

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE CR 19-087

Ch. DHS 105.17

Basis and Purpose of Proposed Rule

The department has determined that existing standards contained in s. DHS 105.17 are not adequate to monitor compliance with Medicaid requirements and to prevent fraud, waste, and abuse by PCAs in the Medicaid program. In addition, the department determined that provisions relating to the health, safety, and rights of clients receiving services from PCAs or subcontractors could be strengthened.

The department therefore intends to revise s. DHS 105.17 and proposes changes relating to governing bodies, staff qualifications, minimum age requirements, supervision of personal care workers, quality improvement, facility closure and provider certification.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The Department accepted all of the recommendations from the Legislative Council.

Final Regulatory Flexibility Analysis

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

N/A

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 July 29, 2019. A public hearing was held on August 9, 2019, in Madison, WI. Public comments on the proposed rule were accepted until end of business on August 9, 2019.

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

Registrant	Position Taken (Support or Opposed)
Romeal Quin	None taken
Kentocc Coburn	None taken
Kamyia LeFlore	None taken
Kiante Shields	Support
Laura Braner	None taken
Barb Hayden	None taken
Tabitha Ramminger	None taken
Garfield Williams	None taken
Erin Fabrizius	None taken
Erica Schlicht	None taken
Nicole Mudd	None taken

Summary of Public Comments to the Proposed Rule and the Agency’s response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
<p>105.17 (1n) (d) 1.</p>	<p>1. The rule should not require that the Registered Nurse (RN) observe care provided by personal care worker. This may impinge on the person’s right to privacy and make it difficult for the client to share concerns about the personal care worker with the RN.</p> <p>2. It may also be difficult to coordinate visits with the RN and the personal care worker and to find enough time to observe each personal care worker.</p> <p>3. When evaluating the worker will the RN have the option to use an alternate evaluation when it is obvious that the worker is stressed?</p>	<p>1. The proposed rule requires that the RN conduct the supervisory visit when the personal care worker is providing care to observe and evaluate whether staff is providing care in compliance with the individual’s care plan. Clients who wish to discuss the care provided by the personal care worker can talk with the nurse after the personal worker leaves or contact the agency by phone at a later time.</p> <p>2. The Department understands that, at times, it may be challenging to coordinate the visit but most personal care agencies are already meeting this standard. It is important that the RN observe the provision of care by the personal care worker to ensure the client is receiving the needed services and that the services are provided correctly. This also gives the RN the opportunity to provide counseling to the personal care worker if the care provided is not appropriate.</p> <p>3. The agency would be expected to comply with the code provisions regarding the supervision of the personal care worker. However, nothing would prohibit an agency from providing additional counseling and education to the worker.</p>
<p>105.17 (1n) 2.b.</p>	<p>Requiring that only a registered nurse may train others on a delegated act will increase costs and take independence away from consumers who may be capable of providing the training. Will it be necessary for the nurse to train each new worker on a delegated act? Additionally, it may be necessary to hire additional RNs. It is difficult to hire RNs with current workforce shortages.</p>	<p>The proposed requirement only applies to delegated acts as defined to mean an act that is delegated to an RN or LPN by a physician, podiatrist, dentist or optometrist. Delegated acts from a physician are complex and require a registered nurse to provide the training to the personal care worker to ensure the client is receiving safe and quality care. The proposed provision applies to each new personal care worker.</p>
<p>105.17 (1k) and 105.17 (1e) (j)</p>	<p>1. Adding a requirement that the administrator and a substitute administrator be identified could increase administrative charges for services. The requirements for an administrator are too limiting. What is the definition of “health care related field”? The term “training and experience in health care administration is very vague and could be interpreted differently by individual Department staff.</p> <p>2. Is the agency RN able to also be the administrator or the substitute administrator? Can the administrator who is in charge of an</p>	<p>1. Currently, there is no requirement for a PCA to appoint an administrator responsible for supervising daily operations. The department proposes to establish these standards to ensure that staff is knowledgeable and in compliance with requirements governing PCAs. Existing administrators will not be subject to newly proposed qualification requirements. If the proposed provisions are enacted, the Department will provide additional information on how the requirement may be met to ensure statewide consistency.</p>

	<p>entire Independent Living Center also be the personal care agency administrator?</p> <p>3. The commenter stated that the proposed rule, DHS 105.17 (1k) (b) states, Persons who are the qualified administrator of record with the department of a personal care agency on the effective date of this rule shall be shall be exempt is problematic. The word qualified is not defined in the rule and currently, the Department does not maintain a record of administrators of personal care agencies.</p>	<p>2. The agency RN or the person in charge of an Independent Living Center may be the administrator as long as the person fulfills the requirements of the administrator of the personal care agency.</p> <p>3. The Department application for a personal care agency includes the name of the administrator. The Department will revise the proposed rule to read, Persons who are the administrator of record with the department of a personal care agency on the effective date of this rule shall be shall be exempt from the qualification requirements specified under par. (a).</p> <p>4. The department made the following proposed revision at DHS 105.17 (1e) (j) DHS 105.17 (1e) (j) Provide for a substitute administrator to act in the absence of the administrator. If it is necessary to immediately terminate an administrator or if the agency loses an administrator for other reasons, employ or name a qualified replacement as soon as possible within 90 days of the vacancy. The Department proposed to take out the word qualified because small agencies may not have another person on staff that meets the definition of a qualified administrator and added the second sentence to put a limit on how long an agency can operate without a qualified administrator.</p>
<p>105.17 (1e) (f) to (L)</p>	<p>1. The requirement that the agency adopts written policies and procedures and document that outline agency operations appear to be duplicative of existing rule. Will the policies, procedures and plan be reviewed and approved by the Department? How will the Department ensure consistency between inspectors?</p> <p>2. Will the Department provide a sample plan that can be customized by the entity? Will DQA review that documents and what is the procedure to update or change policies. Will they require resubmittal for re-approval?</p> <p>3. If the agency adds a new service line does the Department need to approve the new service line before the services is provided?</p>	<p>1. The Department does not think that the provision is duplicative. Developing agency policies and procedures that outline the agency operation is different than a written plan that describes the process from referral through delivery of services and follow-up. Policies and procedures will not require approval by the Department. The Department works hard to ensure that the administrative codes are applied consistently in all parts of the state through regular staff training and supervisory review.</p> <p>2. The Department does not plan to develop a sample template but is available to answer questions from personal care agencies regarding this requirement. Revisions to policies and procedures do not need to be submitted to the Department.</p> <p>3. DHS does not need to approve a new service line before the agency offers the service.</p>
<p>105.17 (1e) (g)</p>	<p>If an agency adds a new service does the Department need to approve to add the new service?</p>	<p>No, the agency does not need Department approval to add a new service.</p>
<p>105.17 (1e) (h)</p>	<p>This provision seems misplaced.</p>	<p>The Department thinks the provision is correctly placed. The proposed rule would read: The personal care provider shall do all of the</p>

		following: Oversee the management of the agency. The proposed rule would require that the personal care provider is responsible for overseeing the management of the agency.
105.17 (3) (a) 4.	This requirement is vague and could be interpreted differently by staff of the Department.	The Department chose not to require specific educational requirements for personal care workers so not to unreasonably limit individuals who would be eligible to provide care in a personal care agency.
105.19 (7) (b)	What level of assistance is required in arranging continuity of care?	Agency assistance would consist of providing current clients with a list of Personal Care Agencies in the area and their contact information.
105.17 (6)	What would the Quality Assessment and Assurance Committee evaluate? Will the Department establish guidelines for the assessment and assurance review?	<p>Personal care agencies would identify issues and concerns regarding their operations for review and analysis through quality assessment and assurance activities.</p> <p>The Department does not have plans to establish guidelines in this area but is available to answer questions from personal care agencies regarding this requirement.</p>
	Will there be a place to review questions and answers once the commenting period is complete? When is the revised rule expected to be put in place?	The questions and answers received during the commenting period will be posted on the DHS Administrative Rules page at: https://www.dhs.wisconsin.gov/rules/permanent.htm We anticipate the rule will be implemented May 1, 2020.

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