

The Governor approved this Statement of Scope on November 7, 2016

**STATEMENT OF SCOPE  
DEPARTMENT OF HEALTH SERVICES**

**Rule No.:** DHS 131  
**Relating to:** Hospices  
**Rule Type:** Permanent  
**Type:** Original

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

Not applicable.

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

Prior to 2015 Wisconsin Act 55 (“Act 55”), hospices were required to submit a fee and plan of review to the Department of Safety and Professional Services (DSPS) for any capital construction or remodeling of structures owned or leased for operation of a hospice. Act 55 created s. 50.92 (3m), Stats., which assigned this responsibility to the Department of Health Services (“department”) and directed the department to promulgate rules establishing a fee schedule for plan reviews. The department therefore intends to revise DHS 131 to establish a fee schedule for plan reviews and to update, correct, or remove any outdated rule provisions or cross-references.

**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:**

Section 50.92 (3m), Stats., requires the department to promulgate rules establishing a fee schedule for plan reviews of capital construction and remodeling of structures that are owned or leased for operation of a hospice. The entities that will be affected by the fee schedule are owners or lessees of structures used for the operation of a hospice in Wisconsin. The department does not currently have a fee schedule for plan reviews because prior to Act 55 these fees were paid to DSPS. The department therefore intends to revise DHS 131 to establish a fee schedule for plan reviews, pursuant to Section 50.92 (3m), Stats. There are no reasonable policy alternatives, because the department is required to establish a fee structure by statute. The department also intends to update, correct, or remove any outdated rule provisions or cross-references in order to clarify regulatory requirements.

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

The department’s authority to promulgate rules is as follows:

Section 50.92 (3m), Stats., states:

The department may conduct plan reviews of all capital construction and remodeling of structures that are owned or leased for operation of a hospice. The department shall promulgate rules that establish a fee schedule of its services in conducting the plan reviews under this subsection.

Section 50.95, Stats., states:

Rule-making authority. The department shall promulgate all of the following rules:

Except as provided in s. 50.942, standards for the care, treatment, health, safety, rights, welfare and comfort of individuals with terminal illness, their families and other individuals who receive palliative

care or supportive care from a hospice and the maintenance, general hygiene and operation of a hospice, which will permit the use of advancing knowledge to promote safe and adequate care and treatment for these individuals. These standards shall permit provision of services directly, as required under 42 CFR 418.56, or by contract under which overall coordination of hospice services is maintained by hospice staff members and the hospice retains the responsibility for planning and coordination of hospice services and care on behalf of a hospice client and his or her family, if any.

Wis. Stat. § 227.11 (2), states:

Rule-making authority is expressly conferred on an agency as follows:

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:

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.

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.

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 :**

The department estimates that approximately 120 hours of staff time will be required to promulgate the proposed rule.

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

The proposed rule will affect hospices regulated under ch. DHS 131.

**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 are no existing or proposed federal regulations that address the activities 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.

**Contact Person:**

Pat Benesh, Division of Quality Assurance, 608-264-9896

Patricia.Benesh@dhs.wisconsin.gov