

**FINAL PROPOSED ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT PERMANENT RULES**

The Wisconsin Department of Health Services proposes an order to create ch. DHS150, relating to grants for workplace wellness programs, and relating to small businesses.

RULE SUMMARY

Statute interpreted

See the “Statutory authority” section.

Statutory authority

Sections 227.11 (2) (a) and 250.21 Stats.

Explanation of agency authority

Section 227.11 (2) (a) reads: 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.

Section 250.21 (2), (3), and (4) reads:

(2) **WORKPLACE WELLNESS PROGRAM GRANTS.** Subject to the limitations provided under sub. (3) and after the department's approval of the application, from the appropriation account under s. 20.435 (1) (bn), the department shall award a grant to each applicant who provides a workplace wellness program to any of the applicant's employees who are employed at a small business in this state in an amount not to exceed 30 percent of the amount that the applicant paid during the year to provide such a program, not including any amount paid to acquire, construct, rehabilitate, remodel, or repair real property.

(3) **LIMITATIONS.** The maximum amount of the grants that may be awarded to all applicants in any fiscal year is \$3,000,000. No applicant may be awarded a grant under this section for a workplace wellness program in existence before March 15, 2014. No applicant may be awarded more than one grant under this section. No grants may be awarded under this section after December 31, 2018.

(4) **ADMINISTRATION.** A person wishing to receive a grant under this section shall apply for a grant in the manner prescribed by the department. An applicant shall include with the application an itemized list of the applicant's expenditures for providing a workplace wellness program. The department shall promulgate rules to administer this section.

Related statute or rule

Section 20.435 (1) (bn), Stats.

Plain language analysis

Section 250.21, Stats., requires the department to award to businesses with 50 or fewer employees, one time grants for up to 30% of the costs, excluding amounts paid to acquire, construct, rehabilitate, remodel, or repair real property, paid during the year, to provide for its employees, a workplace wellness program defined under s. 250.21 (1) (c), Stats., as a health or fitness program that includes health risk assessments and one or more of the following programs or services:

- Chronic disease prevention.
- Weight management.
- Stress management.
- Worker injury prevention programs.
- Health screenings.
- Nutrition education.
- Health or fitness incentive programs.
- Vaccinations.
- Employee physical examinations.

The legislature under s. 250.21 (3), Stats., provides that the maximum amount that the department award to all applicants in any fiscal year is \$3,000,000. Section 250.21 (3), Stats., further provides that the department may not award grants for workplace wellness programs in existence before March 15, 2014, and sunsets grant disbursements on December 31, 2018.

The department is required under s. 250.21, (4), Stats., to establish rules to administer workplace wellness program grants. The department proposes to establish, by rule, an application process and application review criteria.

The department proposes to grant an award of 30% or \$15,000 whichever is less, of allowable costs to applicants with complete applications for costs, except excluded costs, paid by the small business in any 12-month period, within the grant funding period, as that phrase is defined in proposed s. DHS 150.02 (5). Grants may be awarded for expenses in the following categories:

1. Personnel/Staff Time
2. Health risk assessment
3. Education programs
4. Behavior change programs (campaigns, challenges, etc.)
5. Equipment
6. Incentives (cash, prizes, etc.)
7. Contracted services

Normal costs for a comprehensive workplace wellness program average about \$300 per employee. Based on that figure, an employer with the maximum 50 employees would generate costs of \$15,000. With potential higher costs for personnel, contractual services and purchasing of equipment, the department is setting a maximum award for a single application at \$15,000. If the \$3,000,000 appropriation account under s. 20.435 (1) (bn), Stats., is depleted in a state fiscal year before all of the applicants are fully paid, the department proposes to put the applicants in the queue for payment in the next state fiscal year. If any application for a grant is not fully paid in a state fiscal year because the amount of the grant to be issued would be greater than the remaining funds in that state fiscal year, the department will pay the balance of the grant from the appropriation of the following state fiscal year. In the final year of the grant funding period, applications must be received by October 31, 2018 in order to be reimbursed before the grant funding period ends on December 31, 2018.

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

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the rules.

Comparison with rules in adjacent states

Illinois:

There appears to be no existing or proposed regulations in Illinois that address the activities to be regulated by the proposed rules.

Iowa:

There appears to be no existing or proposed regulations in Iowa that address the activities to be regulated by the proposed rules.

Michigan:

There appears to be no existing or proposed regulations in Michigan that address the activities to be regulated by the proposed rules.

Minnesota:

There appears to be no existing or proposed regulations in Minnesota that address the activities to be regulated by the proposed rules.

Summary of factual data and analytical methodologies

The department formed an advisory committee to help develop the proposed rules. The committee included: one or more representatives from the Wisconsin Manufacturers and Commerce, Wisconsin – National Federation of Independent Business, Wellness Council of Wisconsin, local health departments, Eau Claire Chamber of Commerce, American Heart Association, YMCA, and M3 Insurance. The committee met three times and recommended the content contained in the rules and the related application form. The committee used the knowledge of the group to comply with the law in s. 250.21, Stats., and to make the process easy for small businesses, as defined in s. 250.21 (1), (b), Stats., to apply. The committee reviewed other state rules and processes and used an example from Massachusetts as a starting point to help draft the department’s application form.

When deciding to propose, under s. DHS 150.04 (1) (a), that the department award grants for “costs paid in *any* 12-month period during the grant funding period” instead of “costs *paid during* the year” as provided in s. 250.21 (2), Stats., the department considered the entire statute and determined that paying costs in ‘any 12-month’ period within the grant funding period is more practical and administratively feasible in that the department would avoid any delays in processing applications and distributing the grants that may be caused by department staffing and workload issues. Moreover, the intent of the statute is met by using an ‘any 12-month’ period. The statute states that funding can be provided for costs between March 15, 2014 and December 31, 2018, so it is unlikely that ‘during the year’ is based on a state fiscal year, which is a July to June period. Small businesses would lose months of possible reimbursement if interpreted that way. The same is true if reimbursement is tied to a calendar year. A floating 12-month period meets the intent and is within the language of s. 250.21, Stats., whether the costs were paid by an applicant ‘during the year’ or in ‘any 12-month’ period between March 15, 2014 and December 31, 2018, because an applicant can only receive a one-time grant of no more than 30% of costs paid for a workplace wellness program that is provided between March 15, 2014 and December 31, 2018.

The department’s authority to provide grants for costs that arise in ‘any 12-month’ period during the “grant funding period”, defined in proposed rule s. DHS 150.02 (5) as the period beginning on March 15, 2014 and ending on December 31, 2018, derives from s. 227.11 (2) (a), Stats., which permits the department to “...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...”

Analysis and supporting documents used to determine effect on small business

The proposed rules will impact businesses with 50 or fewer employees that choose to establish a workplace wellness program and apply for a grant, and the employees of such businesses. The proposed rules do not impose regulatory or other requirements on businesses, including small businesses, beyond those required under s. 251.20, Stats. Applying for a workplace wellness grant is voluntary and involves a minimum time commitment to complete the application form. Thus, costs to complete the application are negligible.

Effect on small business

The proposed rules do not impose requirements on businesses, including small businesses.

Agency contact person

Jon Morgan, 608-266-9781, Jonathon.morgan@wi.gov

Statement on quality of agency data

To prepare the text and analysis of the proposed rules, the department relied on the language in ss. 227.11 (2) and 250.21, Stats. Information about the average costs per employee for a comprehensive workplace wellness program was received from Dee Edington, PhD., University of Michigan, a highly respected wellness program ROI expert.

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.

RULE TEXT

SECTION 1. DHS 150 is created to read:

Chapter DHS 150 (title) DHS 150 GRANTS FOR WORKPLACE WELLNESS PROGRAMS

DHS 150.01 Authority and purpose. This chapter is promulgated under the authority of 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 employed in this state.

DHS 150.02 Definitions. In this chapter:

(1) “Applicant” means the small business or that person’s agent applying for a workplace wellness grant under this chapter.

(2) “Complete application” means the workplace wellness grant application form on which all of the required questions on the application form have been answered.

(3) “Department” means the department of health services.

(4) “Excluded costs” means any costs paid by a small business to acquire, construct, rehabilitate, remodel, or repair real property to provide a workplace wellness program to its employees employed in this state.

Note: Section 250.21 (2), Stats., prohibits the awarding of grants for costs to acquire, construct, rehabilitate, remodel, or repair real property to provide a workplace wellness program.

(5) “Grant funding period” means the period beginning on March 15, 2014 and ending on December 31, 2018.

(6) “Small business” has the meaning given in s. 250.21 (1) (b), Stats.

Note: Section 250.21 (1) (b), Stats., reads: “Small business” means a business that has 50 or fewer employees.

(7) “State fiscal year” means the annual period commencing on the first day of July and ending on the succeeding June 30th.

(8) “Workplace wellness program” has the meaning given in s. 250.21 (1) (c), Stats.

(9) “Workplace wellness program grant” or “grant” means the grant specified under s. 250.21, Stats.

DHS 150.03 Application requirements. (1) Only a small business is eligible to apply for a workplace wellness program grant.

(2) To apply for a workplace wellness program grant, the applicant shall apply on an application form supplied by the department. The applicant shall complete the application fully and accurately, including the required questions for contact information; program components; affirmation, and expenditure report. The

applicant shall submit the application to the department. Applications must be received by October 31, 2018 in order to be reimbursed before the grant funding period ends on December 31, 2018.

(3) If requested by the department, the applicant shall provide to the department a receipt for the costs submitted under sub. (2).

Note: An application for a workplace wellness grant can be completed online at <http://www.dhs.wisconsin.gov/physical-activity/Worksite/index.htm>. A paper application can be obtained from the department by download at <http://www.dhs.wisconsin.gov/physical-activity/Worksite/index.htm> or by submitting a written request to Chronic Disease Unit, 1 W. Wilson St, Room 218, Madison, WI 53703.

DHS 150.04 Department action on grant application. (1) The department shall accept grant applications on a continuous basis throughout the grant funding period. Upon receipt of an application, the department shall do all of the following:

(a) Except as provided under par. (b) and sub. (2), issue the small business a grant of 30% of its costs paid in any 12-month period, during the grant funding period, to provide a workplace wellness program, or \$15,000 whichever is less, within 60 calendar days after receiving a complete application for a grant under s. DHS 150.03 (2).

(b) Review and make award decisions on applications in the order that the applications are received. If an application for a grant is received after the \$3,000,000 appropriation account under s. 20.435 (1) (bn), Stats., is depleted for the state fiscal year, the application shall be considered received on the first day of the next state fiscal year. If an application for a grant received in a state fiscal year depletes the \$3,000,000 appropriation account without being fully paid because the amount of the grant would be greater than the remaining funds in that state fiscal year, the department shall pay the balance from the appropriation account of the following state fiscal year.

(c) Request the applicant to provide any missing information or documentation if an application for a grant is not a complete application.

(2) The department may not award a grant under this section if any of the following circumstances apply:

(a) The grant funding period has expired.

(b) The costs submitted for reimbursement are outside the grant funding period.

(c) The costs submitted for reimbursement are excluded costs.

(d) The department previously awarded the small business a grant under this chapter.

(e) The application is not a complete application.

(f) The applicant fails to provide the department with a receipt for costs requested under s. DHS 150.03 (3).

(g) The workplace wellness program was in existence before March 15, 2014.

SECTION 2. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.