

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE CR 21-081

Ch. DHS 10, relating to requirements for adult long-term care.

Basis and Purpose of Proposed Rule

The intent of the proposed rule is to take action permitted under s. 105 (1) of 2019 Wis. Act 185 and thereby qualify for increased federal funding under s. 6008 of the Families First Coronavirus Response Act ("FFCRA"), Pub. L. No. 116-127. Section 6008 of FFCRA provides a temporary 6.2 percentage point federal Medical Assistance percentage ("FMAP") increase to each state that maintains continuous eligibility for persons enrolled in Medicaid (unless the person leaves the state or requests disenrollment) and does not increase Medicaid premiums during the federal emergency period defined in par. (1)(B) of s. 1135(g) of the Social Security Act, 42 USC 1320b-5(g), and declared by the United States Secretary of Health And Human Services in relation to the COVID-19 pandemic. The increased FMAP provided to the state under the FFCRA amounts to approximately \$150 million per quarter.

In order to continue complying with section 6008 of the FFCRA and receive approximately \$150 million in federal funding per quarter, the Department has determined that permanent rules that supplant the emergency rules (EmR2121) currently in effect and temporarily suspend certain Medicaid eligibility provisions are necessary so that the Department maintains continuous enrollment of Medicaid recipients during the declared federal emergency period.

Additionally, the rule seeks to align with federally-approved program changes permitted under s. 105 (10) (a) of Act 185, which authorized the Medicaid program to amend program waivers in response to the COVID-19 pandemic. The Family Care program operates under concurrent 1915(b) and 1915(c) waivers, as described by section 1915 of the Social Security Act. See 42 USC 1396n(b)-(c). Based on s. 105 (10) (a) of Act 185, the Department requested, and the Centers for Medicare and Medicaid Services approved, an amendment to the Family Care 1915(c) waiver. This waiver amendment, known as Appendix K: Emergency Preparedness and Response and COVID 19 Addendum, is in effect from March 1, 2020 to no later than six months after the expiration of the federal public health emergency.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The Department accepted all recommendations made by the Rules Clearinghouse and modified the proposed rule order accordingly.

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. No small business appeared at the public hearing.

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.

No changes in the rule were made because no issues were raised by small businesses during the public hearing or economic impact public commenting period.

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

None were received because no issues were raised by small businesses during the public hearing.

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

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

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

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

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

The proposed rule was published for economic impact public comment from September 7, 2021 through September 21, 2021. No comments were received, and no changes were made to the rule's fiscal estimate/economic impact analysis.

Fiscal Estimate/Economic Impact Analysis

No changes were made to the rule's fiscal estimate/economic impact analysis.

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 November 22, 2021. A public hearing was held virtually (with the option to call in) on December 9, 2021, via Zoom. Public comments on the proposed rule were accepted until the end of the day on December 9, 2021. No public comments were received and no testimony was provided.

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 one 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