

**STATEMENT OF SCOPE**  
**WISCONSIN DEPARTMENT OF HEALTH SERVICES**

<b>CHAPTERS/</b>	DHS 2	Recoupment of Benefit Overpayments
<b>RELATING TO:</b>	DHS 5	Personnel Administration in Local Human Services Agencies
	DHS 12	Caregiver Background Checks
	DHS 13	Reporting and Investigation of Caregiver Misconduct
	DHS 36	Comprehensive Community Services for Persons with Mental Disorders and Substance-Abuse Disorders
	DHS 65	Supportive Services for Families with Disabled Children
	DHS 92	Confidentiality of Treatment Records
	DHS 97	Complaint Procedures for Inmates of the Wisconsin Resource Center
	DHS 98	Field Supervision of Clients
	DHS 114	Neonatal Intensive Care Unit Training Grants
	DHS 125	Do-Not-Resuscitate Orders Directed at Emergency Health Care Personnel
	DHS 134	Facilities Serving People with Developmental Disabilities
	DHS 143	Hearing Impaired Children
	DHS 157	Radiation Protection
	DHS 190	Institution Sanitation
	DHS 199	Tobacco Control Activities
<b>RULE TYPE:</b>	Permanent	
<b>SCOPE TYPE:</b>	Original	

**SUMMARY**

**Introduction**

This Statement of Scope seeks authorization to repeal or amend rules that the Department identified as being in need of revision throughout the review process required under s. 227.29, Stats., and to make other corrections based upon information provided to the Department by the Legislative Reference Bureau.

**Description of rule objective/s**

The Department proposes the following:

1. Ch. DHS 2: Repeal the rule chapter because it applies to programs that were transferred to the Wisconsin Department of Children and Families in 2008.
2. Ch. DHS 5: Repeal the rule chapter because it describes processes that the Wisconsin Department of Children and Families is authorized to regulate and which are no longer practiced by the Department.

3. DHS 12.03 (22): Amend provisions referencing the term “treatment foster home” because the term no longer appears in the statutes.

4. DHS 13.03 (16): Correct the citation to the definition of a “nurse aide.”

5. DHS 36.03 (10m) & (11m): Remove the term “infirmities of aging” within section DHS 36.03 (10m) and (11m). The term no longer appears in the statute.

6. Ch. DHS 65: Repeal the rule chapter because the statute authorizing the rule has been repealed.

7. DHS 92.04 (11) (a): To repeal the portion of s. DHS 92.04 (11) (a) stating treatment records may be made accessible to a patient’s counsel for the interest of the public only as authorized under s. 51.30 (4) (b) 14., Stats. 2001 Wisconsin Act 16 repealed s. 51.30 (4) (b) 14., Stats.

8. DHS 97.03 (1) (b) & DHS 97.04 (2) (b): To replace the term “DMHSAS” with “DCTS,” reflecting the change in the name of the “division of mental health and substance abuse services” to the “division of care and treatment services.”

9. DHS 98.12 (2): To repeal s. DHS 98.12 (2), which requires a violation report shall be prepared for a client who absconds, in accordance with s. DOC 331.03 (4). Chapter DOC 331 has been repealed.

10. Ch. DHS 114: Repeal chapter DHS 114 because the training grant program is no longer funded by statute.

11. DHS 125.02, 125.03 (5m), (6) & (7), DHS 125.05 (1), (3)(a)1., (c), (5) (a), and (6): Amend provisions to ensure conformity with the updated statutory definitions and terminology for certain types of emergency medical service personnel in authorizing statute, ch. 154, Wis. Stats, as amended by 2017 Wis. Act. 12.

12. DHS 134.82 (3) (f): Amend s. DHS 134. 82 (3) (f) to remove the reference to s. 101.123 (4), Stats., because the statute was repealed.

13. Ch. DHS 143: Repeal chapter DHS 143 because eligibility criteria and requirements related to children with hearing loss in need of amplification services are now specified by federal law.

14. DHS 157.96 (8): To amend s. DHS 157.96 (8) to replace the citation to the repealed s. NR 809.81, with s. NR 809.833.

15. Ch. DHS 190: Repeal the obsolete rule chapter because it applies to entities that are regulated through other, more recent, rule chapters.

16. DHS 199.02 & (Note), DHS 199.03 (2), (3), (5), (8), (12) & (Note), DHS 199.04 (1) (intro.), (d) 2., & (e), (2), DHS 199.05 (2) (a), (b), DHS 199.05 (3) (a) 3., (b) 1. & 3., (5) (a) 1. & 2., (b) (intro.), (6) (a) 1.-3., (b) 1.-3., DHS 199.06 (1) (a) 1.-3., (b), (c), (2)-(4), (5) (a)-(c), DHS 199.07 (1), (2), (3) (b)-(d): To amend provisions that refer to the “tobacco control board” or “board.” Section 15.195 (1), Stats., which created the Tobacco Control Board, was repealed by 2003 Wisconsin Act 33 and tobacco control activities were transferred to the Department of Health Services.

### **Existing policies relevant to the rule**

1. Ch. DHS 2: The rule chapter was intended to establish certain procedures for the recovery of incorrectly paid benefits to children and families.

2. Ch. DHS 5: The rule chapter was intended to ensure fair and efficient personnel administration of local aging, mental health, alcohol and other drug abuse, developmental disabilities, public health, income maintenance and social services positions supported by federal funds which require that personnel standards on a merit basis be established and maintained.

3. DHS 12.03 (22): Section DHS 12.03 (22) defines the term “treatment foster home.” The term is used in ss. DHS 12.03 (12), DHS 12.03 (17) (a) 2.

4. DHS 13.03 (16): Section DHS 13.03 (16) defines the term “nurse aide.”

5. DHS 36.03 (10m) & (11m): Section DHS 36.03 (11m) defines the term “infirmities of aging.” The term is also used in the definition for “elder,” provided in s. DHS 36.03 (11m).

6. Ch. DHS 65: The rule chapter was intended to establish procedures, criteria and requirements relating to the distribution of funds to county departments for the provision of goods and services to families who have a disabled child living in the home.

7. DHS 92.04 (11) (a): Section DHS 92.04 (11) (a) states that treatment records or portions of treatment records may be made accessible to the patient’s counsel or guardian ad litem only under several specific circumstances, including to the counsel for the interest of the public only as authorized under s. 51.30 (4) (b) 14., Stats.

8. DHS 97.03 (1) (b) & DHS 97.04 (2) (b): Section DHS 97.03 (1) (b) defines “DMHSAS administrator”, and s. DHS 97.04 (2) (b) references the term within the context of specifying a complaint procedures for inmates of the Wisconsin Resource Center.

9. DHS 98.12 (2): Section DHS 98.12 (2) states that a violation report shall be prepared for a client who absconds, in accordance with s. DOC 331.03 (4).

10. Ch. DHS 114: The rule chapter was intended to establish a neonatal intensive care unit training grant program.

11. DHS 125.02, 125.03 (5m), (6) & (7), DHS 125.05 (1), (3)(a)1., (c), (5) (a), and (6): Affected provisions describe do-not-resuscitate orders requirements for “emergency medical technicians” and “first responder” and define these terms.

12. DHS 134.82 (3) (f): Section DHS 134.82 (3) (f) requires facilities to have and enforce policies and rules regarding smoking.

13. Ch. DHS 143: The rule chapter was intended to specify eligibility criteria and requirements related to children with hearing loss in need of amplification services.

14. DHS 157.96 (8): Section DHS 157.96 (8) requires public notification of radioactivity levels in community water systems as prescribed in s. NR 809.81.

15. Ch. DHS 190: The rule chapter was intended to establish standards of hygiene and safety for certain specified institutions.

16. DHS 199.02 & (Note), DHS 199.03 (2), (3), (5), (8), (12) & (Note), DHS 199.04 (1) (intro.), (d) 2., & (e), (2), DHS 199.05 (2) (a), (b), DHS 199.05 (3) (a) 3., (b) 1. & 3., (5) (a) 1. & 2., (b) (intro.), (6) (a) 1.-3., (b) 1.-3., DHS 199.06 (1) (a) 1.-3., (b), (c), (2)-(4), (5) (a)-(c), DHS 199.07 (1), (2), (3) (b)-(d): Affected provisions accord tobacco-related responsibilities to the “tobacco control board” or “board.”

### **Policies proposed to be included in the rule**

The Department does not propose to include new policies in the proposed rules, but instead proposes to repeal obsolete rule chapters and make corrections to limited provisions in light of statutory changes and current practices. In addition to any changes that may be suggested by the Legislative Council or through input received during the rulemaking process, the Department proposes the following actions:

1. Chs. DHS 2 and DHS 5 are repealed.

2. DHS 12.03 (12) is amended to read:

“Foster home” means any facility operated by a person required to be licensed under s. 48.62 (1), Stats., in which care and maintenance are provided for no more than 4 foster children, or, if all are siblings, for no more than 6 children, and also includes ~~a treatment foster home that also provides structured~~

~~professional treatment by trained individuals, and~~ a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats.

3. DHS 12.03 (12) (Note) is repealed.

4. DHS 12.03 (17) (a) 2. is amended to read:

Issuance or renewal by a county department or child-placing agency of a foster home ~~or treatment foster home~~ license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

5. DHS 12.03 (17) (a) 2. (Note 2) and DHS 12.03 (22) and (Note) are repealed.

6. DHS 13.03 (16) is amended to read:

DHS 13.03 (16) "Nurse aide" ~~means a nurse's assistant as defined in s. DHS 129.03 (14), a home health aide, as defined in s. DHS 129.03 (11) or a hospice aide, as defined in s. DHS 129.03 (11r).~~ has the meaning given in s. DHS 129.03 (30).

7. Section DHS 36.03 (10m) is amended to read:

DHS 36.03 (10m) "Elder" means a person who is age 60 ~~or older or who is subject to the infirmities of~~ aging.

8. DHS 36.03 (11m) and ch. DHS 65 are repealed.

9. DHS 92.04 (11) (a) is amended to read:

DHS 92.04 (11) (a) Treatment records or portions of treatment records may be made accessible to the patient's counsel or guardian ad litem only as authorized under s. 51.30 (4) (b) 11., Stats., and this section, ~~to the counsel for the interest of the public only as authorized under s. 51.30 (4) (b) 14., Stats., and this section~~ and to the court appointed examiner only as authorized under s. 51.20 (9) (a), Stats., and this section.

10. DHS 97.03 (1) (b) and DHS 97.04 (2) (b) are amended to read:

DHS 97.03 (1) (b) "~~DMHSASDCTS~~ administrator" means the administrator of the department's division of ~~mental health and substance abuse services~~ care and treatment services.

DHS 97.04 (2) (b) The CCE shall send a copy of his or her recommendation under s. DOC 310.12 to the ~~DMHSAS DCTS~~ administrator, and the ~~DMHSAS DCTS~~ administrator or designee may make a recommendation to the secretary of corrections.

11. DHS 98.12 (2) and ch. DHS 114 are repealed.

12. DHS 125.02 and 125.03 (5m) are amended to read:

DHS 125.02 This section applies to any person providing health care as an emergency medical ~~technician~~ services practitioner or a ~~first~~ emergency medical responder, or within an emergency health care facility.

DHS 125.03 (5m) "Emergency health care personnel" means emergency medical ~~technicians~~ practitioners, ~~first~~ emergency medical responders and emergency health care facility staff.

13. DHS 125.03 (6) and (7) are repealed.

14. DHS 125.03 (5r) is created to read:

DHS 125.03 (5r) "Emergency medical responder" has the meaning given in s. 256.01 (4p), Stats.

15. DHS 125.05 (1), (3) (a) 1., (c), (5) (a) and (6) are amended to read:

DHS 125.05(1) GENERAL REQUIREMENT. Emergency health care personnel shall follow a do-not-resuscitate order, as evidenced by a patient wearing a do-not-resuscitate bracelet, unless the order is invalidated by a condition under sub. (3). If there is any doubt about honoring a do-not-resuscitate bracelet, emergency medical ~~technicians~~ services practitioners and ~~first~~ emergency medical responders shall contact the medical control hospital and emergency health care facility staff shall contact the director of emergency services.

DHS 125.05 (3) (a) 1. Expressing to an emergency medical ~~technician~~ services practitioner, ~~first~~ emergency medical responder or emergency health care facility staff member the desire to be resuscitated. When this is done, emergency health care personnel shall promptly remove the do-not-resuscitate bracelet.

DHS 125.05 (3) (c) The emergency medical ~~technician~~ services practitioner, ~~first~~ emergency medical or emergency health care facility staff member knows that the patient is pregnant.

DHS 125.05 (5) (a) Even if resuscitation is not attempted, the emergency medical ~~technician~~ services

~~practitioner, first emergency medical~~ or emergency health care facility staff member shall document the patient contact in the patient's medical record or the ambulance run report form, as appropriate.

DHS 125.05 (6) VIOLATIONS. An emergency medical ~~technician services practitioner, first emergency medical~~ or emergency health care facility staff member who does any of the following is subject to the penalties set forth in s. 154.29 (1) or (2), Stats.:

16. DHS 134.82 (3) (f) is amended to read:

DHS 134.82 (3) (f) *Smoking*. Facilities shall have and enforce a policy and rules to ensure that smoking materials are used safely. ~~The policy and rules shall include the designation of areas in which smoking is permitted, as required under s. 101.123 (4), Stats.~~

17. DHS 134.82 (3) (f) (Note) and Ch. DHS 143 are repealed.

18. DHS 157.96 (8) is amended to read:

DHS 157.96 (8) PUBLIC NOTIFICATION. Public notification shall be provided as prescribed in s. NR ~~809.81~~ 809.833.

19. Chapter DHS 190 is repealed.

20. DHS 199.02 is amended to read:

DHS 199.02 Applicability. This chapter applies to the ~~tobacco control board~~ department of health services, to applicants for grants awarded by the ~~board~~ department, and to organizations that have been awarded grants by the ~~board~~ department.

21. DHS 199.02 (Note) is repealed.

22. DHS 199.03 (2), (3), (5), (8), are amended to read:

DHS 199.03 (2) “Applicant” means an organization that applies for a grant from the ~~tobacco control board~~ department to operate a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

DHS 199.03 (3) “Continuation grant” means a grant awarded by the ~~board~~ department to an applicant who received an initial grant for the current funding year and who proposes to continue to operate the same program, or that program as modified in consultation with the ~~board~~ department, in the new funding year.

DHS 199.03 (5) “Evaluation committee” means a department committee ~~of board members and other persons invited by board members~~ that reviews and evaluates applications.

DHS 199.03 (8) “Grant” means a monetary award made by the ~~board~~ department from the appropriation under s. 20.435 (1) (fm), Stats., to an applicant for the uses specified in s. 255.15 (3) (b), Stats.

23. DHS 199.03 (12) and (Note) are repealed.

24. DHS 199.04 (1) (intro.), (d) 2., & (e), (2), DHS 199.05 (2) (a), (b), DHS 199.05 (3) (a) 3., (b) 1. & 3., (5) (a) 1. & 2., (b) (intro.), (6) (a) 1. – 3., (b) 1.- 3., DHS 199.06 (1) (a) 1.- 3., (b), (c), (2)-(4), (5) (a)-(c), DHS 199.07 (1), (2), (3) (b)-(d), are amended to read:

DHS 199.04 (1) The ~~board~~ department shall do all of the following:

DHS 199.04 (1) (d) 2. As determined appropriate by the ~~board~~ department, specify additional performance-based standards in each grant contract based on the scope and content of the media and counter-marketing campaign.

DHS 199.04 (1) (e) Fund programs or projects that demonstrate plans and progress toward achieving program quality criteria and indicators of success specified in the grant RFP and the ~~board~~ department strategic plan.

DHS 199.04 (2) The ~~board~~ department may provide funding to governmental organizations performing or providing support for tobacco prevention and reduction activities, including tobacco education, cessation services, policy development, policy advocacy, monitoring, evaluation, resource distribution, program planning or monitoring.

DHS 199.05 (2) (a) The ~~board~~ department shall solicit applications for initial grants by preparing one or more RFPs, publishing a legal notice of the availability of each RFP at least twice in the official state newspaper no later than 3 weeks before the application deadline, and distributing copies of an RFP on request.

DHS 199.05 (2) (b) Based upon satisfactory performance and availability of funds, the ~~board~~ department may solicit applications annually for continuation grants from current grantees. The ~~board's~~ department's solicitations shall be published as a legal notice at least twice in the official state newspaper no later than 3 weeks before the application deadline. The ~~board~~ department shall provide details of the continuation grant to interested parties upon request.



DHS 199.05 (3) (a) 3. The application shall be submitted to the ~~board~~ department in accordance with the deadline and processes indicated in the RFP.

DHS 199.05 (3) (b) 1. The ~~board~~ department may solicit applications for continuation grants from currently-funded projects in a form determined by the ~~board~~ department to be appropriate for the projects.

DHS 199.05 (3) (b) 3. The application shall be submitted to the ~~board~~ department in accordance with the deadline, required format and content specifications indicated in the continuation solicitation.

DHS 199.05 (5) (a) 1. 'Preliminary review.' All initial grant applications shall include all of the application contents specified in sub. (4) and, if applicable, the RFP. The ~~board~~ department or its designated evaluation committee shall review each application for compliance with the format and content specifications of sub. (4) and the RFP. Applications that fail to meet all of the criteria may not be approved by the ~~board~~ department. Rejection of an application for failure to meet form and content specifications is not subject to appeal to the ~~board~~ department.

DHS 199.05 (5) (a) 2. 'Evaluation criteria.' The ~~board~~ department or its designated evaluation committee shall evaluate initial grant applications that receive a favorable preliminary review as specified in subd. 1. against criteria specified in sub. (4) and the RFP. The criteria shall include all of the following:

DHS 199.05 (5) (b) *Criteria for evaluating continuation applications.* The ~~board~~ department or its designated evaluation committee shall evaluate continuation grant applications against all of the following criteria:

DHS 199.05 (6) (a) 1. The ~~board~~ department or its designated evaluation committee shall weight the importance of each evaluation criterion by assigning points to it. The criteria weighting shall be provided in the RFP.

DHS 199.05 (6) (a) 2. Using the evaluation criteria specified in subs. (4) and (5), the ~~board~~ department or its designated evaluation committee shall evaluate each application against each applicable criterion and assign points signifying the degree to which the application meets each criterion up to the maximum number of points specified in the RFP. The total points assigned to the application for all applicable criteria will be the score for each application.

DHS 199.05 (6) (a) 3. The ~~board~~ department shall numerically rank each application for each RFP and for continuation grants.

DHS 199.05 (6) (b) 1. Ranking applications for continuation grants. 1. Using evaluation criteria specified in sub. (5) (b), the ~~board~~ department or its designated evaluation committee shall conduct a non-competitive evaluation of each application.

DHS 199.05 (6) (b) 2. The ~~board~~department shall assign a numerical score to each continuation grant application.

DHS 199.05 (6) (b) 3. The ~~board~~department or its designated evaluation committee shall award continuation grants based upon the applicant's demonstration of effective grant administration and achievement of program outcomes during the previous funding period.

DHS 199.06 (1) (a) *Initial grants*. For a given RFP, the ~~board~~department shall award a grant to the applicant with the highest numerical score pursuant to s. DHS 199.05 (6), except that:

DHS 199.06 (1) (a) 1. The ~~board~~department or its designated evaluation committee may reject any application failing to meet the content specifications under s. DHS 199.05 (4). Rejection of an application for failure to meet the content specifications under s. DHS 199.05 (4) is not subject to appeal.

DHS 199.06 (1) (a) 2. The ~~board~~department may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a grant to an applicant.

DHS 199.06 (1) (a) 3. The ~~board~~department or its designated evaluation committee may reject applications submitted by organizations or individuals that have a contractual, corporate, organizational or business responsibility to promote, assist in the promotion of, the use of or the sale of tobacco products for a company involved in the production, distribution or marketing of tobacco products.

DHS 199.06 (1) (b) *Continuation grants*. The ~~board~~department may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a continuation grant to an applicant.

DHS 199.06 (1) (c) *Intergovernmental procurements*. In accordance with s. 16.75 (6) (b), Stats., the ~~board~~department may perform an intergovernmental procurement for purchases of supplies, materials, equipment or contractual services other than printing and stationary, from the federal government, from another state, or from any county, city, village, town or other governmental body in the state.

DHS 199.06 (2) NOTIFICATION. The ~~board~~department shall notify all applicants, in writing, within 60 days of the deadline stated in the RFP for an initial grant, or within 30 days of the expiration of an existing grant, of awards for the new funding agreement.

DHS 199.06 (3) APPEAL. Except as provided in s. DHS 199.05 (5) (a) 1. And sub. (1) (a) 1., an applicant for either an initial grant or a continuation grant may appeal to the ~~board~~department an adverse decision of the ~~board~~department. The appeal shall be in writing and shall fully identify all contested

issues. The appeal shall be filed with the ~~board~~ department within 10 working days of the date on which the notice of awards is postmarked.

DHS 199.06 (4) CONTRACT. The ~~board~~ department shall make all grant awards through a contract between the ~~board~~ department and each applicant selected to receive a grant.

DHS 199.06 (5) (a) The ~~board~~ department shall decide in advance of the funding year the amount of funds available for grants from the expected appropriation under s. 20.435 (1) (fm), Stats., and shall announce the availability of funds in one or more RFPs.

DHS 199.06 (5) (b) All funding decisions shall be contingent upon availability of funds under s. 20.435 (1) (fm), Stats. Any changes in the amount of funds available which were unforeseen at the time of the ~~board's~~ department's release of an RFP or continuation grant materials shall be accommodated by the ~~board~~ department, as appropriate, by means of reduction, elimination or increase in existing awards, by awarding of funds to applicants previously denied due to insufficient funds, or by release of a new RFP or new continuation grant application materials.

DHS 199.06 (5) (c) Any funds that become available due to a denial of an award to a selected grantee as a result of failure of the selected grantee to sign the required agreement or as a result of termination of a project by the ~~board~~ department or grantee shall be reallocated by the ~~board~~ department at its discretion but within the limits of the intent of the appropriation and this chapter.

DHS 199.07 (1) PROHIBITED USE OF FUNDS. The following activities are prohibited under any grant awarded by the ~~tobacco control board~~ department:

DHS 199.07 (2) VIOLATION OF PROHIBITED ACTIVITIES. If a grantee conducts prohibited activities under sub. (1), the ~~board~~ department may terminate the grant and recover funds previously paid to the grantee for that funding period on a recoupment schedule specified in the grant contract.

DHS 199.07 (3) (b) A grantee may not use grant funds to purchase capital equipment without the prior written approval of the ~~board~~ department, although funds may be used to rent capital equipment. In this paragraph, "capital equipment" means equipment having a value greater than \$5000 and a useful life of more than one year.

DHS 199.07 (3) (c) Grant recipients shall annually furnish the ~~board~~ department with an independent certified audit of grant expenses within 30 days after receipt of the report from the audit firm but no later than 90 days after completion of the grant recipient's fiscal year. The cost of the audit shall be included in an applicant's budget of administrative costs.

DHS 199.07 (3) (d) Grant recipients shall maintain records for 3 years and provide information to the ~~board~~ department as required by the ~~board~~ department for purposes of program and fiscal audits and, at the request of the ~~board~~ department, shall appear before the ~~board~~ department to respond to any questions about the project and use of the grant monies.

### **Analysis of policy alternatives**

This Statement of Scope seeks authorization to repeal obsolete rule chapters that the Department identified throughout the rule review process required under s. 227.29, Stats., and to make other corrections based upon information provided to the Department by the Legislative Reference Bureau. No reasonable policy alternatives exist to the promulgating the proposed rules.

### **Statutory authority for the rule**

#### **a. Explanation of authority to promulgate the proposed rule**

1. Ch. DHS 2: The Department is authorized to establish standards for recovering overpayments and incorrectly paid benefits for certain programs administered by the Department. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

2. Ch. DHS 5: The Department is authorized to promulgate rules governing the administrative structure deemed necessary to administer community mental health, developmental disabilities, alcoholism and drug abuse services and to prescribe standards for qualifications and salaries of personnel. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

3. DHS 12.03 (22): The Department is authorized to promulgate rules defining entity types subject to caregiver background check requirements, specifying the information that must be made available for inspection, specifying sanctions, establishing rehabilitation procedures, and specifying persons subject to caregiver background checks. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

4. DHS 13.03 (16): The Department administers several statutes related to reporting, investigation, and disposition of allegations of abuse or neglect of a client or misappropriation of client's property in certain specified settings. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

5. DHS 36.03 (10m) & (11m): The Department is authorized to promulgate rules establishing the scope of psychosocial service programs, standards for certification, and criteria for determining the need for psychosocial rehabilitation services. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

6. Ch. DHS 65: The rule chapter is unauthorized, following the repeal of s. 46.985, Stats.

7. DHS 92.04 (11) (a): The Department is authorized to promulgate rules to implement the statutes governing accessibility to health care treatment records relating to mental health and alcohol and other drug abuse. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

8. DHS 97.03 (1) (b) & DHS 97.04 (2) (b): The Department is authorized to administer the Wisconsin Resource Center. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

9. DHS 98.12 (2): The Department is authorized to promulgate rules for supervision in communities of persons who are committed to the Department and placed under its control after being found not guilty by reason of mental illness or defect of having committed a crime, or after being found to be sexually violent persons or who are otherwise sex offenders. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

10. Ch. DHS 114: The Department is authorized to promulgate rules to establish criteria and procedures for the awarding of grants for neonatal intensive care unit training from the appropriation under s. 20.435 (5) (er), Stats. The appropriation was repealed by 1997 Wis. Act 237.

11. DHS 125.02, 125.03 (5m), (6) & (7), DHS 125.05 (1), (3)(a)1., (c), (5) (a), and (6): The Department is authorized to promulgate rules standards and procedures related to do-not-resuscitate orders.

12. DHS 134.82 (3) (f): The Department is authorized to establish and enforce regulations and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in community-based residential facilities and nursing homes and for the construction, general hygiene, maintenance and operation of those facilities.

13. Ch. DHS 143: The rule chapter does not cite to any statutory authority. The rule was initially promulgated by the Department of Public Instruction (see

[https://docs.legis.wisconsin.gov/code/register/1975/237b/rules/pi\\_10.pdf](https://docs.legis.wisconsin.gov/code/register/1975/237b/rules/pi_10.pdf)), and was later transferred to the Department under Section 9145 (4) of 1991 Wis. Act 39.

14. Ch. DHS 157: Under s. 254.34 (1) (a) and (b), Stats., the Department is designated as the state radiation control agency and given statutory authority to promulgate, administer and enforce rules promulgated under this subchapter. Section 254.33, Stats. authorizes the Department to advise, consult and cooperate with other agencies of the state and other jurisdictions. Section 254.37 (3), Stats. gives the Department authority to promulgate and enforce rules pertaining to ionizing radiation. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

15. Ch. DHS 190: At the time of initial promulgation in 1964, DHS 190 was named H 56. At that time, the State Board of Health cited to ss. 140.05 (3) and 140.055 (1), Stats., for authority to promulgate the rule. H 56 was repealed and HSS 190 was created in 1985. At that time, the Department cited ss. 140.05 (3) and 227.014 (2), Stats., to promulgate the rule chapter. Sections 140.05 and 227.014, Stats., were subsequently renumbered to ss. 250.04 and 227.11, Stats. The Department administers s. 250.04, Stats., and, within certain parameters, s. 227.11 (2), Stats., authorizes the Department to 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.

16. DHS 199.02 & (Note), DHS 199.03 (2), (3), (5), (8), (12) & (Note), DHS 199.04 (1) (intro.), (d) 2., & (e), (2), DHS 199.05 (2) (a), (b), DHS 199.05 (3) (a) 3., (b) 1. & 3., (5) (a) 1. & 2., (b) (intro.), (6) (a) 1.-3., (b) 1.-3., DHS 199.06 (1) (a) 1.-3., (b), (c), (2)-(4), (5) (a)-(c), DHS 199.07 (1), (2), (3) (b)-(d): The Department is authorized to promulgate rules establishing criteria for recipients of certain tobacco-related grants it administers, including performance-based standards for grant recipients that propose to use the grant for media efforts.

#### **b. Statute/s that authorize/s the promulgation of the proposed rule**

##### 1. Ch. DHS 2:

- a. Sections 48.57 (3m) (h) and (3n) (h), Stats.
- b. Section 48.62 (6), Stats.
- c. Section 48.975 (4m), Stats.
- d. Section 49.847, Stats.
- e. Section 227.11 (2), Stats.

##### 2. Ch. DHS 5:

- a. Section 51.42 (7) (b), Stats.
- b. Section 227.11 (2), Stats.

3. DHS 12.03 (22):
  - a. Sections 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), Stats.
  - b. Sections 50.065 (1) (ag) 1. a., (2) (d), (4), (5), (6) (b) and (c), Stats.
  - c. Section 227.11 (2), Stats.
4. DHS 13.03 (16): Section 227.11 (2), Stats.
5. DHS 36.03 (10m) & (11m): Sections 49.45 (30e) (b), 51.42 (7) (b), and 227.11 (2) (a), Stats.
6. Ch. DHS 65: None.
7. DHS 92.04 (11) (a): Sections 51.30 (12) & 227.11 (2) (a), Stats.
8. DHS 97.03 (1) (b) & DHS 97.04 (2) (b): Sections 46.056 (1) & 227.11 (2), Stats.
9. DHS 98.12 (2): Sections 51.37 (9), 51.375 (3), 971.17 (3) (e), 980.08 (6m), and s.227.11 (2), Stats.
10. Ch. DHS 114: Section 9122 (3ty) (c). of 1997 Wisconsin Act 237.
11. DHS 125.02, 125.03 (5m), (6) & (7), DHS 125.05 (1), (3)(a)1., (c), (5) (a), and (6): Sections 154.19 (3) (a) and 154.27, Stats.
12. DHS 134.82 (3) (f): Section 50.02 (2) and (3), Stats.
13. Ch. DHS 143: Section 9145 (4) of 1991 Wisconsin Act 39.
14. DHS 157.96 (8): Sections 227.11 (2), 254.33, 254.34 (1) (a) & (b)., and 254.37 (3), Stats.
15. Ch. DHS 190: Section 227.11 (2), Stats.
16. DHS 199.02 & (Note), DHS 199.03 (2), (3), (5), (8), (12) & (Note), DHS 199.04 (1) (intro.), (d) 2., & (e), (2), DHS 199.05 (2) (a), (b), DHS 199.05 (3) (a) 3., (b) 1. & 3., (5) (a) 1. & 2., (b) (intro.), (6) (a) 1.-3., (b) 1.- 3., DHS 199.06 (1) (a) 1.- 3., (b), (c), (2)-(4), (5) (a)-(c), DHS 199.07 (1), (2), (3) (b)-(d): Section 255.15 (1m) (c), Stats.

**Statute/s or rule/s that will affect the proposed rule or be affected by it**

None.

**Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources**

The estimated time for state staff to develop the rule is 2,080 hours.

**Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule**

1. Ch. DHS 2: None.
2. Ch. DHS 5: None.
3. DHS 12.03 (22): None.
4. DHS 13.03 (16): All specified Department-licensed, certified, approved or registered entities and all persons employed by or under contract with an entity and who have access to the entity's clients and who are under the entity's control.
5. DHS 36.03 (10m) & (11m): None.
6. Ch. DHS 65: The department, to county departments and to administering agencies designated by county departments.
7. DHS 92.04 (11) (a): None.
8. DHS 97.03 (1) (b) & DHS 97.04 (2) (b): None.
9. DHS 98.12 (2): None.
10. Chapter DHS 114: Neonatologists, nurses, respiratory therapists, social workers, physical therapists, occupational therapists, speech and language therapists, educators, pediatricians, psychiatrists, neurologists and other health care professionals responsible for the care of infants and families in the NICU who would have been eligible for the training grants.
11. DHS 125.02, 125.03 (5m), (6) & (7), DHS 125.05 (1), (3)(a)1., (c), (5) (a), and (6):
12. DHS 134.82 (3) (f): All facilities that provide care primarily for people with developmental disabilities who require active treatment, including facilities owned and operated by the state, a county, a municipality or another public body.
13. DHS 157.96 (8): None.
14. Ch. DHS 190: Hospitals, psychiatric hospitals, nursing homes, community based residential facilities, adult family homes and residential care apartment complexes.



15. DHS 199.02 & (Note), DHS 199.03 (2), (3), (5), (8), (12) & (Note), DHS 199.04 (1) (intro.), (d) 2., & (e), (2), DHS 199.05 (2) (a), (b), DHS 199.05 (3) (a) 3., (b) 1. & 3., (5) (a) 1. & 2., (b) (intro.), (6) (a) 1.-3., (b) 1.-3., DHS 199.06 (1) (a) 1.-3., (b), (c), (2)-(4), (5) (a)-(c), DHS 199.07 (1), (2), (3) (b)-(d): None.

**Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule**

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

**Anticipated economic impact, locally or statewide**

The proposed rules are not anticipated to have an economic impact.

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