporting documents used to determine effect on small business:

The rules do not affect businesses.

Effect on small business:

The rules do not affect businesses.

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

Section HFS 10.23 (2) (d) 2., is amended to read:

HFS 10.23 (2) (d) 2. Notwithstanding sub. (7) (b), a benefit specialist may not disclose information about a client without the informed consent of the client, unless required by law or as permitted under ss. 55.043 (1m) (br) or 46.90 (4) (ar), Stats.