

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

The Wisconsin Department of Health Services proposes an order to create DHS 105.14, relating to adult day care centers.

RULE SUMMARY

Statute interpreted

None.

Statutory authority

Sections 49.45 (47) (a) and (b), 49.45 (2) (a) 11. Wis. Stat.

Explanation of agency authority

Section 49.45 (2) (a) 11., Wis. Stat., authorizes the department to establish criteria for certification of providers of Medical Assistance (MA), certify providers who meet certification criteria and promulgate rules to implement the statute.

Section 49.45 (10), Wis. Stat., authorizes the department to promulgate rules consistent with its duties in administering MA, including its duties relating to reimbursement for personal care services by certified providers.

Section 227.11 (2) (a), Wis. Stat., allows agencies to promulgate rules interpreting the provision of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

None.

Plain language analysis

Adult day care providers offer services for part of a day, in a group setting, to adults who need an enriched health, supportive or social experience, and who may need assistance with activities of daily living, supervision, or protection. These may include personal care and supervision, meals, medical care, transportation, and activities designed to meet physical, social, and leisure time needs. Adult day care providers do not need to be licensed or certified to operate in Wisconsin. However, certification as an MA provider is required, under both state (s. 49.45 (47) (b), Wis. Stat.) and federal (42 CFR 441.352 (a) (1) and (2)) law, for providers that wish to receive reimbursement by MA for adult day care services provided to MA recipients. Adult Day Care Centers (ADCC) are either free-standing, or housed in nursing homes or multi-use facilities such as churches, schools, or senior centers. ADCCs provide a necessary link and resource for older adults who either reside in their own homes or come to the center for part of the day from assisted living facilities or other settings. There are currently 124 ADCCs in Wisconsin. In 1990, the Department articulated interim requirements for ADCCs seeking MA reimbursement. Pursuant to the directive given by the Legislature in s. 49.45 (2) (a) 11. b., Wis. Stat., the Department proposes to establish these requirements by rule, in DHS 105.14. There are no reasonable policy alternatives to implementing this statutory requirement.

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

There appears to be no existing or proposed federal regulation that addresses the criteria for certification of ADCCs to be established by the proposed rule.

Comparison with rules in adjacent states

Illinois:

Illinois Administrative Code at Title 89 Social Services, Chapter 11 Department on Aging, Part 240 Community Care Program, Section 240.230 Adult Day Services (ADS) requires programs to provide an assessment of the participant's strengths and needs and development of an individual written person-centered plan of care that establishes participant goals for all services to be provided or arranged for by the service provider. Programs are to provide purposeful activities to meet the participant's needs and interests designed to improve or maintain the optimal functioning of the participant. Programs must also provide assistance or supervision of activities of daily living, health-related services including monitoring, nursing intervention and medication administration if needed. A copy of participant rights and responsibilities are to be provided to participants at the time of admission.

There shall be 40 square feet of activity area per participant. The facility shall meet the Illinois Plumbing Code, Accessibility Code, Fire Prevention and Food Services Sanitation Code, the National Fire Protections Association standards and the Americans with Disabilities Act. Room temperature in the facility shall be not less than 70 degrees and not more than 85 degrees by using a heating system, air conditioning or circulating fans. Hot water shall be controlled to not exceed 119 degrees but not less than 100 degrees. Exit areas shall be clear of equipment and debris and equipped with monitoring or signaling devices to alert staff of participants leaving the facility unattended. Service providers shall provide 1 meal at mid-day that meets the Dietary Guidelines for Americans established by the Secretary of Health and Human Services. Minimum ratios of full-time staff are established by code. Staff is required to have 24 hours of training within the first week of employment and include purpose of adult day services, assistance with activities of daily living, dealing with adverse behaviors, recognizing abuse, confidentiality of participant information, universal precautions, fire safety, CPR and understanding Alzheimer's disease and dementia. Staff who hold a valid, active CNA, RN or LPN degree are exempt from training. A minimum of 12 hours of in-services training for continuing education is mandatory annually.

Iowa:

Iowa Administrative Code 481 - Chapter 70 Adult Day Services requires programs to evaluate each prospective participant prior to the participant signing the contractual agreement to determine the participant's eligibility for the program including whether the services needed are available. A service plan shall be developed for each participant based on the evaluation conducted and shall be designed to meet the specific service needs of the participant. The program shall provide a hot or other appropriate meal at least once a day or shall make arrangements for the availability of meals in accordance with the Food and Nutrition Board of the National Research Council. Dementia specific programs shall provide staff with a minimum of eight hours of dementia specific education within 30 days of employment. Programs must have a managed risk policy and provide the participant with a copy at the time of admission. The program shall submit to the department and follow written emergency policies and procedures related to fire safety procedures, regular staff training, fire drills, monitoring and testing smoke control system, participant evacuation procedures, reporting and documentation. The program shall meet building and public safety codes including accessibility regulations related to people with disabilities.

Michigan:

Michigan Master Standards. C-1 Adult Day Services must complete a uniform preliminary screening and maintain consistent records for all individuals. Screening may be conducted over the telephone. If the screenings indicates that the individual is eligible for Adult Day Services, a comprehensive individual assessment of needs shall be performed before admission to the program. All assessments shall be conducted face to face. The assessment must identify the individual's functional status, supporting resources and needs. The adult day care shall provide directly or make arrangement for transportation, personal care, nutrition, rehabilitation and medical support. The center shall provide one hot meal per eight hour day.

The program shall establish written policies and procedures to govern the assistance given to a participant in taking medication. Each program shall employ a full-time program director with a minimum of a bachelor's degree in health or human services field or be a qualified health professional. The program shall provide support staff at a ratio of no less than one staff person for each ten participants. Program staff shall receive orientation training that includes topics specified in the general requirement of all service programs including assessment and observation skills and basic first-aid. In-service training shall be provided twice a year which is designed to increase staff knowledge and understanding of the program, aging process issues, including cultural diversity, dementia, cognitive impairment, mental illness, abuse and exploitation.

Each program shall have first-aid supplies, and a staff person knowledgeable in first-aid procedures, including CPR, shall be present at all time at the center. Procedures to be followed in an emergency situation shall be posted in each room of the center. Programs shall conduct practice drills or emergency procedure every six months and maintain a record of all practice drills. Each center shall have at least one straight back chair for each participant, lounge chairs or day beds as needed for rest periods, storage space for participant's personal belongings, tables, a telephone that is accessible to all participants and special equipment as needed to assist person with disabilities. Each program shall be in compliance with fire safety standards and the Michigan Food Code.

Minnesota:

Minnesota Administrative Rules 9555.9600 require the program to conduct an intake screening to determine whether the center can serve the person's needs and condition. After conducting the screening the center shall conduct a needs assessment and develop a service plan. The assessment shall include the participant's functional status, psychosocial needs, physical status, nutritional needs and services needed. Each center shall adopt and hold employees accountable for complying with the participant's bill of rights. The center shall provide a meal which meets the requirements of the Food and Nutrition Board of the National Research Council. The center shall offer health services developed in consultation with a registered nurse. The center shall offer a daily structured exercise program for participants and a daily activity program that includes socialization, activities, group projects, arts, craft, and music. Required safety components include a first aid kit, telephone and posted emergency numbers and emergency phone numbers for participants.

Furniture and equipment shall be in good repair and without sharp points, splinter and paint that contains lead. Areas used by participants must be free from debris, loose plaster, peeling paint and litter. Rugs must have a nonskid backing. The center shall have written procedures governing medical emergencies and emergencies caused by fire or weather. The center shall provide 40 square feet for each participant. A minimum of 70 degrees must be maintained in

indoor areas. Outside doors and windows used for ventilation must be screened in summer months.

Summary of factual data and analytical methodologies

The department formed an advisory committee with 7 members composed of the President of the Wisconsin Adult Day Services Association, Adult Day Care providers for elders and for persons with disabilities and a representative from the Disability Provider Network, an advocacy organization. Committee members were provided a copy of an initial draft of the rule for review and asked for comments. The recommendations from the Advisory Committee were incorporated into the proposed rule.

Analysis and supporting documents used to determine effect on small business

TBD

Effect on small business

TBD

Agency contact person

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

Statement on quality of agency data

The data used by the Department to prepare these proposed rule and analysis comply with Section 227.14 (2m), Wis. Stat.

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 notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 105.14 is created to read:

Department of Health Services

**Chapter DHS 105.14
Adult Day Care Centers**

Subchapter I – General Provisions

DHS 105.14.01 Authority and purpose

DHS 105.14.02 Definitions

DHS 105.14.03 Variance and waiver

Subchapter II – Certification

DHS 105.14.04 Application requirements

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DHS 105.14.07 Department action

DHS 105.14.08 Biennial report and fees

DHS 105.14.09 Change of ownership

DHS 105.14.10 Center closing

DHS 105.14.11 Investigation, notification and reporting requirements

DHS 105.14.12 Record retention

Subchapter III – Personnel

DHS 105.14.13 Operator

DHS 105.14.14 Program director

DHS 105.14.15 Caregiver

DHS 105.14.16 Hiring and employment

DHS 105.14.17 Caregiver records

Subchapter IV – Orientation and Training

DHS 105.14.18 Orientation

DHS 105.14.19 Training

DHS 105.14.20 Caregiver supervision

DHS 105.14.21 Continuing education

DHS 105.14.22 Documentation

Subchapter V – Enrollment, Retention and Discharge

DHS 105.14.23 Limitations on enrollment and retention

DHS 105.14.24 Enrollment procedures

DHS 105.14.25 Discharge

Subchapter VI – Participant Rights

DHS 105.14.26 Rights of participants

Subchapter VII – Participant Care and Services

DHS 105.14.27 Assessment, individual service plan and evaluation

DHS 105.14.28 Caregiver requirements

DHS 105.14.29 Medications

DHS 105.14.30 Program Services

DHS 105.14.31 Food services

Subchapter VIII – Physical Environment

DHS 105.14.32 Building and furnishings

Subchapter IX – Safety

DHS 105.14.33 Emergency preparedness

Subchapter X – Requirements for Multiple Occupancies

DHS 105.14.34 Multiple occupancies

Subchapter XI – Program Evaluation

DHS 105.14.35 Annual program review

Subchapter I – General Provisions

DHS 105.14.01 Authority and purpose. (1) This chapter is promulgated under the authority of s. 49.45 (2) (a) 11. Wis. Stat., to develop and establish regulations and standards for the care, treatment or services, and health, safety, rights, well-being and welfare of participants in certified adult day care centers (ADCC).

(2) The chapter is intended to ensure all ADCCs provide a supportive environment for participants in a community-based group setting that is the least restrictive of each participant's freedom; and that care and services are provided in a manner that protects the rights and dignity of the participants.

DHS 105.14.02 Definitions. In this chapter:

(1) "Abuse" has the meaning given in s. 46.90 (1), Wis. Stat.

(2) "Accessible" means barriers are not present that prevent a person from entering, leaving or functioning within an ADCC without physical help.

(3) "Activities of daily living" means bathing, eating, oral hygiene, dressing, toileting, incontinence care, mobility and transferring from one surface to another such as from a bed to a chair.

(4) "Adult" means an individual who is at least 18 years of age.

(5) "Adult Day Care Center" means an entity that provides services for part of a day in a group setting to adults who need an enriched health, supportive or social experience and who may need assistance with activities of daily living, supervision or protection.

(6) "Applicant" means the person seeking certification of an ADCC.

(7) "Assessment" means gathering and analyzing information about a prospective or existing participant's needs and abilities.

(8) "Caregiver" has the meaning given in s. 50.065 (1) (ag), Wis. Stat.

(9) "Chemical restraint" means a psychotropic medication used for discipline or convenience, and not required to treat medical symptoms.

(10) "Department" means the Wisconsin Department of Health Services.

(11) "Legal representative" means a person who is any of the following:

(a) The health care agent under an activated power of attorney for health care under ch. 155, Wis. Stats.

- (b) A person appointed as a durable power of attorney under ch. 244, Wis. Stats.
- (c) A guardian as given in s. 54.01 (10) to (12), Wis. Stats.
- (12)** "Operator" means an individual or business entity to whom a certification is granted and is legally responsible for the operation of the ADCC.
- (13)** "Medication administration" means the direct injection, ingestion or other application of a prescription or over-the-counter drug or device to a participant by a practitioner, the practitioner's authorized agent, ADCC caregivers or the participant, at the direction of the practitioner. Medication administration does not include reminders to take medication.
- (14)** "Misappropriation of property" has the meaning as given in s. DHS 13.03 (12).
- (15)** "Neglect" has the meaning as given in s. 46.90 (1) (f), Wis. Stat.
- (16)** "Nursing care" means nursing procedures, other than personal or supportive care, that a registered nurse or a licensed practical nurse performs directly on or to a participant.
- (17)** "Occupant" means any person who lives and sleeps in the ADCC, but who is not a participant.
- (18)** "Participant" means an adult who attends the ADCC during listed hours of operation and receives care, treatment or services.
- (19)** "Participant group" means individuals who need similar services because of a common disability, condition or status. Participant groups include individuals:
- (a) With functional impairments that commonly accompany advanced age.
 - (b) With irreversible dementia, such as Alzheimer's disease.
 - (c) Who have a developmental disability as given in s. [51.01 \(5\)](#), Wis. Stat.
 - (d) Who are emotionally disturbed or who have a mental illness as given in s. [51.01 \(13\) \(a\)](#), Wis. Stat.
 - (e) With physical disabilities.
 - (f) With traumatic brain injury.
- (20)** "Physical restraint" means any manual method, article, device, or garment interfering with the free movement of the participant or the normal functioning of a portion of the participant's body or normal access to a portion of the participant's body, and which the participant is unable to remove easily, or confinement of a participant in a locked room.
- (21)** "Program Director" means an employee, including the operator, or an employee designated by the operator, who is responsible for the management and day-to-day operation of the ADCC.
- (22)** "Psychotropic medication" means a prescription drug, as given in s. 450.01 (20), Wis. Stat., that is used to treat or manage a psychiatric symptom or challenging behavior.
- (23)** "Qualified Caregiver" means an employee who is at least 18 years of age and has successfully completed all of the applicable orientation and training under s. DHS 105.14.18 and s. DHS 105.14.19.
- (24)** "Seclusion" means physical or social separation of a participant from others by actions of caregivers, but does not include separation to prevent the spread of communicable disease or voluntary cool-down periods in an unlocked room.
- (25)** "Serious Injury" means an injury from any incident or accident which results in:
- (a) Either a temporary or permanent increase in the level of activities of daily living (ADL) assistance needed in one or more ADL categories, such as bathing, eating, oral hygiene, dressing, toileting, incontinence care, mobility and transferring;
 - (b) A fracture; or
 - (c) A pronounced decline in communication or cognitive abilities.
- (26)** "Significant change in a participant's physical or mental condition" means one or more of the following:
- (a) Decline in a participant's medical condition that results in further impairment.
 - (b) Decline in 2 or more ADLs.
 - (c) A pronounced decline in communication or cognitive abilities.
 - (d) Decline in behavior or mood which requires either a temporary or permanent increase in the level of ADL assistance needed in one or more ADL categories, such as bathing, eating, oral

hygiene, dressing, toileting, incontinence care, mobility and transferring.

(27) “Standard precautions” are a set of infection control practices used to prevent transmission of diseases that can be acquired by contact with blood, body fluids, non-intact skin (including rashes), and mucous membranes. These measures are used when providing care to all individuals, whether or not they appear infectious or symptomatic.

(28) “Supervision” means oversight of a participant’s daily functioning, keeping track of a participant’s whereabouts and providing guidance and intervention when needed by a participant.

(29) “Transferor” means the current operator in a change of ownership process who will voluntarily relinquish the current certification.

(30) “Transferee” means the recipient of a property or business in a change ownership process who will submit application for a new certification.

(31) “Utensils” means dishes, silverware and pots and pans used for storing, preparing, serving or consuming food.

(32) “Volunteer” means any person who provides services for participants without compensation.

DHS 105.14.03 Variance and waiver. (1) In this section:

(a) “Variance” means the granting of an alternate means of meeting a requirement in this chapter.

(b) “Waiver” means the granting of an exemption from a requirement of this chapter.

(2) Exception to a Requirement. (a) The department may grant a waiver or variance if the department determines that the proposed waiver or variance will not jeopardize the health, safety, welfare or rights of any participant.

(b) A written request for a waiver or variance shall be sent to the department and include justification that the waiver or variance will not adversely affect the health, safety or welfare of any participant for the requested action.

(c) A written request for a variance shall include a description of an alternative means planned to meet the intent of the requirement.

(3) The department may rescind a waiver or variance if any of the following occurs:

(a) The department determines the waiver or variance has adversely affected the health, safety, well-being or welfare of the participants.

(b) The ADCC fails to comply with any of the conditions of the waiver or variance as granted.

Subchapter II – Certification

DHS 105.14.04 Application requirements. (1) No person may receive reimbursement under s. 46.27 (11) Wis. Stat. for the provision of services to participants in an adult day care center unless the adult day care center is certified by the department. A person who assumes ownership interest in a certified ADCC, regardless of whether the transfer includes title to the real estate, or changes the location of the ADCC shall complete an application as required under sub. (2).

(2) An application for certification shall be on a form provided by the department and shall be accompanied by all of the following:

(a) A program description as specified under s. DHS 105.14.05.

(b) A floor plan specifying dimensions of the ADCC, exits and planned room usage.

(c) A fire inspection report.

(d) All required fees.

(e) A balance sheet.

(f) Evidence that the applicant has 60 days of projected operating funds in reserve.

(g) Proof of transportation liability insurance (if applicable).

(h) Well water test results (if applicable).

- (i) Program evaluation plan.
- (j) Any additional information requested by the department.
- (3)** An ADCC may not be located on a parcel of land zoned for industrial or manufacturing use.

DHS 105.14.05 Program description. (1) CONTENT. The program description shall accurately include all of the following:

- (a) The name of the operator, the program director and the caregiver position in charge when the operator or program director is away from the ADCC.
- (b) The participant capacity of the ADCC.
- (c) A definition of the program goals; the days and hours of operation; a description of the services provided or made available to participants.
- (d) A description of any limits the program establishes for providing service to participants with specific care needs.
- (e) A fee schedule that pertains to the perspective participant which includes: The daily charge; additional fees for specific services, goods, or supplies that are not included in the daily charge, i.e., transportation, baths, personal cares, and the method for notifying participants or legal representatives of fee changes.
- (f) A procedure for informing the participant's legal representative, family, or caregiver of any major change in the participant's general functioning or medical condition.
- (g) A procedure for documenting any incident occurring at the site which would affect the health, safety or welfare of a participant.
- (i) The participant group to be served. If serving more than one participant group, the program description shall include an explanation acceptable to the department of how the participant groups are compatible with one another.
- (j) A grievance procedure for investigating and resolving complaints made by a participant, legal representative, family member, caregiver, or other interested persons about the services provided by the ADCC which includes informing such persons of appropriate local, county and/or state agency contacts.
- (k) The criteria for voluntary and involuntary discharge of a participant from the program as defined in s. DHS 105.14.25 Discharge.

- (2) AVAILABILITY.** (a) Before finalizing an agreement to provide care, the ADCC shall provide its program description to each person seeking services or to the person's legal representative.
- (b) The program description shall be provided to caregivers and any other person upon request.

DHS 105.14.06 Fit and qualified. (1) ELIGIBILITY. An applicant may not be certified unless the department determines the applicant is fit and qualified to operate an ADCC.

(2) STANDARDS. In determining whether a person is fit and qualified, the department shall consider all of the following:

- (a) Compliance history. Compliance history with Wisconsin or any other state's licensing or certification requirements and with any federal certification requirements, including any license revocation or denial.
- (b) Criminal history. Arrest and criminal records, including any of the following:
 1. Crimes or acts involving abuse, neglect or mistreatment of a person or misappropriation of property of a person.
 2. Crimes or acts subject to elder abuse reporting under s. 46.90, Wis. Stat.
 3. Crimes or acts related to the manufacture, distribution, use, or dispensing of a controlled substance.
 4. Fraud or substantial or repeated violations of applicable laws and rules in the operation of any health care center or in the care of dependent persons.
 5. A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care center.

(c) Financial history. Financial stability, including:

1. Financial history and financial viability of the owner or related organization.
2. Outstanding debts or amounts due to the department or other government agencies, including unpaid fees and fines.

DHS 105.14.07 Department action. (1) INITIAL CERTIFICATION. (a) Within 70 days after receipt of a complete application, the department shall either approve or deny the certification. (b) A certification issued by the department shall be only for the premises and persons named in the application. A certification may not be transferred or assigned without following the change of ownership provisions in s. DHS 105.14.09.

(c) A certification is valid until suspended or revoked by the department.

(2) CERTIFICATION DENIAL. The department shall deny a certification to any applicant who does not substantially comply with any provision of this chapter or ch. 49, Wis. Stat., or who is not fit and qualified as specified in s. DHS 105.14.06 or who has failed to pay any fee or any outstanding amounts due to the department. The department shall provide the reasons for denial and the process for appeal of the denial in a written notice to the applicant.

(3) MONITORING. The department shall conduct periodic inspections of the ADCC during the period of certification and may, without notice to the operator, visit an ADCC at any time to determine if the ADCC continues to comply with this chapter. The operator shall be able to verify compliance with this chapter and shall provide the department access to the ADCC, its staff, participants and records.

(4) SANCTIONS. (a) *Notice of violation.* The department shall issue a written notice of violation when it finds that an ADCC is in violation of this chapter or with any federal, state, and local laws and codes that govern the operation of the ADCC, including, but not limited to, space, heating, plumbing, ventilation and lighting systems, fire safety and sanitation requirements. The notice shall explain the grounds for the notice of violation, the sanction to be imposed, if any, and the process for appeal, if any.

(b) *Plan of correction.* An ADCC may submit a written plan of correction to the department within 10 days after the date of receipt of the notice of violation.

(c) *Suspension.* The department may summarily suspend the ADCC's certification following procedures in ch. 227, Wis. Stats., when the department finds that participant health, safety or welfare requires emergency action.

(d) *Revocation.* The department may revoke the ADCC's certification whenever the department finds that the ADCC has failed to maintain substantial compliance with one or more of the requirements set forth in this chapter. Revocation of certification will result in the ADCC being ineligible for Medicaid waiver funds.

(5) APPEALS. (a) Any person whose application for certification is denied under sub. (2) or suspended under sub. (4) (c) or revoked under sub. (4) (d) may request a hearing on that decision under s. 227.42, Wis. Stat.

(b) A request for hearing shall be in writing, shall be filed with the department of administration's division of hearings and appeals and shall be sent to that office so that it is received there within 10 days after the date of the notice under sub. (4) (a).

DHS 105.14.08 Biennial report and fees. Every 24 months, on a date determined by the department, the operator shall submit a biennial report containing all of the information required by the department on the form provided by the department, and shall submit payment of the certification continuation fees.

DHS 105.14.09 Change of ownership. (1) DUTIES OF THE TRANSFEREE. (a) When an ADCC seeks a change of ownership, the transferee shall submit a complete application for certification as required under s. DHS 105.14.04 at least 30 days prior to the change of ownership.

(b) If there is less than 30 days' notice given to participants of the change of ownership, neither the transferor nor the transferee may enforce any advanced notice requirements for discharge as specified in any participant's enrollment agreement.

(2) DUTIES OF THE TRANSFEROR. (a) The transferor shall notify the department within 30 days before a change of ownership of an ADCC and shall include the name and contact information of the transferee.

(b) The transferor remains responsible for the operation of the ADCC until the department issues a certification to the transferee.

(c) The transferor shall disclose to the transferee any existing department waiver, variance or outstanding deficiencies. Violations reported in department inspection reports prior to the change of ownership shall be corrected, with corrections verified by the department, prior to the issuance of the certification to the transferee. The transferee shall apply for continuation of any existing waivers or variances, if necessary.

(3) TRANSFERABILITY. (a) The department shall issue a certification only for the premises and persons named in the certification application. A certification may not be transferred or reassigned without following the change of ownership provisions in DHS 105.14.09.

DHS 105.14.10 Center closing. **(1)** Any ADCC that intends to close shall notify the department, participants or legal representative, and case manager, if any, in writing at least 30 days before closing and comply with the requirements under s. DHS 105.14.25.

(2) The ADCC shall surrender the certification to the department when the ADCC closes.

(3) The ADCC shall surrender its certification if it hasn't served participants within the last 24 months.

DHS 105.14.11 Investigation, notification, and reporting requirements. The ADCC shall report the following incidents to DQA when the incident occurs while the participant is at or under the supervision of the ADCC:

(1) DEATH REPORTING. (a) *Participant death related to physical restraint, psychotropic medication or suicide.* No later than 3 working days after the death of a participant, the ADCC shall report the death to the department if there is reasonable cause to believe the death was related to the use of a physical restraint, or psychotropic medication, or was a suicide.

(b) *Participant death related to an accident or injury.* When a participant dies as a result of an incident or accident not related to the use of a physical restraint, psychotropic medication, or suicide, the ADCC shall send a report to the department within 3 working days of the participant's death.

(c) *Participant death due to natural causes.* An ADCC is not required to report a death to the department if the death is the result of natural causes, and none of the circumstances surrounding the death involve a condition under par. (a) or (b).

(2) INVESTIGATING AND REPORTING ABUSE, NEGLECT OR MISAPPROPRIATION OF PROPERTY. (a) *Caregiver.* 1. When an ADCC receives a report of an allegation of abuse or neglect of a participant, or misappropriation of property by a caregiver, the ADCC shall take immediate steps to ensure the safety of all participants and security of their property.
2. The ADCC shall thoroughly investigate and document any allegation of abuse or neglect of a participant, or misappropriation of property by a caregiver. Incidents shall be reported to DQA when the entity has reasonable cause to believe it has sufficient evidence or another regulatory authority could obtain the evidence to show the alleged incident occurred and, the entity has reasonable cause to believe the incident meets or could meet the definition of abuse, neglect or misappropriation. When the ADCC concludes that these conditions are true, the ADCC shall report the incident to the department on a form provided by the department within 7 calendar days from the date the ADCC knew or should have known about the abuse, neglect, or misappropriation of property. The ADCC shall maintain documentation of any investigation and its conclusion. If the ADCC concludes the incident did not meet the definition of abuse, neglect

or misappropriation, the ADCC shall document its rationale for that conclusion. Each ADCC shall comply with the caregiver misconduct reporting requirements in s. 50.065, Wis. Stat., and the caregiver misconduct reporting and investigation requirements in ch. DHS 13.

(b) *Non-caregiver or participant.* When there is an allegation of abuse or neglect of a participant, or misappropriation of property by a non-caregiver or participant, the ADCC shall follow the elder abuse reporting requirements under s. 46.90, Stat., or the adult at risk requirements under s. 55.043, Wis. Stat., whichever is applicable.

(c) *Other reporting.* Filing a report under sub. (1) or (2) does not relieve the operator or other person of any obligation to report an incident to any other authority, including law enforcement and the coroner.

(3) INVESTIGATING INJURIES OF UNKNOWN SOURCE. (a) An ADCC shall thoroughly investigate an injury of unknown source when both of the following conditions are met:

1. The source of the injury was not observed by any person or the source of the injury could not be explained by the participant; and

2. The injury appears suspicious because of the extent of the injury or the location of the injury on the participant.

(b) The ADCC shall maintain documentation of each investigation of an injury referenced under par. (a). The ADCC shall report the incident as required under sub. (2).

(4) OTHER REPORTING AND NOTIFICATION REQUIREMENTS. An ADCC shall send a written report to the department within 3 working days after any of the following occurs:

(a) Any time a participant's whereabouts are unknown, except those instances when a participant who is competent chooses not to disclose his or her whereabouts or location to the ADCC, the ADCC shall notify the local law enforcement authority immediately upon discovering that a participant is missing.

(b) Any time law enforcement personnel are called to the ADCC as a result of an incident that jeopardizes the health, safety, or welfare of participants or caregivers. The ADCC's report to the department shall provide a description of the circumstances requiring the law enforcement intervention.

(c) Any incident or accident resulting in serious injury requiring hospital admission or emergency room treatment of a participant.

(d) A catastrophe occurs resulting in damage to the ADCC.

(e) A fire occurs on the premises of the ADCC.

(f) Any time the ADCC must evacuate and temporarily relocate participants and caregivers from the ADCC for reasons other than a fire drill.

(5) NOTIFICATION OF CHANGES AFFECTING A PARTICIPANT. (a) The ADCC shall immediately notify the participant's legal representative and the participant's residential provider and document the notification when there is an incident or injury to the participant or a significant change in the participant's physical or mental condition as defined in s. DHS 105.14.02(26).

(b) The ADCC shall immediately notify the participant's legal representative and document the notification when there is an allegation of physical, sexual or mental abuse, or neglect of a participant. The ADCC shall notify the participant's legal representative within 72 hours when there is an allegation of misappropriation of property and document the notification

(c) The ADCC shall give the participant or the participant's legal representative a 30-day written notice of any change in services available or in charges for services that will be in effect for more than 30 days.

(6) DOCUMENTATION. All written reports required under this section shall include, at a minimum, the time, date, place, individuals involved, details of the occurrence, and the action taken by the provider to ensure participants' health, safety, welfare and well-being.

DHS 105.14.12 General records retention. (1) RECORDS RETENTION. (a) The ADCC shall retain all records required under this chapter for 2 years, unless otherwise specified under pars.

(b) and (c).

(b) Participant records shall be retained for 7 years following the date of a participant's final discharge.

(c) Employee records shall be retained for 3 years following a caregiver's separation from employment at the ADCC.

Subchapter III – Personnel

DHS 105.14.13 Operator. (1) QUALIFICATIONS. (a) An operator shall be at least 21 years of age.

(b) An operator shall meet the caregiver background requirements under s. 50.065, Wis. Stat., and ch. DHS 12.

(2) RESPONSIBILITIES. (a) The operator shall ensure the ADCC and its operation comply with all laws governing the ADCC.

(b) The ADCC shall comply with the requirements set by the Federal 1991 Americans with Disabilities Act, and by the Federal Occupation, Safety and Health Administration.

(c) The operator shall develop a procedure to implement standard precautions.

(d) The operator shall develop and implement written policies and procedures to investigate allegations of employee misconduct and injuries of unknown source as defined in s. DHS 105.14 (11).

(e) The operator shall report any change in participant group in writing to the department at least 30 days in advance and may not implement the change until the operator receives written approval from the department.

(f) The operator shall not change the ADCC's capacity until the operator receives written approval from the department.

(g) The operator shall provide to each participant, or the participant's legal representative, and third party payer, a 30 day written notice of any change in the ADCC's capacity or client group.

(h) The operator shall post the ADCC certification, any statement of deficiency, notice of revocation and any other notice of enforcement action in a public area that is visually and physically accessible. A statement of deficiency shall remain posted for 90 days following receipt. Notices of revocation and other notices of enforcement action shall remain posted until a final determination is made.

(i) The operator may not permit the existence or continuation of any condition which is or may create a substantial risk to the health, safety, well-being or welfare of any participant.

(j) The operator shall ensure that the presence of other occupants does not adversely affect the health, safety, well-being or welfare of participants.

DHS 105.14.14 Program director. (1) QUALIFICATIONS. The program director of an ADCC shall be at least 21 years of age and have the capacity to respond to the needs of the participants and manage the day to day operations of the ADCC. The Director shall have any one of the following qualifications:

(a) An associate degree or higher from an accredited college in a health care related field.

(b) At least 2 years' experience working in health care or related field, which served a population similar to the population at the adult day care center.

(c) Persons who are the qualified program director of record with the department of an ADCC on the date this rule becomes effective, shall be exempt from the qualification requirements specified under sub. (1).

(2) RESPONSIBILITIES. (a) The program director shall supervise the daily operation of the ADCC, including but not limited to, participant care and services, personnel, finances, and physical plant. The program director shall provide the supervision necessary to ensure that the participants receive proper care and treatment, that their health and safety are protected and promoted and that their rights are respected.

- (b) The program director shall be responsible for the training and competency of all caregivers.
- (c) A qualified caregiver who is at least 18 years old shall be designated as in charge whenever the program director is absent from the ADCC.

DHS 105.14.15 Caregiver. (1) Each caregiver shall have the skills, education, experience and ability to fulfill the caregiver's job requirements.

(2) A caregiver shall be at least 16 years old.

DHS 105.14.16 Hiring and employment. (1) CAREGIVER BACKGROUND CHECK. Before hire, employment or contract and every 4 years after, the operator shall conduct and document a caregiver background check following the procedures in s.50.065, Wis. Stat., and ch. DHS 12. An operator shall not employ, contract with or permit a person to work or reside at the ADCC if the person has been convicted of the crimes or offenses, or has a governmental finding of misconduct, found in s. 50.065, Wis. Stat., and ch. DHS 12, Appendix A, unless the person has been approved under the department's rehabilitation process as defined in ch. DHS 12.

(2) **EMPLOYEE HEALTH COMMUNICABLE DISEASE CONTROL.** (a) The ADCC shall obtain documentation from a physician, physician assistant, clinical nurse practitioner or a licensed registered nurse indicating all employees have been screened for clinically apparent communicable disease including tuberculosis. Screening for tuberculosis shall be conducted in accordance with current standards of practice. The screening and documentation shall be completed within 90 days before the start of employment or before assumption of duties in which the caregiver will have direct contact with participants. The ADCC shall keep screening documentation confidential, except the department shall have access to the screening documentation for verification purposes.

(b) Employees shall be re-screened for clinically apparent communicable disease as described in par. (a) based on the likelihood of exposure to communicable disease, including tuberculosis.

(c) A person who has a communicable disease shall not be permitted to work or be present in the ADCC if the disease would present a risk to the health or safety of participants.

DHS 105.14.17 Employee records. (1) A separate record for each employee shall be maintained, kept current, and at a minimum, include:

(a) Beginning date of employment.

(b) Educational qualifications for program director.

(c) A completed caregiver background check following procedures under s. 50.065, Wis. Stat., and ch. DHS 12.

(d) Documentation of orientation and training.

(2) Employee records shall be available upon request at the ADCC for review by the department.

Subchapter IV – Orientation and Training

DHS 105.14.18 Orientation. (1) Before performing any job duties, all employees shall receive appropriate orientation to their job responsibilities and to the center and its policies, including, but not limited to, emergency and evacuation procedures, participant rights and prevention and reporting of participant abuse, neglect and misappropriation of participant property.

DHS 105.14.19 Training. (1) Within 90 days of employment the ADCC shall provide, obtain or otherwise ensure all caregivers receive training in the following areas:

(a) Training specific to each participant group served to include the physical, social and mental health needs of the participant group. Specific training topics shall include, as applicable: activities, safety risks, managing and responding to challenging behaviors, environmental considerations, disease processes, communication skills, and nutritional needs.

(b) Recognizing and responding to changes in condition including first-aid.

(c) Use of a fire extinguisher.

(2) The ADCC shall provide, obtain, or otherwise ensure caregivers receive specific task training prior to assuming these job duties, to include:

(a) Personal Care. All caregivers responsible for providing assistance with activities of daily living shall successfully complete training appropriate to the care and services provided.

Specific training topics may include, but not limited to, toileting and incontinence care, mobility and transferring, eating, bathing, and dressing.

(b) Standard precautions. All caregivers who may be exposed to blood, body fluids or other moist body substances, including mucous membranes, non-intact skin, secretions, and excretions except sweat, whether or not they contain visible blood shall successfully complete training in standard precautions.

(c) Medication administration. Any caregiver, who manages, administers or assists participants with prescribed or over-the-counter medications shall complete training in medication administration and management.

DHS 105.14.20. Caregiver supervision. Until a caregiver has completed all required training, the caregiver shall be directly supervised by the program director or by a qualified caregiver.

DHS 105.14.21 Continuing education. The program director and all caregivers shall receive at least 10 hours per calendar year of continuing education beginning with the first full calendar year of employment. Continuing education shall be relevant to the job responsibilities and shall include, at a minimum:

(1) Standard precautions.

(2) Participant rights.

(3) Prevention and reporting of abuse, neglect and misappropriation.

(4) Emergency and evacuation procedures.

DHS 105.14.22 Documentation. (1) The ADCC shall maintain documentation of all the applicable training under subch. IV to include the name of the employee, the name of the instructor, the dates of training, a description of the course content, and the length of the training.

(2) Orientation, training, and hours of continuing education shall be documented in the employee's file.

Subchapter V - Admission, Retention and Discharge

DHS 105.14.23 Limitations on enrollment and retention. (1) CERTIFICATION CAPACITY.

(a) No ADCC may serve more participants than the maximum participant capacity on its certification at any time during hours of operation.

(2) ENROLLMENT AND RETENTION LIMITATIONS. No person under the age of 18 years may be enrolled as an ADCC participant, unless approved for enrollment by the department.

(a) Requests for approval to enroll a person under the age of 18 years shall be made in writing and shall include:

1. A statement from the referring physician stating the services required by the minor;

2. A statement from the program director certifying that the required services can be provided;

3. A statement from the persons or agencies assuming financial responsibility; and

4. Evidence of guardianship and legal representative, if any.

DHS 105.14.24 Enrollment procedures. (1) ASSESSMENT. The ADCC shall assess each participant before enrollment as required under s. DHS 105.14.27.

(2) ENROLLMENT INFORMATION. The ADCC shall obtain and document the following information about the participant upon acceptance into the program:

- (a) Participant's full name, address, telephone number, date of birth and living arrangement;
- (b) Name, address and telephone number of designated contact person, and legal representative, if any;
- (c) Name, address and telephone number of the participant's primary physician;
- (d) Name and address of the referring or coordinating agency and case manager, if applicable; and
- (e) Advance Directives, if executed by the participant, such as a power of attorney for health care, or a do-not-resuscitate order.

(3) SERVICES AND CHARGES. An enrollment agreement shall be signed by the participant, or legal representative, if applicable, that includes a written description of the services to be provided, the cost of those services, and a statement of the participant's rights have been received.

(4) HEALTH SCREENING. (a) *Participant health screening.* 1. Within 90 days before or 7 days after enrollment, a physician, physician assistant, clinical nurse practitioner or a licensed registered nurse shall screen each person enrolled in the ADCC for clinically apparent communicable disease, including tuberculosis, and document the results of the screening. 2. Screening for tuberculosis and all immunizations shall be conducted in accordance with current standards of practice. 3. The ADCC shall maintain the screening documentation in each participant's record.

DHS 105.14.25 Discharge. (1) APPLICABILITY. This section applies to all ADCC participant discharges.

(2) The ADCC shall develop criteria for voluntary and involuntary discharge of a participant from the program.

(3) The ADCC may not involuntarily discharge a participant except for any of the following reasons:

- (a)** Nonpayment of charges, following reasonable opportunity to pay.
- (b)** Care is required that is beyond the ADCC's certification.
- (c)** Care is required that is inconsistent with the ADCC's program description and beyond that which the ADCC is required to provide under the terms of the enrollment agreement and this chapter.
- (d)** Medical care is required that the ADCC cannot provide.
- (e)** There is imminent risk of serious harm to the health or safety of the participant, other participants or employees, as documented in the participant's record.
- (f)** As otherwise permitted by law.

(4) The ADCC shall provide a 30 day written notice of involuntary discharge to the participant or legal representative prior to an involuntary discharge unless the continued presence of the participant endangers the health, safety or welfare of the participant or other participants.

Subchapter VI – Participant Rights

DHS 105.14.26 Rights of participants. (1) RIGHTS OF PARTICIPANTS. Any form of coercion to discourage or prevent a participant or the participant's legal representative from exercising any of the rights under this subchapter is prohibited. Any form of retaliation against a participant or the participant's legal representative for exercising any of the rights in this subchapter, or against a caregiver or any other person who assists a participant or the participant's legal representative in the exercise of any of the participant rights in this subchapter, is prohibited. Each participant shall have all of the following rights:

- (a) The right to be treated with respect and dignity.

- (b) The right to be free from physical, sexual, mental abuse and neglect, and from misappropriation of personal property.
- (c) The right to participate in the development of one's service plan, with support from a caregiver or legal representative, if needed.
- (d) The right to refuse to participate in an activity.
- (e) The right to privacy and confidentiality.
- (f) The right to be fully informed of all the services provided and the charge for each of those services.
- (g) The right to be informed of the reason for discharge and the procedure for appealing that decision.
- (h) The right to initiate a grievance and be informed of the grievance procedure.
- (i) Freedom from physical restraints. Be free from physical restraints except upon prior review and approval by the department upon written authorization from the participant's primary physician, physician assistant or advanced practice nurse prescriber as defined in s. N 8.02 (2). The department may place conditions on the use of a restraint to protect the health, safety, welfare, well-being and rights of the participant.
- (j) Recording, filming, photographing. Not to be recorded, filmed or photographed without prior written informed consent by the participant or participant's legal representative. The center may take a photograph for identification purposes. The department may photograph, record or film a participant pursuant to an inspection or investigation under s. 49.45 (2) (a) 11. Wis. Stat. without his or her written informed consent.

Subchapter VII – Participant Care and Services

DHS 105.14.27 Assessment, individual service plan and evaluations. (1) ASSESSMENT.

(a) *Scope.* Assessments shall be conducted by staff members having the expertise, experience, or training pertinent to the participant population served by the program. The assessment identifying the participant's needs shall be completed prior to enrollment. For emergency enrollments, the program will complete an assessment within 5 days.

(b) *Areas of assessment.* A comprehensive written assessment of the participant's needs, at a minimum, shall include the areas of physical health to include physical disabilities and mobility status, mental and emotional health, medications to include allergies, nutritional needs, emergency evacuation capabilities, preferences and interests and any other information helpful to developing the service plan.

(2) SERVICE PLAN. (a) *Scope.* The service plan shall be developed by staff members having the expertise, experience, or training pertinent to the participant population served by the program. Within 30 days of enrollment and based on the comprehensive assessment, the ADCC shall develop and implement a service plan to identify the services and activities the program will provide in order to meet the individual needs and personal interests of the participant.

(b) *Service Plan Review.* The service plan will be reviewed and revised every six months or when necessary due to changes in the participant's functioning, health condition, or preferences. Changes shall be documented in the participant's record.

(c) *Access.* All caregivers who provide participant care and supervision shall have continual access to the participant's service plan.

(3) EVALUATION. The center shall have a process in place to promote communication among caregivers and with the participant and legal representative about the participant's daily capabilities, interests, general well-being and response to the individualized service plan. At a minimum, quarterly notes shall document how a participant is responding to the service plan.

DHS 105.14.28 Caregiver requirements. (1) In this subsection: "Severely impaired" means any impairment leading to a participant's inability at the program to perform any 3 or more

activities of daily living. The impairment may be physical or cognitive in nature. A severely impaired participant demonstrates an inability to perform these activities of daily living at the adult day care center unless assistance, supervision or prompting is provided.

(2) ADEQUATE STAFFING. (a) At least one qualified caregiver shall be on the premises at all times when one or more participants are present.

(b) The ADCC shall provide sufficient caregiver staff at all times to implement the program goals and participant service plans based on a comprehensive assessment of each participant's needs, including physical health, physical disabilities and mobility status, mental and emotional health, emergency evacuation capabilities and participant's preferences and interests.

(3) There shall be a minimum of 1 caregiver for each 8 non-severely impaired participants at the ADCC.

(4) There shall be a minimum of 1 caregiver for each 4 severely impaired participants at the ADCC.

(5) CAREGIVER SCHEDULE. The ADCC shall maintain a current written schedule for caregivers at the ADCC. The schedule shall include each caregiver's full name, job assignment and time worked.

(6) VOLUNTEERS. Volunteers who meet the same standards, requirements, and training as a caregiver and who have signed a written job description may be counted as a caregiver to meet staffing requirements.

DHS 105.14.29 Medications. **(1)** The ADCC shall have a written policy for medication management and shall designate which caregivers are authorized and trained to administer medications. The caregiver administering medications shall be 18 years of age or older. The policy shall indicate the program's role in the supervision of self-administered medications and caregiver administered medications.

(2) Self-administered medications may be supervised by a caregiver who may prompt the participant and observe the participant taking the medication. To self-administer medications, the participant shall have the physical and mental capacity to obtain, dispense and ensure the correct medications are taken in the prescribed dosages. When medications are self-administered (whether supervised or not), the medication list shall be reviewed and updated annually by the prescribing practitioner, physician, physician's assistant, or nurse practitioner.

(3) Caregiver administered medications are stored, obtained and assembled for the participant. The caregiver is responsible for ensuring the correct medication, in the correct dose, at the correct time is administered to the correct participant. Medications administered by a caregiver shall meet the following conditions:

(a) A written order from the prescribing practitioner shall be in the participant's record;

(b) A listing of current medications with the dosage, frequency, and route of administration shall be in the participant's record;

(c) Over-the-counter and prescription medications shall remain in the original labeled containers and be stored in a locked, safe place;

(d) Non-licensed caregiver shall consult with the prescribing practitioner or pharmacist about each medication to be administered;

(e) Written information describing side effects and adverse reactions of each medication shall be kept in the participant's record; and

(f) The administration of medications shall be documented in the participant's permanent record to include the name of the medication, dosage, method of administration, date and time administered, and name of the caregiver who administered the medication.

(g) Medication administration by routes to include: injectable, nebulizers, stomal and enteral medications, and medications, treatments or preparations delivered vaginally or rectally shall be administered by a registered nurse or by a licensed practical nurse within the scope of their license. Medication administration described under sub. (3) (g) may be delegated to non-licensed caregivers pursuant to s. N 6.03 (3).

DHS 105.14.30 Program services. (1) SERVICES. Based on the written description of the program, the ADCC shall provide or arrange for services to meet the needs of the participants in all of the following areas;

(a) *Leisure activities.* The ADCC shall provide activity programming including individual and group activities that encourage creativity, social interaction, and physical exercise; and provide opportunities for indoor and outdoor activities. Activities shall include outings to points of interest and involvement in the general community which take into consideration individual functional abilities, needs, and interests.

(b) *Personal cares.* The ADCC shall provide assistance to meet a participant's assessed need with activities of daily living.

(d) *Supervision.* The ADCC shall provide supervision appropriate to the participant's needs.

(e) *Communication skills.* The ADCC shall provide services to meet the participant's communication needs.

(f) *Health monitoring.* The ADCC shall monitor the health of a participant by observing and documenting changes in each participant's health and referring a participant to health care providers when necessary. The ADCC shall immediately notify the participant's legal representative and the participant's residential provider, if any, when there is a significant change in the participant's condition.

(g) *Behavior management.* The ADCC shall provide services to manage a participant's behaviors that may be harmful to themselves or others.

(h) *Transportation.* The ADCC program providing transportation for participants shall carry liability insurance and ensure the vehicle is safe and well-maintained.

DHS 105.14.31 Food service. (1) GENERAL REQUIREMENTS. (a) *Food supply.* 1. The ADCC shall maintain a food supply that meets the needs of each participant.

2. Food shall be obtained from acceptable sources.

(b) *Equipment and Utensils.* The ADCC shall store equipment and utensils in a clean manner and shall maintain all utensils and equipment in good repair. Single-use utensils may not be reused.

(c) *Dishwashing.* 1. Whether washed by hand or mechanical means, all equipment and utensils shall be cleaned using separate steps for pre-washing, washing, rinsing and sanitizing.

2. Mechanical washing of dishes and utensils in a residential type dishwasher will have a temperature setting of at least 120 degrees F. A separate process must be completed for sanitization of all items upon removal from a residential type dishwasher. The sanitization process must be in accordance with practices described in the Wisconsin Food Code.

3. Mechanical washing of dishes and utensils in a commercial type dishwasher will be in accordance with standard practices described in the Wisconsin Food Code.

4. Dishes and utensils shall be air dried, unless a dishwasher, which performs this function, is used.

NOTE: Wisconsin Food Code and Food Code Fact Sheets can be found at

https://datcp.wi.gov/Pages/Programs_Services/FoodCode.aspx

(2) NUTRITION. (a) *Meals.* The ADCC shall arrange for or provide a meal to each participant attending the program for 5 or more hours. Meals shall provide at least 1/3 of an adult's daily nutritional requirements.

(b) *Documentation.* The center shall document the food served at meals and maintain the documentation on file for at least six months.

(c) *Snacks.* A nutritious snack shall be made available consistent with each participant's dietary needs.

(3) SANITATION AND SAFETY. (a) *Infection control.* 1. Each caregiver who prepares or serves food shall be free from open, infected wounds and from communicable disease and shall maintain clean and safe work habits.

2. The ADCC shall provide hand-washing facilities in the kitchen for use by food handlers. Use of a common towel is prohibited.
3. Participants who assist in preparing food shall adhere to the same food safety requirements as staff and be directly supervised by a caregiver.
 - (b) *Food safety.* Whether food is prepared at the ADCC or off-site, the ADCC shall store, prepare, distribute and serve food under sanitary conditions for the prevention of food borne illnesses, according to all of the following:
 1. The ADCC shall refrigerate all foods requiring refrigeration at or below 41 degrees F.
 2. The ADCC shall maintain freezing units at 0 degrees F or below. Food shall be covered and stored in a sanitary manner.
 3. The ADCC shall hold hot foods at 135 degrees F or above and shall hold cold foods at 41 degrees F or below until served.
 4. Each refrigerator and freezer shall have an accurate thermometer inside the unit.
 5. The ADCC shall keep storage areas clean and dry and store food at least six inches off the floor.

Subchapter VIII – Physical Environment

DHS 105.14.32 Building and furnishings. (1) ENVIRONMENT. (a) If required by the Department of Safety and Professional Services or local municipality, the ADCC shall have on file an inspection report signed by an authorized agent demonstrating that its center, including remodeling, has met applicable building codes.

(b) The ADCC shall provide at least 50 square feet of usable floor space for each participant exclusive of passageways, bathrooms, lockers, office, storage areas, staff room, furnace rooms, and parts of rooms occupied by stationary equipment.

(c) The ADCC shall be designed in such a way that it is accessible and functional in meeting the identified needs of the adult population it serves.

(d) The ADCC shall have a telephone on the premises, which is immediately accessible during hours of operation.

(e) Temperature at the ADCC shall be maintained at not less than 70 degrees F.

(f) Toilet rooms and fixtures shall function properly and shall be maintained in a sanitary condition.

(g) The premises shall be clean, comfortable, and in good repair.

(h) Pets kept on the premises shall be vaccinated against diseases including rabies if appropriate.

(2) Water Supply

(a) A supply of safe drinking water shall be available to participants at all times.

(b) If well water is used, wells shall be approved by the State Department of Natural Resources and water samples shall be tested annually at a state approved laboratory. Documentation of test results shall be kept on file at the ADCC.

(c) The ADCC shall set the temperature of all water heaters connected to sinks, showers and tubs used by residents at a temperature of at least 140°F. The temperature of hot water at plumbing fixtures used by residents may not exceed the range of 110 - 115°F.

(3) FURNISHINGS. (a) The center shall provide sufficient furniture and equipment for use by participants that provides comfort, safety and is appropriate for the participants.

(b) The furnishings shall be clean, safe and in good repair.

(4) EXITS. Stairs, walkways, and ramps shall be maintained in a safe condition. All exits, sidewalks, and driveways used for exiting shall be kept free of ice, snow, and obstructions.

(a) *Delayed egress.* Delayed egress door locks are permitted with department approval only in ADCCs with a supervised automatic fire sprinkler system and a supervised interconnected automatic fire detection system and shall comply with all of the following:

1. No more than one device shall be present in a means of egress.

2. A sign shall be posted adjacent to the locking device indicating how the door may be opened.
3. The doors shall unlock upon activation of the sprinkler system or fire detection system. The doors shall unlock upon loss of power controlling the lock or locking mechanism.
4. The door locks shall have the capability of being unlocked by a signal from the ADCC's fire command center.
5. An irreversible process will occur which will release the latch in not more than 15 seconds when a force of not more than 15 pounds is applied for 3 seconds to the release device. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door. Once the door lock has been released by the application of force to the releasing device, re-locking shall be by manual means only.
6. To obtain department approval, the ADCC shall:
 - (a) Demonstrate the delayed egress equipment is necessary to ensure the safety of participants served by the ADCC, specifically persons at risk of elopement due to behavioral concerns, cognitive impairments or dementia, including Alzheimer's disease.
 - (b) Obtain documentation from the local municipality that the delayed egress door lock system complies with the requirements under s. DHS 105.14.32 and applicable building codes.
7. Upon installation of the approved delayed egress lock system, the operator shall obtain documentation from the installer that the system has been installed, tested and is fully operational as designed and approved. The ADCC shall submit the documentation to the department within 10 days of completion of the installation.

Subchapter IX – Safety

DHS 105.14.33 Emergency preparedness. (1) EMERGENCY PLAN. Each adult day care center shall have a written plan for responding to fires, tornadoes, missing participants, injuries and other emergencies which includes:

- (a) Posting an evacuation plan;
 - (b) Informing all staff members of their duties during an emergency;
 - (c) Practicing and documenting annual tornado drills.
- (2) FIRE SAFETY.** The ADCC shall maintain written reports of fire safety inspections as well as any other inspection reports required by local authorities.
- (a) The ADCC shall have at least one 2A, 10-B-C fire extinguisher per 1,500 square feet of space. If only one extinguisher is necessary in the building, it is to be located near the cooking area. Fire extinguishers shall be operable at all times, inspected once a year by a qualified person, and shall bear a label indicating its condition and date of the last inspection.
 - (b) Unless the fire department indicates otherwise in writing, the center shall have smoke detectors in each activity room and hallway which shall be tested monthly.
 - (c) Fire drills shall be conducted and documented quarterly.

Subchapter X – Requirements for adult day care programs located in a multi-use facility

DHS 105.14.34 Multiple occupancies. An ADCC located in a multi-use facility shall ensure the setting, programs, and physical environment will enhance the dignity and individual respect of participants.

- (1) EXTERIOR.** (a) Access to the ADCC shall be distinct and have separate entrance and exit doors so participants and staff are not walking through the living areas of others. A multi-use facility may have a shared lobby leading to a distinct entrance door for the ADCC.
- (b) The ADCC shall have a separate door to the outside so participants and staff are not walking through the living areas of others.
- (c) ADCC participants shall not share outdoor space at the same time as residents of a multi-use facility.

(2) INTERIOR. (a) The ADCC shall be separate from living areas, shall be in addition to space required for other programs, and shall meet the requirements of s. DHS 105.14.32(1)(b).

(b) Spaces designated for program activities, dining, toileting, exercise and ambulation are distinctly part of the adult day care area and limited to use by the adult day care participants. ADCC participants may be provided personal care or therapy in space also used by residents of a multi-use facility provided that the adult day care services are scheduled at different times from other occupants.

(3) COMMON USE AREAS. (a) If ADCC participants and other occupants are intermixed and the total building is available to ADCC participants and other occupants, the common dining and living space shall be determined by the total capacity of the building as described under s. DHS 105.14.32(1)(b).

(4) STAFFING. The ADCC shall have distinct and separate caregivers. No caregiver may be concurrently assigned to the ADCC and another program. All staff assigned to the ADCC shall meet requirements for orientation and training under subch. IV.

(5) Activities. The ADCC activity program shall be programmatically distinct from the weekly or monthly calendar of activities planned for residents of a multi-use facility, but does not include special events provided on a non-routine basis.

Subchapter XI – Program Evaluation

DHS 105.14.35 Annual program review. (1) ADCCs shall develop and implement an annual plan to evaluate and improve the effectiveness of the program's operation and services to ensure continuous improvement in service delivery.

(2) The evaluation process shall include: a review of the existing program; survey results from participants, participants' legal representatives, and referral sources; program modification that responded to changing needs of participants; and proposed program and administrative improvements. A written report which summarizes the evaluation findings, improvement goals and implementation plan shall remain on file at the site.

SECTION 2. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in § 227.22 (2), Wis. Stat.