

STATEMENT OF SCOPE

WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 110

RELATING TO: Emergency Medical Services Licensure, Certification, and Staffing Requirements

RULE TYPE: Emergency

SCOPE TYPE: Original

FINDING OF EMERGENCY: Preservation of the public peace, health, safety, or welfare necessitates adoption of an emergency rule because some emergency medical services (EMS) providers have reduced staff and/or volunteer availability due to practitioners with high-risk characteristics such as age and other health issues who have either removed themselves or been removed from clinical rotations. Flexibility in staffing requirements will allow providers to maximize the use of available staff to respond to calls for service without delay or interruption.

SUMMARY

1. Description of rule objectives

On March 12, 2020, Governor Evers issued Executive Order 72, which, in accordance with s. 323.10, Stats., declared a public health emergency related to the novel strain of coronavirus, now named COVID-19. Executive Order 72 further designated the Department of Health Services (“the department”) as the lead agency to respond to the public health emergency. By making that designation, the Governor directed the department to take all necessary and appropriate measures to respond to, and prevent the spread of, COVID-19 in the state—including suspending provisions of any administrative rule that the Secretary of the department determines compliance with the rule would prevent, hinder, or delay necessary actions to respond to the emergency and increase the health threat.

On April 3, 2020, Governor Evers and Secretary-designee Palm signed Emergency Order 21, which ordered the suspension of a number of administrative rules, including various sections of ch. DHS 110. Specifically, Emergency Order 21 suspended provisions requiring renewal of EMS licensure or certification while responding to the spread of COVID-19, and extended any certifications which expired during that time period by 60 days. The rule also suspended staffing requirements for paramedic ambulances, and staffing and equipment requirements for reserve ambulances. These suspensions helped EMS providers to combat staff and volunteer shortages due to the spread of COVID-19. The Governor’s public health emergency declaration expired on May 11, 2020, per s. 323.10, Stats., and this expiration will effectively nullify Emergency Order 21.

In order to preserve the public peace, health, safety, and welfare under s. 227.24 (1) (a), Stats., and in accordance with the department's authority under s. 252.02 (4) and (6), Stats., to promulgate rules and implement emergency measures to protect against, and control the spread of, communicable diseases, the department proposes to suspend entirely or in part the following rules in order to allow EMS providers to continue to respond to staffing shortages due to the spread of COVID-19:

- Section DHS 110.07 (1) (d), which establishes preconditions for renewal of EMS licensure or certification.
- Section DHS 110.13 (5), which requires EMT-intermediates or EMT-paramedics to maintain current certification in advanced cardiac life support (ACLS).
- Section DHS 110.50 (1) (d) 1., 3. and 4., which sets staffing number requirements for paramedic ambulances.
- Section DHS 110.50 (3) (a), which requires specific staffing and equipment levels for reserve ambulances.
- Section. DHS 110.50 (3) (b), which requires specific staffing levels and scope of practice for reserve ambulances in a two-paramedic system.

2. Existing policies relevant to the rule and polices proposed to be included in the rule

Many EMS providers are currently short-staffed due to staff members who are at higher risk of contracting COVID-19 due to age or pre-existing conditions. Under the certification and staffing requirements in ch. DHS 110, it is likely that EMS providers will continue to struggle to respond to these staffing shortages due to expiring certifications or insufficient staff to comply with the numbers requirements in s. DHS 110.50. Temporarily suspending these requirements will allow EMS providers to continue to promptly respond to emergency service calls without delay due to staffing shortages, and will further encourage social distancing practices—thereby helping prevent the spread of COVID-19—amongst staff who are more susceptible to COVID-19 due to age or pre-existing conditions.

Additionally, ss. DHS 110.07 (1) (d) and 110.13 (5) establish, respectively, preconditions for renewal of EMS licensure or certification (such as completing required CPR classes), and requirements that an EMT-intermediate or EMT-paramedic maintain current certification in advanced cardiac life support. Availability of these recertification classes is limited due to closures at technical colleges and other facilities that provide CPR and ACLS classes to comply with these requirements. Temporary suspension of these rule provisions will allow practitioners who are otherwise qualified except for these requirements to continue to provide necessary and potentially life-saving services to Wisconsinites.

3. Analysis of policy alternative

There are no reasonable alternatives to emergency rulemaking. Governor Evers and Secretary-designee Palm jointly ordered that these above-referenced administrative rule sections be suspended on April 3, 2020, and that order expired on May 11, 2020.

4. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The department is authorized to promulgate the rule based upon explicit statutory language.

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

The department is authorized to promulgate the emergency rule based upon the following statutory sections:

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

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

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

Section 227.24 (1) (a), Stats.: An agency may, except as provided in s. 227.136 (1), promulgate rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

Section 252.02 (4) and (6) Stats.:

(4) . . . [T]he department may promulgate and enforce rules or issue orders for guarding against the introduction of any communicable disease into the state, for the control or suppression of communicable diseases, for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by a communicable disease

(6) The department may authorize and implement all emergency measures necessary to control communicable diseases.

Section 256.15 (13), Stats.:

(a) The department may promulgate rules necessary for administration of this section.

(b) The department shall promulgate rules under subs. (8) (b), (c) and (e) and (8m).

(c) The department shall promulgate rules that specify actions that emergency medical services practitioners may undertake after December 31, 1995, including rules that specify the required involvement of physicians in actions undertaken by emergency medical services practitioners.

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

There do not appear to be any other statutes or rules affected by the proposed administrative rule.

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

The estimated time for state employees to develop the rule is 40 hours.

6. 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

The proposed emergency rule is anticipated to affect many of the 18,000 practitioners in the state who have a CPR card and at the advanced levels of care, advanced cardiac life support cards (ACLS). A recent survey of agencies indicate that almost 30% of practitioners have a CPR card expiring between May 1 and September 30 and 24% with an expiring ACLS card.

7. 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 rule.

8. Anticipated economic impact, locally or state wide

The proposed rule will have minimal or no economic impact.

Agency contacts

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