

**ADMINISTRATIVE RULES
REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 08-109**

By the Department of Health Services relating to ch. DHS 10, Family Care

Basis and Purpose of Proposed Rule

Chapter DHS 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 adults at risk under s. 55.043 (1m) (br), Stats., s. DHS 10.23 (2) (d) 2., effectively prevents disability benefits specialists from making such disclosures.

The department proposes to revise s. DHS 10.23 (2) (d) 2., by adding language that would permit disability benefit specialists to report abuse, neglect, or financial exploitation of adults-at-risk without violating that section's non-disclosure provisions. This amendment would help ensure that elder adults and adults-at-risk who may have been abused, neglected, or financially exploited are brought to the attention of the response systems outlined under s. 55.043, Stats.

Responses to Legislative Council Rules Clearinghouse Recommendations

The Department accepted the comment(s) made by the Legislative Council Rules Clearinghouse and modified the proposed rule where suggested.

Final Regulatory Flexibility Analysis

The rules do not affect businesses.

Changes to the Analysis or Fiscal Estimate

Analysis

The Department revised the analysis to make corrections in language as recommended by the Legislative Council Rules Clearinghouse.

Fiscal Estimate

No changes were made to the fiscal estimate.

Public Hearing Summary

The Department began accepting comments via the Wisconsin Administrative Rules Website on January 2, 2009. The Department held one public hearing on January 27, 2009, in Madison. Comments on the proposed rule were accepted until February 3, 2009. Two individuals attended the public hearing.

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted comments on the proposed rule, the position taken by the commenter and whether or not the individual provided written or oral comments.

Name and Address	Position Taken (Support or Opposed)	Action (Oral or Written)
1. Sabrina Fox, Department of Administration	None taken	Observed Only
2. Ellen Henningsen Disability Rights Wisconsin 131 West Wilson Street, #700 Madison, WI 53703	Opposed	Oral and Written
3. Grant Nyhammer Coalition of Wisconsin Aging Groups 2850 Dairy Drive, Suite 100 Madison, WI 53718	None taken	Written

Public Comments and Department Responses

The number(s) following each comment corresponds to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

Rule Provision	Public Comment	Department Response
General Comments	The Coalition of Wisconsin Aging Groups (CWAG) requested clarification between disability benefit specialists and elderly benefit specialists. <p style="text-align: center;">3</p>	The Department revised the rule language to clarify that the proposed rule changes apply to disability benefit specialists only. The Department also created a definition for “disability benefit specialist”.
DHS 10.23 (2) (d) 2.	Disability Rights Wisconsin (DRW) expressed concern about benefit specialists having “blanket authority” to report abuse, neglect or financial exploitation based on confidential information that is gathered from clients for the purposes of helping the clients obtain benefits without an analysis of risk. DRW questioned the necessity for the proposed changes permitting disability benefit specialists to report abuse, neglect or financial exploitation because they believe that in most situations abuse, neglect, or financial exploitation is witnessed by others who are permissive or	Data from across the United States shows that abuse to adults-at-risk and elders are greatly under-reported. Many states have recently amended laws to require mandatory reporting by many professionals in order to increase reporting and thereby protect these “silent victims” from greater harm. The Department understands the confidentiality of the relationship between a disability benefit specialist (as well as doctors, social workers and others who are limited required reporters) and their

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	<p>mandatory reporters.</p> <p>DRW requested language from s. 55.043 (1m) (b), Stats., specifying conditions that must exist before disability benefit specialists would report abuse, neglect or financial exploitation.</p> <p>The Coalition of Wisconsin Aging Groups agree with the comments and proposals made by DRW, and believe the arguments apply equally to the elderly benefit specialist program.</p> <p style="text-align: right;">2, 3</p>	<p>clients. This rule amendment simply allows permissive reporters to report in order to protect the health and safety of Wisconsin’s most vulnerable adults.</p> <p>The Department revised the proposed rule and added the language suggested by DRW, which specifies the conditions under which reporting should occur. In addition, as previously stated in its response in the “General Comment” section to CWAG’s comment, the Department revised the proposed rule to clarify that the proposed rule changes apply to disability benefit specialists only.</p>