

Report From Agency

**ADMINISTRATIVE RULES
REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 09-107**

By the Department of Health Services relating to Ch. DHS 105, Personal Care Providers, Ch. 106, Provider Rights and Responsibilities, Ch. DHS 133, Home Health Agencies

Basis and Purpose of Proposed Rule

Section 49.45 (2) (a) 11., Stats., authorizes the Department to establish criteria for certification of providers of Medical Assistance, and to certify providers who meet certification criteria and promulgate rules to implement the statute. Section 49.45 (10), Stats., authorizes the Department to promulgate rules consistent with its duties in administering Medical Assistance, including its duties relating to reimbursement for personal care services by certified providers. Section 49.45 (42) (c), Stats., allows the Department to charge a fee to certify a provider of personal care services that is not an independent living center (ILC), county department, a federally recognized American Indian tribe or band in Wisconsin or a licensed home health agency.

The Department proposes standards by which to certify freestanding personal care agencies, county departments, home health agencies, federally recognized American Indian tribes or bands in Wisconsin, and Independent Living Centers as personal care providers. The proposed rules include certification and fee requirements for persons that want to directly bill and be reimbursed by the Medical Assistance program for the personal care services provided to recipients of Medical Assistance. The rules include new provisions that all personal care providers must follow.

Responses to Legislative Council Rules Clearinghouse Recommendations

The Department accepted the comments made by the Legislative Council Rules Clearinghouse and modified the proposed rule where suggested.

Final Regulatory Flexibility Analysis

The proposed rule will affect at least 10% of the small businesses affected by the rule, but the rules will not have a significant economic impact on those businesses.

Changes to the Analysis or Fiscal Estimate

Analysis

The Department included information concerning requirements for branch office approval and fees and requirements for counties, ILCs and federally recognized American Indian tribes or bands to provide identifying information about the personal care provider and those agencies and individuals that provide Medicaid personal care services through a contract with the personal care provider.

Fiscal Estimate

No changes were made to the fiscal estimate.

Public Hearing Summary

The Department began accepting public comments on the proposed rule via the Wisconsin

Administrative Rules Website on December 11, 2009. One public hearing was held in Madison on February 3, 2010. The Department accepted comments on the proposed rule until 4:30 pm on February 4. A total of 9 persons attended the public hearing.

The Department held a second public hearing in Madison on May 12, 2010. The Department began accepting public comments via the Wisconsin Administrative Rules Website on April 6, 2010. The Department accepted comments on the proposed rule until 4:30 pm on May 13, 2010. No comments were received via the Department's website or at 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. Laurie L. Lane 3262 Church Street St 1 Stevens Point, WI 54481	None taken	Observer only
2. Stephanie Noel, Quality Assurance and Program Development Coordinator New Health Services 2020 W. Wells Street Milwaukee, WI 53233	None taken	Observer only
3. Jean Rumachik, Director of Home Care Society's Assets, Inc. 5200 Washington Ave. Racine, WI 53406	None taken	Oral and written
4. Michael Blumenfeld 16 N. Carroll Street Suite 800 Madison, WI 53703	None taken	Observer only
5. Burton A. Wagner 22 E. Mifflin Street Suite 600 Madison, WI 53703	None taken	Oral and written
6. Amy Weiss Gemini Cares, Inc. 840 Enterprise Drive Slinger, WI 53086	Support	Oral
7. Jody Krainer Milwaukee Center for Independence 2020 W. Wells Street Milwaukee, WI 53233	None taken	Observer
8. Jennifer Fasula Midstate Independent Living Consultants, Inc. 3262 Church Street Stevens Point, WI 54481	Oppose	Oral
9. Ginger Reimer Independence First, WPSA 540 South 1 st Street	None taken	Observer

Name and Address	Position Taken (Support or Opposed)	Action (Oral or Written)
Milwaukee, WI 53204		

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 comment	<p>Is there a requirement in the rule that addresses how an agency can provide supervision or management to an offsite or satellite location? Is there a requirement in the rule that pertains to supervision of offsite or satellite offices? 6</p>	<p>The proposed rule did not include provisions related to supervision of offsite or satellite locations. However, based on experience with other programs that provide services to clients statewide, the Department has amended DHS 105.17 and added clarifying language to give the Department the ability to require separate approval of a branch office if the Department determines that the branch office, because the volume of services provided or the distance between the branch office and the parent agency, cannot adequately share supervision and administration with the parent agency. The Department further amended the proposed rule in response to comments from providers of personal care services and identified requirements that may be satisfied by policies and practices that are adopted by the entity that owns or controls the agency and that are applicable to other required offices.</p>
General comment	<p>The commenter questions why the Department went forward with the emergency rule when Independent Living Centers said they would be able to meet the needs of the clients in Wisconsin. 8</p>	<p>2009 Act 28, the 2009-11 biennial budget bill, expanded the types of entities that can be certified by the Department as personal care services providers reimbursable by Medical Assistance. Section 49.45 (42) (d) 3. e., Stats., under rules promulgated by the department. Therefore, types of entities other than those that historically have provided MAPC (ILCs, county agencies, tribes and home health agencies) are now legally entitled to apply for certification to provide these services. If DHS did not go forward with the administrative rules DHS would have no standards to apply to this new class of MAPC agencies.</p>
General comments	<p>There are inconsistencies between DHS 105.17 and the Family Care requirements related to visits, record keeping and infection control. However, the commenter states that no changes need to be made to DHS 105.17.</p>	<p>No response necessary.</p>

	<p>Under family care, RN oversight and supervisory visits and physician orders are not always required. Some managed care organizations have advised providers that they do not need physician orders or nurse supervisory visits.</p> <p>5, 6</p>	
General comments	<p>Since the inception of the Medical Assistance personal care program on July 1, 1988 the rules only applied to persons funded by Medicaid. On December 10, 2009 the Wisconsin Personal Services Association (WPSA) was informed by the Department that the rules apply to all pay sources.</p> <p>WPSA is concerned about the Department's intent to apply the rule to recipients of service that are not eligible for medical assistance. Chapter DHS 101 – 108 provide guidance and limitations of the medical assistance program. Individuals, who are not a part of the medical assistance program and pay for their service directly through some other third party payer, should not be subject to the controls and limitations imposed on medical assistance recipients and the related costs.</p> <p>The commenter would like clarification as to whether the rule will apply to all funding sources or only Medicaid recipients. If the rule is applied to all funding sources some providers may drop out of the program because they can not pay the costs associated with physician orders, nurse supervisory visits, etc., for non Medicaid clients.</p> <p>3, 5, 8</p>	<p>The provisions of ss. DHS 105.17 and DHS 107.112 apply to all clients who receive personal care services regardless of pay type. (When services that would otherwise be regarded as personal care are provided as supportive home care (SHC) services under any of the Home and Community-based Services Waivers, including fee-for-service waivers like CIP and Family Care, the managed care waiver, the SHC services are provided under separate SHC Medicaid waiver provider standards rather than these rules.)</p> <p>To respond to concerns related to costs to comply with the rule for non Medicaid recipients the Department has amended s. DHS 105.17 (2) (b) 2. to no longer require physician orders for personal care services for clients who are not Medicaid recipients and has created s. DHS 105.17 (1n) (d) 2. to allow clients who are not Medicaid recipients to waive the requirement for the 60 day RN supervisory review and visit.</p>
DHS 105.17 (1w) (f) 2.	<p>There is an inconsistency between DHS 133, Home Health Agencies rule and DHS 105.17 Personal Care provider rule. DHS 133.09 (3) (a) 2. requires the home health agency to provide a written notice of discharge at least 10 working days in advance of discharge. DHS 105.17 (1w) (f) 2. requires a written notice of discharge at least 14 calendar days in</p>	<p>The Department has amended s. DHS 105.17 (1w) (f) 2. to be consistent with s. DHS 133.09 (3) (a) 2.</p>

	advance of discharge. 3	
DHS 105.17 (2) (b) 5.	Amend the provision to read, "Give the personal care worker instructions about the services to be performed and arrange for an appropriate person to demonstrate to the personal care worker how to perform the services." 5	The Department has amended s. DHS 105.17 (2) (b) 5. as requested by the commenter.

