

The Governor approved this Statement of Scope on August 17, 2015.

STATEMENT OF SCOPE
DEPARTMENT OF HEALTH SERVICES

Rule No.: DHS 145

Relating to: Control of communicable diseases

Rule Type: Permanent

Type of Statement of Scope: Original

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rulemaking is to revise the list of communicable diseases and other notifiable conditions and to update the standards incorporated in the rule by reference.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter DHS 145 establishes a surveillance system for the purpose of controlling the incidence and spread of communicable diseases. This surveillance system consists of timely and effective communicable disease reporting by local health departments, laboratories, health care facilities, schools, day care centers, and others (reporters); methods of intervention to prevent transmission of communicable diseases; means of investigation; and prevention and control of outbreaks by local health officers and the department.

Since 2008, when the list of communicable diseases was last revised, a number of communicable diseases and conditions, including Ebola, valley fever, and dengue, have been determined by the state epidemiologist to be reportable, or have been recommended as reportable at the national level by the Council of State and Territorial Epidemiologists (CSTE) but are not listed in ch. DHS 145. The outdated list makes it difficult for reporters to determine whether to report a disease or condition, and adds to the failure of not reporting diseases not specifically listed.

The department proposes to revise the list of communicable diseases and other notifiable conditions that the state epidemiologist has declared as notifiable conditions, or that have been

added to the list of nationally notifiable conditions by CSTE, which encourages states to establish parallel reporting requirements. The diseases CSTE places under surveillance are typically novel pathogens or those with severe manifestations whose transmission is amenable to control by public health measures. The department may also propose to remove any disease or condition from the list that may no longer be reportable.

The department also proposes to incorporate updated standards by reference, including for methods of communicable disease control, laboratory testing, and treatment. Chapter DHS 145 includes numerous literature citations to standards the department incorporated by reference that are now outdated, and may lead to implementation of inaccurate and possibly harmful recommendations for disease control and prevention. It also obligates the department and local health departments to maintain access to outdated materials to meet public health accreditation requirements.

There are no reasonable alternatives to rulemaking. Without this proposed rulemaking, disease reporters may not submit reports of some communicable diseases, and national communicable disease data may not reflect diseases occurring in Wisconsin, public health surveillance and response to those diseases are diminished, and the rule would be outdated.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 252.02 (1) and (4), Stats., reads:

(1) The department may establish systems of disease surveillance and inspection to ascertain the presence of any communicable disease. Any agent of the department may, with a special inspection warrant issued under s. 66.0119, enter any building, vessel or conveyance to inspect the same and remove therefrom any person affected by a communicable disease. For this purpose, the agent may require the person in charge of the vessel or conveyance, other than a railway car, to stop the same at any place and may require the conductor of any railway train to stop the train at any station or upon any sidetrack, for such time as may be necessary.

(4) The department may promulgate and enforce rules or issue orders for guarding against the introduction of any communicable disease into the state, for the control and suppression of communicable diseases, for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by a communicable disease and for the sanitary care of jails, state prisons, mental health institutions, schools, hotels and public buildings and connected premises. Any rule or order may be made applicable to the whole or any specified part of the state, or to any vessel or other conveyance. The department may issue orders for any city, village or county by service upon the local health officer. Rules that are promulgated and orders that are issued under this subsection supersede conflicting or less stringent local regulations, orders or ordinances.

Section 252.07 (11), Stats., reads:

The department may promulgate any rules necessary for the administration and enforcement of this section, including, if necessary to prevent or control the transmission of mycobacterium tuberculosis, rules that require screening of members of specific groups that are at risk for contracting or transmitting mycobacterium tuberculosis.

Section 254.51 (3), Stats., reads:

The department shall promulgate rules that establish measures for prevention, surveillance and control of human disease that is associated with animal-borne and vector-borne disease transmission.

Section 227.11 (2) (a), Stats., reads: Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 510 hours of staff time will be needed to develop the proposed rule changes.

6. List with description of all entities that may be affected by the proposed rule:

Local health departments; tribal health agencies; health care professionals; personal care personnel; food handlers; health care providers; home health providers; day care providers; education professionals; clinical and diagnostic laboratories ;Wisconsin Department of Public Instruction; and the Wisconsin Department of Children and Families.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There appears to be no existing or proposed federal regulation that addresses the activities to be regulated by the proposed rule.

8. Anticipated economic impact of implementing the rule:

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

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