

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 1/6/2020
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> DHS 105.14 Adult Day Care Centers	
<b>4. Subject</b> Adult Day Care Centers	
<b>5. Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> N/A
<b>7. Fiscal Effect of Implementing the Rule</b> <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> <b>\$The proposed rule will have no fiscal impact on current providers.</b>	
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>11. Policy Problem Addressed by the Rule</b> Adult day care providers offer services for part of a day, in a group setting, to adults who need an enriched health-supportive or social experience, and who may need assistance with activities of daily living, supervision, or protection. These may include personal care and supervision, meals, medical care, transportation, and activities designed to meet physical, social, and leisure time needs.  Adult day care providers do not need to be licensed or certified to operate in Wisconsin. However, certification as an MA provider is required, under both state (s. 49.45 (47) (b), Stats.) and federal (42 CFR 441.352 (a) (1) and (2)) law, for providers that wish to receive reimbursement by MA for adult day care services provided to MA recipients.  Adult Day Care Centers (ADCC) are either free-standing, or housed in nursing homes or multi-use facilities such as churches, schools, or senior centers. ADCCs provide a necessary link and resource for older adults who either reside in their own homes or come to the center for part of the day from assisted living facilities or other settings. There are currently 124 ADCCs in Wisconsin.  In 1990, the Department articulated interim requirements for ADCCs seeking MA reimbursement. Pursuant to the directive given by the Legislature in s. 49.45 (2) (a) 11. b., Stats., the Department proposes to establish these requirements by rule, in DHS 105.14. There are no reasonable policy alternatives to implementing this statutory requirement.	
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> Wisconsin has 124 ADCCs that may be affected by this rule. All ADCCs are certified for Medicaid. The Department formed an Advisory Committee consisting of representatives from the Wisconsin Adult Day Services Association and other ADCC operators. The public was notified of all Advisory Committee meetings pursuant to Wisconsin's Open Meeting law. Committee members prepared initial drafts that were reviewed at the Advisory Committee meetings. In	

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addition, the department requested comments on the economic impact of the proposed rule by publishing a solicitation in the Administrative Register and on its website.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.  
None.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule is anticipated to have little to no economic impact if promulgated.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule  
Pursuant to the directive given by the Legislature in s. 49.45 (2) (a) 11. b., Stats., the Department proposes to establish these requirements by rule, in DHS 105.14. There are no reasonable policy alternatives to implementing this statutory requirement. The rule will also strengthen the Department's ability to ensure the health and safety of participants receiving services in ADCCs.

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16. Long Range Implications of Implementing the Rule

Pursuant to the directive given by the Legislature in s. 49.45 (2) (a) 11. b., Stats., the Department proposes to establish these requirements by rule, in DHS 105.14. There are no reasonable policy alternatives to implementing this statutory requirement. The rule will also strengthen the Department's ability to ensure the health and safety of participants receiving services in ADCCs.

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17. Compare With Approaches Being Used by Federal Government

There appears to be no existing or proposed federal regulation that addresses the criteria for certification of ADCCs to be established by the proposed rule.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Illinois Administrative Code at Title 89 Social Services, Chapter 11 Department on Aging, Part 240 Community Care Program, Section 240.230 Adult Day Services (ADS) requires programs to provide an assessment of the participant's strengths and needs and development of an individual written person-centered plan of care that establishes participant goals for all services to be provided or arranged for by the service provider. Programs are to provide purposeful activities to meet the participant's needs and interests designed to improve or maintain the optimal functioning of the participant. Programs must also provide assistance or supervision of activities of daily living, health-related services including monitoring, nursing intervention and medication administration if needed. A copy of participant rights and responsibilities are to be provided to participants at the time of admission.

There shall be 40 square feet of activity area per participant. The facility shall meet the Illinois Plumbing Code, Accessibility Code, Fire Prevention and Food Services Sanitation Code, the National Fire Protections Association standards and the Americans with Disabilities Act. Room temperature in the facility shall be not less than 70 degrees and not more than 85 degrees by using a heating system, air conditioning or circulating fans. Hot water shall be controlled to not exceed 119 degrees but not less than 100 degrees. Exit areas shall be clear of equipment and debris and equipped with monitoring or signaling devices to alert staff of participants leaving the facility unattended. Service providers shall provide 1 meal at mid-day that meets the Dietary Guidelines for Americans established by the Secretary of Health and Human Services. Minimum ratios of full-time staff are established by code. Staff is required to have 24 hours of training within the first week of employment and include purpose of adult day services, assistance with activities of daily living, dealing with adverse behaviors, recognizing abuse, confidentiality of participant information, universal precautions, fire safety, CPR and understanding Alzheimer's disease and dementia. Staff who hold a valid, active CNA, RN or LPN degree are exempt from training. A minimum of 12 hours of in-services training for continuing education is mandatory annually.

Iowa:

Iowa Administrative Code 481 - Chapter 70 Adult Day Services requires programs to evaluate each prospective participant prior to the participant signing the contractual agreement to determine the participant's eligibility for the

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program including whether the services needed are available. A service plan shall be developed for each participant based on the evaluation conducted and shall be designed to meet the specific service needs of the participant. The program shall provide a hot or other appropriate meal at least once a day or shall make arrangements for the availability of meals in accordance with the Food and Nutrition Board of the National Research Council. Dementia specific programs shall provide staff with a minimum of eight hours of dementia specific education within 30 days of employment. Programs must have a managed risk policy and provide the participant with a copy at the time of admission. The programs shall submit to the department and follow written emergency policies and procedures related to fire safety procedures, regular staff training, fire drills, monitoring and testing smoke control system, participant evacuation procedures for reporting and documentation. The program shall meet building and public safety codes including accessibility regulations related to person with disabilities.

#### **Michigan:**

Michigan Master Standards. C-1 Adult Day Services must complete a uniform preliminary screening and maintain consistent records for all individuals. Screening may be conducted over the telephone. If the screenings indicates that the individual is eligible for Adult Day Services. A comprehensive individual assessment of needs shall be performed before admission to the program. All assessments shall be conducted face to face. The assessment must identify the individual's functional status, supporting resources and needs. The adult day care shall provide directly or make arrangement for transportation, personal care, nutrition, rehabilitation and medical support. The center shall provide one hot meal per eight hours day.

The program shall establish written policies and procedures to govern the assistance given to participant in taking medication. Each program shall employ a full-time program director with a minimum of a bachelor's degree in health or human services field or be a qualified health professional. The program shall provide support staff at a ratio of no less than one staff person for each ten participants. Program staff shall receive orientation training that includes topics specified in the general requirement of all service programs including assessment and observation skills and basic first-aid. In-service training shall be provided twice a year which is designed to increase staff knowledge and understanding of the program, aging process issues, including cultural diversity, dementia, cognitive impairment, mental illness, abuse and exploitation.

Each program shall have first-aid supplies and staff person knowledgeable in first-aid procedures, include CPR, shall be present at all time at the center. Procedures to be following in emergency situation shall be posted each room of the center. Programs shall conduct practice drills or emergency procedure every six months and maintain a record of all practice drills. Each center shall have at least one straight back chair for each participant, lounge chairs or day beds as needed for rest periods, storage space for participants personal belongings, tables, a telephone that is accessible to all participants and special equipment as needed to assist person with disabilities. Each program shall be in compliance with fire safety standards and the Michigan Food Code.

#### **Minnesota:**

Minnesota Administrative Rules 9555.9600 require the program to conduct an intake screening to determine whether the center can serve the person's needs and condition. After conducting the screening the center shall conduct a needs assessment and develop a service plan. The assessment shall include the participant's functional status, psychosocial needs, physical status, nutritional needs and services needed. Each center shall adopt and hold employees accountable for complying a participant's bill of rights. The center shall provide a meal which meets the Food and Nutrition Board of the National Research Council. The center shall offer health services developed in consultation with a registered nurse. The center shall offer a daily structure exercise program for participants and a daily activity program that includes socialization, activities, group projects, arts, craft, and music. Required safety components include a first aid kit, telephone and posted emergency numbers and emergency phone numbers for participants.

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Furniture and equipment shall be in good repair and without sharp points, splinter and paint that contains lead. Areas used by participant must be free from debris, loose plaster peeling paint and litter. Rugs must have a nonskid backing. The center shall have written procedures governing medical emergencies and emergencies cause by fire or weather. The center shall provide 40 square feet for each participant. A minimum of 70 degrees must be maintained in indoor areas. Outside doors and windows used for ventilation must be screened in summer months.

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19. Contact Name

Pat Benesh

20. Contact Phone Number

608 264-9896

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This document can be made available in alternate formats to individuals with disabilities upon request.

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### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Adult day care providers offer services for part of a day, in a group setting, to adults who need an enriched health-supportive or social experience, and who may need assistance with activities of daily living, supervision, or protection. These may include personal care and supervision, meals, medical care, transportation, and activities designed to meet physical, social, and leisure time needs.

Adult day care providers do not need to be licensed or certified to operate in Wisconsin. However, certification as an MA provider is required, under both state (s. 49.45 (47) (b), Stats.) and federal (42 CFR 441.352 (a) (1) and (2)) law, for providers that wish to receive reimbursement by MA for adult day care services provided to MA recipients.

Adult Day Care Centers (ADCC) are either free-standing, or located in nursing homes or multi-use facilities such as churches, schools, or senior centers. ADCCs provide a necessary link and resource for older adults who either reside in their own homes or come to the center for part of the day from assisted living facilities or other settings. There are currently 124 ADCCs in Wisconsin.

In 1990, the Department articulated interim requirements for ADCCs seeking MA reimbursement. Pursuant to the directive given by the Legislature in s. 49.45 (2) (a) 11. b., Stats., the Department proposes to establish these requirements by rule, in DHS 105.14. There are no reasonable policy alternatives to implementing this statutory requirement

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The Department relied on all of the following sources to draft the proposed rule and to determine the impact on small businesses.

1. Wisconsin has 124 ADCCs that may be affected by this rule. All ADCCs are certified for Medicaid. The Department formed an Advisory Committee consisting of representatives from the Wisconsin Adult Day Services Association and other ADCC operators. The public was notified of all Advisory Committee meetings pursuant to Wisconsin's Open Meeting law. Committee members prepared initial drafts that were reviewed at the Advisory Committee meetings. In addition, the Department requested comments on the economic impact of the proposed rule by publishing a solicitation in the Administrative Register and on its website.

2. DHS databases including the ASPEN Information System which contains demographic, licensing, program, and compliance history of ADCCs in Wisconsin.

3. The Department solicited information and advice from individuals, businesses, associations representing businesses, and local governmental units who may be affected by the proposed rule for use in analyzing and determining the economic impact that the rules would have on businesses, individuals, public utility rate payers, local governmental units, and the state's economy as a whole from 12/16/19 - 12/30/19. The Department received no comments.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements

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- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Not applicable.

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5. Describe the Rule's Enforcement Provisions

Section 49.45 (2) (a) 11.b., Stat., directs the Department to promulgate rules to implement the criteria for certification of providers of medical assistance. The enforcement provisions for ADCCs are in the proposed rule.

Wis. Admin. ch. DHS 105.14.07 Department Action (3) MONITORING. The department shall conduct periodic inspections of the ADCC during the period of certification and may, without notice to the operator, visit an ADCC at any time to determine if the ADCC continues to comply with this chapter. The operator shall be able to verify compliance with this chapter and shall provide the department access to the ADCC, its staff, participants and records.

(4) SANCTIONS. (a) Notice of violation. The department shall issue a written notice of violation when it finds that an ADCC is in violation of this chapter or with any federal, state, and local laws and codes that govern the operation of the ADCC, including, but not limited to, space, heating, plumbing, ventilation and lighting systems, fire safety and sanitation requirements. The notice shall explain the grounds for the notice of violation, the sanction to be imposed, if any, and the process for appeal, if any.

(b) Plan of correction. An ADCC may submit a written plan of correction to the department within 10 days after the date of receipt of the notice of violation.

(c) Suspension. The department may summarily suspend the ADCC's certification following procedures in ch. 227, Wis. Stats., when the department finds that participant health, safety or welfare requires emergency action.

(d) Revocation. The department may revoke the ADCC's certification whenever the department finds that the ADCC has failed to maintain substantial compliance with one or more of the requirements set forth in this chapter. Revocation of certification will result in the ADCC being ineligible for Medicaid waiver funds.

(5) APPEALS. (a) Any person whose application for certification is denied under sub. (2) or suspended under sub. (4) (c) or revoked under sub. (4) (d) may request a hearing on that decision under s. 227.42, Wis. Stat.

(b) A request for hearing shall be in writing, shall be filed with the department of administration's division of hearings and appeals and shall be sent to that office so that it is received there within 10 days after the date of the notice under sub. (4) (a).

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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