

**PROPOSED ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT PERMANENT RULES**

The Wisconsin Department of Health Services (hereinafter “department”) proposes an order **to repeal** DHS 78.05 (4) and (5), 78.06 (2), and 78.07 (2) (c); **to amend** DHS 78.03 (1), 78.03 (3) through (8), 78.04 (1) (a), (b), (b) (Note), 78.04 (2) (Intro), 78.04 (2) (b) through (f), 78.05 (1) and (3) (a), 78.06 (3), and 78.07 (1); and **to create** DHS 78.03 (10), 78.05 (7), relating to telecommunication assistance for deaf, deafblind, and severely hard of hearing persons.

RULE SUMMARY

Statute interpreted

See the “Statutory authority” section.

Statutory authority

Sections 46.297 (1) to (4), Section 227.11 (2) (a)

Explanation of agency authority

Section 46.297 (1) to (4), Stats., reads:

(1) ASSISTANCE. From the appropriation under s. 20.435 (7) (d), the department shall, subject to the availability of funds, provide assistance to hearing-impaired persons to secure telecommunication devices capable of serving their needs. Except in extraordinary circumstances, the department shall purchase or provide funds for the purchase of telecommunication devices.

(2) ELIGIBILITY. A person is eligible to receive assistance under sub. (1) if all of the following conditions are met:

(a) The person is certified as deaf or severely hearing impaired by a physician, an audiologist licensed under subch. II of ch. 459 or the department.

(b) The adjusted gross income of the person's family is equal to or less than 200% of the poverty line established under 42 USC 9902 (2).

(3) HEARING RIGHTS. Any person aggrieved by a decision of the department under this section has a right to a contested case hearing under ch. 227.

(4) DEPARTMENTAL DUTIES. The department shall:

(a) Promulgate rules necessary for the administration of this section.

(b) Establish application procedures and determine eligibility.

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.

Related statute or rule

None.

Plain language analysis

The Telecommunication Assistance Program (TAP) as defined by s. 46.297, Stats., subject to the availability of funds, provides assistance to income eligible deaf, severely hard of hearing and deafblind persons to secure telecommunication devices capable of serving their needs. Currently TAP provides co-payment assistance to deaf, hard of hearing and deafblind persons in collaboration with the Telecommunication Equipment Purchase Program (TEPP) offered by the Public Service Commission. Under ch. DHS 78, to receive assistance from TAP, individuals must complete a TEPP application form, making it unclear that TAP is a separate and distinct program from TEPP. Chapter DHS 78 also includes application processing procedures, and eligibility requirements.

The processes and procedures currently prescribed in ch. DHS 78 are outdated and do not reflect the program's current needs and objectives, and may not be accurate. The department proposes to update the rules to clarify the distinction between TAP and TEPP; to clarify eligibility requirements; to revise application and processing requirements; to reflect current program operations; and to reflect the changes in technology available to assist the deaf, deafblind and severely hard of hearing persons that have occurred since the rule was last revised in 2003.

Summary of, and comparison with, existing or proposed federal regulations

There appear to be no existing or proposed federal regulations that address state programs assisting deaf, deafblind, and severely hard of hearing persons with the purchase of telecommunication equipment for their homes.

Comparison with rules in adjacent states

Illinois:

The Illinois Telecommunications Access Corporation (ITAC) provides telecommunication equipment to individuals in the state of Illinois that have established telephone service and have their application signed by a medical professional. ITAC is governed by the Illinois Commerce Commission, a Board of Directors and an Advisory Council and is funded through a Telecommunication and Equipment Surcharge that is added to each resident's phone bill. Title 83: Public Utilities; Chapter I: Illinois Commerce Commission; Subchapter F: Telephone Utilities; Part 755 Telecommunications Access For Persons With Disabilities

Iowa:

Telecommunications Access Iowa provides vouchers for "up to 95% of the average cost of specialized telephone category" for deaf, hard of hearing, deaf-blind, and speech impaired individuals. Typically, devices provided by Telecommunications Access Iowa are specialized items that allow individuals to use the phone, or know when the phone is ringing. Telecommunications Access Iowa will also process 15 applications per month that would allow the individual to receive an iPad for distance communication. Telecommunications Access Iowa is a program that is overseen by the Iowa Utility Board. Iowa Chapter 477C.4 Telecommunications devices for the deaf.

Michigan:

There appears to be no existing regulations in the state of Michigan that assists the deaf, deafblind, and severely hard of hearing persons with the purchase of telecommunication equipment for their homes.

Minnesota:

Minnesota's Department of Human Services oversees the Minnesota Telephone Equipment Distribution program. An individual's eligibility is based on their annual gross income. The equipment available through the Telephone Equipment Distribution program includes specialized telephones for the deaf, hard of hearing, deaf-blind, and speech impaired as well as accessories that alert deaf and hard of hearing individuals that a telephone call is being received. Minnesota Rules, Chapter 8775

Summary of factual data and analytical methodologies

The department formed an advisory committee to help develop the proposed rules. The committee met on three occasions to discuss potential impacts of changes to the rule. The committee included stake-holders, customers, and vendors. The department also held regional public listening sessions, to offer the public an opportunity to comment on the proposed rule changes.

Analysis and supporting documents used to determine effect on small business

See "Summary of Factual Data and Analytical Methodologies."

Effect on small business

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

Agency contact person

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Statement on quality of agency data

The department complied with s. 227.14 (2m), Stats., for any data used to draft the rules and analyses.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/> after the hearing is scheduled.

RULE TEXT

SECTION 1. Subsection DHS 78.03 (1), and (3) through (8) are amended to read:

DHS 78.03 (1) "Deaf, deafblind or severely hard of hearing" means a hearing loss significant enough to prevent the individual from ~~using the telephone system~~ accessing distance communication services without technological adaptations that facilitate effective communication in a visual, ~~or audible,~~ or tactile mode.

DHS 78.03 (3) "Household" means a residence unit whose members share a common living arrangement and finances.

DHS 78.03 (4) “Public service commission” or “PSC” means the ~~Wisconsin~~ public service commission of Wisconsin.

DHS 78.03 (5) “TAP manager” means the department’s staff ~~member~~ responsible for ~~developing and implementing TAP~~ overseeing the Telecommunication Assistance Program.

DHS 78.03 (6) “Telecommunication assistance program” or “TAP” means a financial assistance program created by s. 46.297, Stats., for the purpose of making distance communications and telecommunication devices available to individuals who are deaf, deafblind and severely hard of hearing persons who do not have the means to afford these devices.

DHS 78.03 (7) “Telecommunication device” or “device” means any technology needed by ~~a~~ an individual who is deaf, deafblind or severely hard of hearing person to facilitate his or her the individual’s use of a telephone distance communications.

DHS 78.03 (8) “Telecommunication Equipment Purchase Program” or “TEPP” means the financial assistance program under s. 196.218, Stats., and administered by the public service commission of Wisconsin under s. PSC 160.071 ~~to provide financial assistance to customers with a disability who have special needs certification in the purchase of equipment needed to personally access and use essential services of the telecommunications network~~.

SECTION 2. Subsection DHS 78.03 (10) is created to read:

DHS 78.03 (10) “Distance Communications” means an exchange of information between two different locations via transmission facilities using any part of the electromagnetic spectrum.

SECTION 3. Paragraphs DHS 78.04 (1) (a), (b), (b) (Note), and (2) (Intro), (2) (b) through (f) are amended to read:

DHS 78.04 (1) (a) A completed ~~PSC TEPP~~ application form; and

(b) A completed ~~department~~ signed certification of hearing loss form or an audiogram ~~from a certified audiologist~~.

Note: ~~The Department TAP Program uses the PSC TEPP application form, Telecommunication Equipment Purchase Program Application. Both the TEPP application form and the Department certification of hearing loss form, Hearing Loss Certification, may be requested from the TAP Manager, Office for the Deaf and Hard of Hearing, Division of Disability and Elder Services, P.O. Box 7851, Madison, Wisconsin 53707-7851. The forms are also available for downloading at: <http://www.dhs.wisconsin.gov/odhh/TAP/index.htm>. Upon completing the Telecommunication Equipment Purchase Program Application, applicants should send or fax the form to the address or fax number given on the form. Upon completing the hearing loss certification form, applicants should send or fax the form to the TAP Manager at the address given above. Instructions on how to apply for the TAP program and all necessary forms can be found online at: <http://www.dhs.wisconsin.gov/odhh/TAP/index.htm>.~~

DHS 78.04 (2) PROCESSING TAP APPLICATIONS. The department shall process TAP applications ~~for TAP services~~ in the following manner:

DHS 78.04 (2) (b) The department shall review applications in the order they are received ~~to determine whether the application is complete and includes all required attachments.~~

~~(c) When the department finds an application to be complete, the TAP manager shall date and sign the application.~~

(d) The department shall send the applicant written notification of the department's decision on his or her application ~~within 30 calendar days after the department determines the application complete.~~ once all documentation is received.

(e) If the department denies assistance to the applicant, the applicant has the right to appeal the decision under subch. III, of ch.227, Stats., by filing a written request with the department, or may reapply if, due to a change in conditions, the applicant meets eligibility requirements under s. DHS 78.05.

~~(f) Except as provided under par. (g), if~~ If the department approves issuing a TAP voucher to the applicant, the applicant shall apply the voucher to the ~~\$100 co-payment requirement of the telecommunications equipment purchase program administered by the public service commission for all eligible applicants~~ purchase of approved telecommunications devices.

SECTION 4. Subsections DHS 78.05 (1) and (3) (a) are amended to read:

DHS 78.05 (1) CERTIFICATION OF HEARING LOSS. The applicant shall be certified as deaf, deafblind or severely hard of hearing by a licensed physician, medical professional or an audiologist who is certified by the American speech and hearing association ~~or a coordinator of deaf and hard of hearing services who is employed by the department's division of disability and elder services.~~

DHS 78.05 (3) (a) The Wisconsin adjusted gross income of the applicant's ~~family~~ household as reported for Wisconsin income tax purposes for the most recent annual tax reporting period shall be equal to or less than 200% of the poverty line established under 42 USC 9902 (2) as updated annually or more often by the secretary of the U.S. department of health and human services.

SECTION 5. Subsections DHS 78.05 (4) and (5) are repealed.

SECTION 6. Subsections DHS 78.05 (7) is created to read:

DHS 78.05 (7) Preference will be given to individuals who are not receiving telecommunication devices from another state program.

SECTION 7. Subsection DHS 78.06 (2) is repealed.

SECTION 8. Subsection DHS 78.06 (3) is amended to read:

DHS 78.06 (3) A recipient of TAP assistance may not reapply for assistance more often than once every 3 years unless there is a significant or functional change in disability that requires different or other telecommunication devices.

SECTION 9. Subsections DHS 78.07 (1) is amended to read:

DHS 78.07 (1) PURCHASE OF DEVICES. If the department approves the issuance of a TAP voucher to an eligible applicant, the voucher may ~~not exceed \$100~~ only be used for department approved telecommunication devices.

SECTION 10. Subsections DHS 78.07 (2) (c) is repealed.

SECTION 11. EFFECTIVE DATE: This rule 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.