

STATE OF WISCONSIN

DEPARTMENT OF HEALTH AND FAMILY SERVICES

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I, Phyllis J. Dubé, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to home health licensure were duly approved and adopted by this Department on March 22, 2001.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.



SEAL:

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 22nd day of March, 2001.

Phyllis J. Dubé

Phyllis J. Dubé, Secretary
Department of Health and Family Services



ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING, REPEALING AND RECREATING AND CREATING RULES

To amend HFS 133.03 (9), 133.06 (4) (d) 1., 133.10 (1) and 133.20 (4); to repeal and recreate HFS 133.02 (6g), 133.03 (3) (h) (Note), 133.03 (4) (b), 133.03 (8) and (Note), 133.04 (4) and 133.09 (3); and to create HFS 133.02 (5m), 133.02 (6m), 133.02 (8g), 133.02 (8g) (Note), 133.02 (12m), 133.03 (4) (d), 133.04 (2) Note and 133.14 (6), relating to home health licensure.

Analysis Prepared by the Department of Health and Family Services

The Department's rules for licensing home health agencies are found in ch. HFS 133 of the Wisconsin Administrative Code. The rules were originally issued in June 1984 and were substantially revised in November, 1985. Through this rulemaking order, the Department is making changes in the rules to increase funding for this program, incorporate into administrative rules policies currently used by the Department and to define discharge procedures and associated patient rights.

Specifically, the home health agency licensing rules are being revised to:

1. Change the basis for program funding from "annual net income" to "patient fee revenue" pursuant to the authority in 1999 Wisconsin Act 9 amending s. 50.49 (2) (b), Stats.
2. Incorporate existing Department policy expressed in bureau of quality assurance memos and variances into chapter HFS 133 of the Wisconsin Administrative Code. The memos are BQC-94-046, BQC-94-071 and DSL-BQA-99-028.
3. Specify both the home health agency's role and consumers' rights related to discharge from the agency's care.
4. Add a license requirement for home health agencies to serve at least 3 skilled care patients in order to be eligible for initial state licensure.
5. Specify enforcement actions for those home health agencies that are not in compliance with this chapter.

Under the authority vested in the Department of Health and Family Services by ss. 50.49 (2), Stats., the Department of Health and Family Services hereby amends, repeals and recreates and creates rules interpreting s. 50.49, Stats., as follows:

SECTION 1. HFS 133.02 (5m) is created to read:

HFS 133.02 (5m) "Legal representative" means a person who is any of the following:

- (a) A guardian as defined under s. 880.01 (3), Stats.
- (b) A person appointed as a health care agent under an activated power of attorney for health care under ch. 155, Stats.
- (c) A person appointed as an agent to make health care decisions under a durable power of attorney under s. 243.07, Stats.

SECTION 2. HFS 133.02 (6g) is repealed and recreated to read:

HFS 133.02 (6g) "Medical assistance" has the meaning given in s. HFS 101.03 (95).

SECTION 3. HFS 133.02 (6m), 133.02 (8m), 133.02 (8m) (Note) and 133.02 (12m) are created to read:

HFS 133.02 (6m) "Medicare" has the meaning given in s. HFS 101.03 (98).

HFS 133.02 (8m) "Patient fee revenue" means gross patient revenue less the following deductions:

1. Contractual adjustments from medical assistance, medicare, other federal payment sources, and third party payers.
2. Bad debts that cannot be collected from private pay clients.
3. Charitable contributions.

HFS 133.02 (8m) **Note:** Examples of other federal payment sources are the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as authorized under 32 CFR 199, and benefits provided through the Veteran's Administration. An example of a third party payer is a commercial insurer, including a health maintenance organization.

HFS 133.02 (12m) "Statement of deficiency" means a notice of a violation of a requirement of s. 50.49, Stats., or this chapter.

SECTION 4. HFS 133.03 (3) (h) (Note) and HFS 133.03 (4) (b) and (c) are repealed and recreated to read:

HFS 133.03 (3) (h) **Note:** To obtain a copy of the license application form, send your request to the Bureau of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969. The street address is 1 W. Wilson St. in Madison and the telephone number is 608-266-8481. The completed application form should be sent to the same office.

HFS 133.03 (4) (b) 1. Within 90 days after receiving a complete application, the department shall either approve the application and issue a license or deny the application, unless either of the following applies:

- a. The department has not yet completed its investigation; or
- b. The applicant or agency is temporarily unable to conform to all the rules in this chapter.

2. If subd. 1. a. or b. applies, the department may, within the 90-day period in subd. (b) 1., issue a provisional license for a term of 90 days. The department may, upon the agency's request, renew that license for additional 90-day terms not to exceed one year from the original issuance date of the provisional license.

3. During the provisional period specified in subd. 2., the home health agency shall actively serve at least 10 patients requiring skilled nursing care or other therapeutic services in Wisconsin. At least seven of the 10 patients shall be actively receiving skilled services when the home health

agency submits a written request for an on-site licensure survey. At least 3 patients shall be receiving skilled services at the time of the on-site licensure survey.

(c) The department may not charge an additional fee for the original regular license issued to a home health agency that has not had a provisional license.

SECTION 5. HFS 133.03 (4) (d) is created to read:

HFS 133.03 (4) (d) After the department issues an initial regular license, the department may not charge the home health agency an additional licensing fee until the annual, continuing license fee is due. The fee shall be 0.25% of patient fee revenue of the home health agency based on the agency's financial information submitted to the department in the form prescribed by the department, with a maximum fee of \$2,500 and a minimum fee of \$500.

SECTION 6. HFS 133.03 (8) and Note are repealed and recreated to read:

HFS 133.03 (8) HEARINGS. (a) An applicant or home health agency may appeal the following department actions:

1. Denial or revocation of a license.

2. Issuance of a statement of deficiency that results in the imposition of a plan of correction under HFS 133.04 (3) (b) 3. or the imposition of penalties under HFS 133.04 (4) (c).

(b) If a home health agency wants to contest a department action specified in par. (a), it shall file a written request for a hearing under s. 227.44, Stats., with the department of administration's division of hearing within 10 days of receipt of notice of the contested action.

Note: The mailing address of the Division of Hearing and Appeals is: P.O. Box 7875, Madison, WI 53707. The facsimile transmission number is 608-267-2744. The hearing request may be delivered in person to the Division of Hearings and Appeals at: 5005 University Avenue, Room 201, Madison, WI.

SECTION 7. HFS 133.03 (9) is amended to read:

HFS 133.03 (9) REPORTING. Every 12 months, on a schedule determined by the department, a licensed home health agency shall submit to the department an annual report in the form and containing the information that the department requires, including payment of the fee required under s. ~~50.135 (2)(a)~~ 50.49 (2) (b), Stats., and sub. (4) (d). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. If a licensed home health agency that has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

SECTION 8. HFS 133.04 (2) Note is created to read:

HFS 133.04 (2) **Note:** A complaint may be filed by writing the Health Services Section, Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 2969, Madison, WI 53701-2969 or by calling the Wisconsin Home Health Hotline toll free at 1-800-642-6552.

SECTION 9. HFS 133.04 (4) is repealed and created to read:

HFS 133.04 (4) ENFORCEMENT. (a) *Statement of deficiency.* Upon determining that a home health agency is in violation of any requirement of this chapter, the department shall promptly serve a statement of deficiency upon the administrator or other designated representative of the home health agency. The statement of deficiency shall specify the rule violated and state the facts that constitute the violation.

(b) *Plan of correction.* 1. Within 10 working days of receipt of the statement of deficiency, the home health agency shall submit a plan of correction to the department for approval detailing how the agency will correct the violation or how the agency has corrected the violation. The department may require that a plan of correction be submitted for approval within a shorter specified time for violations the department determines may be harmful to the health, safety, welfare, or rights of patients.

2. The department may require the home health agency to modify the proposed plan of correction before the department approves the plan of correction.

3. The department may require a licensee to implement and comply with a plan of correction that is developed by the department.

4. The department shall verify that the home health agency has completed the plan of correction submitted or imposed in par. (b).

(c) *Penalties.* The department may impose any of the following penalties for a violation of a requirement of this chapter:

1. Suspend admissions of new patients until the department has verified that the home health agency has completed the plan of correction under par. (b).

2. Place conditions on the license.

3. Revoke the license as specified in s. HFS 133.03 (7).

SECTION 10. HFS 133.06 (4) (d) 1. is amended to read:

HFS 133.06 (4) (d) 1. Physical health of new employees. Every employee having direct patient contact shall be certified in writing by a physician, ~~or~~ physician's assistant or registered nurse as having been screened for tuberculosis infection and found free from clinically apparent communicable disease within 90 days before beginning work. The employee's certification shall occur within 90 days prior to the employee having direct patient contact.

SECTION 11. HFS 133.09 (3) is repealed and recreated to read:

HFS 133.09 (3) DISCHARGE OF PATIENTS. (a) *Notice of discharge.* 1. A home health agency may not discharge a patient for any reason until the agency has discussed the discharge with the patient or the patient's legal representative and the patient's attending physician and has provided written notice to the patient or the patient's legal representative in the timelines specified in this paragraph.

2. The home health agency shall provide the written notice required under subd. 1. to the patient or the patient's legal representative at least 10 working days in advance of discharge if the reason for discharge is any of the following:

a. Payment has not been made for the patient's care, following reasonable opportunity to pay any unpaid billings.

b. The home health agency is unable to provide the care required by the patient due to a change in the patient's condition that is not an emergency.

3. The home health agency shall provide the written notice under subd. 1. to the patient or the patient's legal representative at the time of discharge if the reason for discharge is any of the following:

a. The safety of staff is compromised, as documented by the home health agency.

b. The attending physician orders the discharge for emergency medical reasons.

c. The patient no longer needs home health care as determined by the attending physician.

4. The home health agency shall insert a copy of the written discharge notice in the patient's medical record.

5. The home health agency shall include in every written discharge notice to a patient or the patient's legal representative all of the following:

a. The reason for discharge.

b. A notice of the patient's right to file a complaint with the department and the department's toll-free home health hotline telephone number and the address and telephone number of the department's bureau of quality assurance.

Note: A complaint may be filed by writing the Health Services Section, Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 2969, Madison, WI 53701-2969 or by calling the Wisconsin Home Health Hotline toll free at 1-800-642-6552.

(b) *Discharge summary.* The home health agency shall complete a written discharge summary within 30 calendar days following discharge of a patient. The discharge summary shall include a description of the care provided and the reason for discharge. The home health agency shall place a copy of the discharge summary in the former patient's medical record. Upon request, the home health agency shall provide a copy of the discharge summary to the former patient, the patient's legal representative or the attending physician.

SECTION 12. HFS 133.10 (1) is amended to read:

HFS 133.10 (1) **REQUIRED SERVICES.** The home health agency shall directly provide or arrange for at least part-time or intermittent nursing services and provide or arrange for home health aide services.

SECTION 13. HFS 133.14 (6) is created to read:

HFS 133.14 (6) **CONTRACTED REGISTERED NURSE SERVICES.** A home health

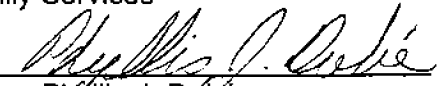
SECTION 14. HFS 133.20 (4) is amended to read:

HFS 133.20 (4) PHYSICIAN'S ORDERS. Drugs and treatment shall be administered by the agency staff only as ordered by the attending physician. The nurse or therapist shall immediately record and sign oral orders and obtain the physician's countersignature within ~~40~~ 20 calendar days.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and
Family Services

Dated: March 22, 2001

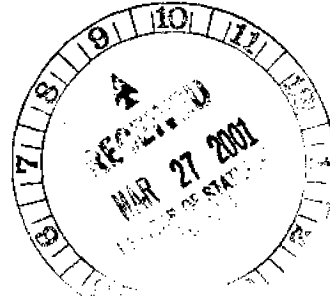
By: 
Phyllis J. Dubé
Secretary

SEAL:



State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary



March 22, 2001

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. HFS 133, relating to home health licensure.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

The effect of the rule changes on small businesses as defined in s. 227.114 (1) (a), Stats., is described on an accompanying page of this filing.

Sincerely,

A handwritten signature in cursive script that reads 'Phyllis J. Dubé'.

Phyllis J. Dubé
Secretary

Enclosure