

Report From Agency

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 23-046

Ch. DHS 1, 10, 13, 40, 82, 83, 89, 101 to 105, 107, 108, 116, 118, 124, 132, 134, 150, 153, 163, 182, and 251, relating to the 2021 biennial review of administrative rules under Wis. Stat. § 227.29.

Basis and Purpose of Proposed Rule

The intent of the proposed rulemaking is to revise rules that the department of health services ("the Department") has identified being in need of revision through the review process required under s. 227.29 (1) and (2), Stats..

Department Response to Legislative Council Rules Clearinghouse Recommendations

The Department accepted the recommendations made by the Legislative Council Rules Clearinghouse and modified the proposed rules where suggested, except as follows:

- Comment 2.n. – The “following requirements” referenced in the proposed creation of s. DHS 103.11 (1d) appeared in the proposed rule through renumbering s. DHS 103.11 (1) (a) to (c), and the existing s. DHS 103.11 (1) (intro.) was renumbered s. DHS 103.11 (1). Subsequent revision based on the Clearinghouse comments have resulted in modifying the proposal to renumber DHS 103.11 (1) (a) to (c) to DHS 103.11 (1e) (a) to (c) (SECTION 149 of the Proposed Rule Order) and creating DHS 103.11 (1e) (SECTION 152 of the Proposed Rule Order).
- Comment 4.a.(3) – The references to Wis. Stat. §§ 49.496 and 49.489, appear to be current and germane to the proposed rules. On September 8, 2023, the Department confirmed with Legislative Council Attorney Margit Kelley via email that this comment appeared to be in error.
- Comment 4.c. – Proposed s. DHS 116.04 (3) (Note 2) includes a website for accessing the form. Section DHS 116.04 (Note 1) includes a physical address and phone number for obtaining the form.
- Comment 5.a. – “Reasonable driving distance” is included in statute without definition. *See* Wis. Stat. § 49.471(8)(d)2.dr.; *see also* 42 CFR 547.310(b)(2)(ii) (using “reasonable access to care” without definition or criteria). The Department has previously left this determination to the discretion of the local agencies, as they are better able to account for what constitutes a reasonable distance based on access to care in the specific locality. For example, in a more populous area a 30-minute drive may be “reasonable,” but in more remote areas, it might take longer than an hour to access health care. The Department prefers to continue to allow local agencies to make this determination.
- Comment 5.c. – 2005 Wis. Act 264 “replac[ed] the definition of ‘infirmities of aging’ with a definition of ‘degenerative brain disorder’” throughout the Wisconsin Statutes. *See, e.g.*, 2005 Wis. Act 264 §§ 18, 19, 22, 23 and 70. The prefatory note to Act 264 states that “[‘Degenerative brain disorder’] is considered to be a more accurate reference to types of organic brain disorders, such as Alzheimer’s disease and Parkinson’s disease, which are not necessarily caused by the aging process.” The Department prefers to use terminology consistent with Wisconsin Statutes, and added a definition of “degenerative brain disorder” to chs. DHS 10 and 101 that define “degenerative brain disorder” consistent with Wis. Stat. § 55.01(1v).
- Comment 5.e. – The comment says that the Department removed “BadgerCare Plus” from the definition of Medical Assistance. The proposed definition includes BadgerCare Plus, which is covered in Wis. Stat. § 49.471, is still included, as the definition cites the “program operated by the department under ss. 49.43 to 49.497.” The reference to Wis. Stat. § 49.665 was removed because BadgerCare was superseded by BadgerCare Plus, *see* Wis. Stat. § 49.471(3)(a).

Final Regulatory Flexibility Analysis

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

No small businesses submitted written public comments or 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 small businesses submitted alternatives to the Department.

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

No reports or estimated costs were prepared because the proposed rules will not have an economic impact on small businesses.

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

There are no estimated costs or anticipated other measures or investments for small businesses because 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

None of those methods were contemplated because the proposed rule will not have an economic impact on small businesses.

Changes to the Rule Analysis or Fiscal Estimate/Economic Impact Analysis

Rule Analysis:

The Department modified the proposed rule Analysis section to address recommendations made by the Legislative Council Rules Clearinghouse. Specifically, the Department elaborated on its authority for certain rule changes, per Comment 1.a, and revised the list of statutes interpreted, per Comment 1.b. The Department also updated the caption based on Comments 2. a. and b., and modifications made based on the Clearinghouse recommendations.

Fiscal Estimate/Economic Impact Analysis:

No changes were made to the fiscal estimate and economic impact analysis.

Public Hearing Summary

The Department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and the Department's Administrative Rules Website on September 5, 2023. A public hearing was held on September 15, 2023, via Zoom for Government. Public comments on the proposed rule were accepted until the close of business on September 15, 2023. No public comments were received and no one appeared at the public hearing.

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 appeared at the public hearing. | N/A |
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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 |