

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE CR 18-066

Ch. DHS 95

Basis and Purpose of Proposed Rule

Under the current s. DHS 95.06 (1), use of force in secure facilities must be governed by policies and procedures that establish a "Force Option Continuum." This model dictates the use of a systematic, less adaptable progression of force based on the level of threat facing staff to guide them in the use of force during a disturbance or emergency.

This model has been replaced with "Intervention Options", rendering the current rule out-of-date and at odds with existing training practices. The Intervention Options model was adopted in the Principles of Subject Control Manual (hereinafter "Manual") in 2012. The Manual has been approved by the department and is supported by directors at both the Wisconsin Resource Center and Sand Ridge Secure Treatment Center as the standard training program designed to provide instruction on defensive tactics and use of force, consistent with federal and state guidelines.

Intervention Options emphasizes a dynamic, more adaptable approach to confronting threats, giving staff more discretion on selecting which alternative of force to use based on the specific level of threat. The model is intended to eliminate confusion about how to respond to threats that may not originate or evolve along a linear path, resulting in diminished risk of harm and liability to staff, as well as improved threat response and management. The Intervention Options model uses the term "control alternatives" to include measures to overcome passive resistance, active resistance or their threats from facility detainees. The model uses the term "protective alternatives" to include measures to overcome continued resistance, assaultive behavior or their threats.

The Department also proposes to change the circumstances under which escorted leaves may occur. Under the current rule, superintendents of secure mental health facilities have discretion to grant escorted leaves to patients under limited circumstances. Requests for escorted leaves may be granted for off-site appointments and death-bed visit of relatives, to secure medically necessary health services, and to engage in pre-placement activities pursuant to an approved supervised release plan. Out-of-state escorted leaves are not currently prohibited under ch. DHS 95. However, these present logistical obstacles, require additional resources, and pose risks that secure mental health facilities face difficulty in meeting. To mitigate these challenges, the department proposes to only permit escorted leaves within the state.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The department accepts the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rule where suggested.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

The proposed rules will not have an economic impact on small businesses.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

N/A

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

N/A

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

N/A

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

N/A

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

N/A

Fiscal Estimate/Economic Impact Analysis

N/A

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on March 11, 2019. A public hearing was held on March 22, 2019, in Madison at DHS, 1 W. Wilson St.. Public comments on the proposed rule were accepted until close of business on March 22, 2019. No person attended the public hearing or submitted comments on the proposed rule.

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
No person appeared or registered for or against the proposed rule at the public hearing.	

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		X	
Department response to Rules Clearinghouse recommendations	X		
Final Regulatory Flexibility Analysis	X		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis	X		
Public Hearing Summary	X		
List of Public Hearing Attendees and Commenters	X		
Summary of Public Comments and Department Responses	X		
Fiscal Estimate/Economic Impact Analysis		X	
Revised Fiscal Estimate/Economic Impact Analysis			X
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			X
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			X
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			X
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			X