

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

The Wisconsin Department of Health Services (“the Department”) proposes an order to **amend** DHS 5.07 (2) (intro) and (2) (a), DHS 10.41 (Note), 60.01 (6) (d), DHS 61.021 (11), DHS 61.022 (5) and (13), DHS 61.06 (8), DHS 61.10, DHS 61.40 (intro), DHS 61.76 (intro), DHS 61.79 (2) (a), DHS 63.02 (12), DHS 63.06 (1) (a), DHS 63.09 (4), DHS 88.10 (3) (L), DHS 101.03 (152), DHS 103.06 (2) (c) 1. c., DHS 104.01 (2) (title) and (2), DHS 105.36 (2) (a) 2., DHS 106.02 (10), DHS 106.06 (22), (23) (title) and (23), DHS 107.06 (3) (d) 2., DHS 110.54 (24), DHS 124.06 (1) (a), DHS 129.05 (2) (a) 1. e., DHS 129.07 (2) (a) 3., DHS 129.08 (5) (a), DHS 134.60 (2) (a) 1., DHS 134.82 (3) (b) 2., DHS 134.83 (5) (g), DHS 134.84 (3)(c) (title) and (3) (c), and DHS 152.04 (4), relating to the use of inclusive language under 2019 Executive Order 15.

RULE SUMMARY

Statute interpreted

Not applicable.

Statutory authority

Section 227.11 (2) (a), Stats.:

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

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

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

Explanation of agency authority

Within certain parameters, the Department is authorized under s. 227.11 (2) (a), Stats., 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.

Related statute or rule

Chapter 49 Stats, subchs. IV–VI
Chapter 50, Stats.
Sections 49.2805-.2897, Stats.

Plain language analysis

The objective of this proposed rulemaking order is to comply with 2019 Executive Order 15. The executive order requires each state agency to review its administrative rules and replace any derogatory or offensive terms with current, inclusive terms. Because the Department has been directed by 2019 Executive Order 15 to update the affected rules, there is no reasonable alternative to rulemaking. Many of the effective rule chapters were amended by 2019 Wis. Act 1, and the Department is in the process of revising or repealing many of the rule chapters listed in the Statement of Scope. This proposed rule order aims to replace any outdated and non-inclusive terms not addressed by 2019 Wis. Act 1 or the department's other active rulemaking.

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

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

Comparison with rules in adjacent states

Illinois:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Iowa:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Michigan:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Minnesota:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Summary of factual data and analytical methodologies

No factual data or methodologies were relied upon. This proposed rule order is based on the Governor's directives in 2019 Executive Order 15.

Analysis and supporting documents used to determine effect on small business

The Department's fiscal estimate and economic impact analysis determined that the proposed rules would not have any effect on small businesses.

Effect on small business

This rule is not anticipated to have any effect on small businesses.

Agency contact person

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Statement on quality of agency data

As provided in the “summary of factual data and analytical methodologies,” no data was used for this proposal rule section repeal.

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 5.07 (2) (intro) and (2) (a) are amended to read:

DHS 5.07 (2). An affirmative action plan shall be developed to increase the utilization of women, minorities and ~~handicapped~~ individuals with disabilities previously underutilized and underrepresented by the identification of goals and establishment of timetables formulated to correct substantial disparities. The plan shall include:

(a) Provision for the collection and maintenance of data on applicants and employees by race, sex, ethnic group and ~~handicapped~~ disability status to determine the impact of the selection process on the composition of the work force;

SECTION 2. DHS 10.41 (Note) is amended to read:

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

SECTION 3. DHS 60.01 (6) (d) is amended to read:

DHS 60.01 (6) (d). Parking in any parking area reserved for ~~the handicapped~~ individuals with disabilities is prohibited at all times to persons other than ~~the handicapped~~ those with disabilities.

SECTION 4. DHS 61.021 (11) is amended to read:

DHS 61.021 (11). “Sheltered employment” means non-competitive employment in a workshop, at home, or in a regular work environment for persons with a physical or ~~mental handicap~~

intellectual disability. ~~A handicapped person~~ An individual with a disability is defined as any person who, by reason of physical or mental defect or alcohol or drug abuse, is or may be expected to be totally or partially incapacitated for remunerative operation.

SECTION 5. DHS 61.022 (5) and (13) are amended to read:

DHS 61.022 (5). “Developmental disability” means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism or another neurologic condition closely related to intellectual disability or requiring treatment similar to that required for intellectual disability, which has continued or can be expected to continue indefinitely and constitutes a substantial ~~handicap~~ disability to the afflicted individual. Developmental disability does not include senility, which is primarily caused by the process of aging or the infirmities of aging.

DHS 61.022 (13). “Substantial ~~handicap~~ disability” means a level of disability of such severity that, alone or in combination with social, legal, or economic constraints, it requires the provision of specialized services over an extended period of time directed toward the individual’s emotional, social, personal, physical, or economic habilitation and rehabilitation.

SECTION 6. DHS 61.06 (8) is amended to read:

DHS 61.06 (8). A teacher shall be eligible for certification by the department of public instruction for teaching the appropriate ~~mental handicap~~ intellectual disability or shall secure the temporary approval of the department

SECTION 7. DHS 61.10 is amended to read:

DHS 61.10. In accordance with Title VI and Title IX of the Civil Rights Act and the Rehabilitation Act of 1973, services shall be available and accessible and no person shall be denied service or discriminated against on the basis of sex, race, color, creed, ~~handicap~~ disability, age, location or ability to pay.

SECTION 8. DHS 61.40 (intro) is amended to read:

DHS 61.40. Sheltered employment services are non-competitive remunerative employment for an indefinite period of time for individuals who are presently unemployable in the competitive labor market. Work activity services are worklike therapeutic activities for ~~handicapped persons~~ individuals with disabilities whose physical or mental impairment is so severe as to make their productive capacity inconsequential (never more than 25% of the normal production capacity). Sheltered employment programs shall include sheltered employment services or work activity services and may include the additional developmental disabilities services of counseling, education, recreation, training, personal care and transportation.

SECTION 9. DHS 61.76 (intro) is amended to read:

DHS 61.76. The community mental health program shall be responsible for the provision of an organized rehabilitation service designed to reduce the residual effects of emotional disturbances and to facilitate the adjustment of ~~the mentally ill, mentally handicapped and emotionally~~

~~disturbed~~ individuals with mental illnesses, intellectual disabilities, or emotional disturbances in the community through a variety of rehabilitation services. When possible, these services should be provided in conjunction with similar services for other disabilities.

SECTION 10. DHS 61.79 (2) (a) is amended to read:

DHS 61.79 (2) (a). Children and adolescents shall be accepted for other than emergency inpatient treatment only if the child or adolescent requires treatment of a comprehensive and intensive nature and is likely to benefit from the program the inpatient facility has to offer or outpatient alternatives for treatment are not available. No child or adolescent shall be admitted to any inpatient facility more than 60 miles from home without permission of the department. Each inpatient service shall specify in writing its policies and procedures, including intake and admission procedures, current costs, the diagnostic, treatment and preventive services it offers and the manner in which these are regularly conducted. Intake and admission procedures must be designed and conducted to ensure as far as possible a feeling of trust on the part of the child and family. In preparation for admission, the diagnosis and evaluation as well as the development of the treatment plan shall take into consideration the age, life experience, life styles, individual needs and personality, clinical condition, special circumstances necessitating admission and special problems presented by the patient and family. Complete assessment shall include clinical consideration of each of the fundamental needs of the patient; physical, psychological, chronological and developmental level, family, education, social, environmental and recreational. In addition to establishing a diagnosis and carrying out treatment, each service must also make provision for the diagnosis and treatment of any concurrent or associated illness, injury, or ~~handicap~~ disability. When treatment is to be concluded, the responsible agency will plan with the child, parents and other significant persons or community agencies to ensure an environment that will encourage continuing growth and development.

SECTION 11. DHS 63.02 (12) is amended to read:

DHS 63.02 (12). “Developmental disability” has the meaning prescribed in s. 51.01 (5) (a), Stats., namely, a disability attributable to brain injury, cerebral palsy, epilepsy, autism, an intellectual disability, or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for an intellectual disability, which has continued or can be expected to continue indefinitely and constitutes a substantial ~~handicap~~ disability to the afflicted individual. “Developmental disability” does not include senility which is primarily caused by the process of aging ~~or the infirmities of aging~~.

SECTION 12. DHS 63.06 (1) (a) is amended to read:

DHS 63.06 (1) (a). A CSP shall have written personnel policies to ensure that employment practices do not discriminate against any employee or applicant for employment on the basis of age, race, religion, color, sexual orientation, marital status, arrest and conviction record, ancestry, creed, national origin, ~~handicap, sex, or physical condition or developmental disability~~ disability, sex or physical condition.

SECTION 13. DHS 63.09 (4) is amended to read:

DHS 63.09 (4). The CSP shall ensure that no client is denied any benefits or services or is subjected to discrimination on the basis of age, race, religion, color, sexual orientation, marital status, arrest and conviction record, ancestry, creed, national origin, ~~handicap~~ disability, sex or physical condition.

SECTION 14. DHS 88.10 (3) (L) is amended to read:

DHS 88.10 (3) (L). To a safe environment in which to live. The adult family home shall safeguard residents who cannot fully guard themselves from environmental hazards to which they are likely to be exposed, including conditions which would be hazardous to anyone and conditions which would be or are hazardous to a particular resident because of the resident's condition or ~~handicap~~ disability.

SECTION 15. DHS 101.03 (152) is amended to read:

DHS 101.03 (152). "Rehabilitation agency" means an agency providing an integrated multi-disciplinary program of services designed to upgrade the physical functioning of ~~handicapped, disabled individuals~~ individuals with disabilities by bringing together as a team specialized rehabilitation personnel to provide these services, the services at a minimum consisting of physical therapy or speech pathology services and a rehabilitation program which, in addition to physical therapy or speech pathology services, includes social or vocational adjustment services.

SECTION 16. DHS 103.06 (2) (c) 1. c. is amended to read:

DHS 103.06 (2) (c) 1. c. It is modified for operation or transportation of a ~~handicapped person~~ person with a disability; or

SECTION 17. DHS 104.01 (2) (title) and (2) are amended to read:

DHS 104.01 (2). RIGHTS OF ~~HANDICAPPED PERSONS~~ INDIVIDUALS WITH DISABILITIES. No otherwise qualified ~~handicapped individual~~ individual with a disability may, solely by reason of ~~handicap~~ disability, be excluded from the participation in MA, be denied benefits of MA or be subjected to discrimination under MA.

SECTION 18. DHS 105.36 (2) (a) 2. is amended to read:

DHS 105.36 (2) (a) 2. Without regard to race, nationality, religion, family size, ~~marital~~ marital status, maternity, paternity, ~~handicap~~ disability or age, in conformity with the spirit and intent of the ~~civil rights act~~ Civil Rights Act of 1964, as amended, and the ~~rehabilitation act~~ Rehabilitation Act of 1973, as amended;

SECTION 19. DHS 106.02 (10) is amended to read:

DHS 106.02 (10). Providers shall comply with the ~~civil rights act~~ Civil Rights Act of 1964, 42 USC 2000d et. seq., and s. 504 of the rehabilitation act Rehabilitation Act of 1973, as amended. Accordingly, providers may not exclude, deny or refuse to provide health care services to

recipients on the grounds of race, color, gender, age, national origin or ~~handicap~~ disability, nor may they discriminate in their employment practices.

SECTION 20. DHS 106.06 (22), (23) (title) and (23) are amended to read:

DHS 106.06 (22). The provider has refused to provide or has denied services to recipients on the basis of the recipient's race, color or national origin in violation of the ~~civil rights act~~ Civil Rights Act of 1964, as amended, 42 USC 200d, et. Seq., and the implementing regulations. 45 CFR Part 80;

DHS 106.06 (23) ~~HANDICAPPED~~ DISABILITY DISCRIMINATION. The provider has refused to provide or has denied services to a ~~handicapped recipient~~ recipient with a disability solely on the basis of ~~handicap~~ disability, thereby violating section 504 of the ~~rehabilitation act~~ Rehabilitation Act of 1973, as amended, 29 USC 794;

SECTION 21. DHS 107.06 (3) (d) 2. is amended to read:

DHS 107.06 (3) (d) 2. Suitable arrangements were made to ensure that the information specified in subd. 1. was effectively communicated to any individual who is blind, deaf, or otherwise ~~handicapped~~ disabled;

SECTION 22. DHS 110.54 (24) is amended to read:

DHS 110.54 (24). The person failed or refused to provide emergency medical care to a patient because of the patient's race, color, sex, age, beliefs, national origin, ~~handicap~~ disability, medical condition, or sexual orientation.

SECTION 23. DHS 124.06 (1) (a) is amended to read:

DHS 124.06 (1) (a). The patient may not be denied appropriate care because of the patient's race, creed, color, national origin, ancestry, religion, sex, sexual orientation, marital status, age, newborn status, ~~handicap~~ disability, or source of payment.

SECTION 24. DHS 129.03 (18) is amended to read:

DHS 129.03 (18). "~~Handicapping condition~~ Disability" means a physical or mental impairment that makes ability to care for oneself unusually difficult or limits one's capacity to work.

SECTION 25. DHS 129.05 (2) (a) 1. e. is amended to read:

DHS 129.05 (2) (a) 1. e. Reasonable accommodations for prospective students with ~~handicapping conditions~~ disabilities.

SECTION 26. DHS 129.07 (2) (a) 3. is amended to read:

DHS 129.07 (2) (a) 3. The program shall have reasonable accommodations for students and prospective students with ~~handicapping conditions~~ disabilities.

SECTION 27. DHS 129.08 (5) (a) is amended to read:

DHS 129.08 (5) (a). Reasonable accommodations for students with ~~handicapping conditions~~ disabilities.

SECTION 28. DHS 134.60 (2) (a) 1. is amended to read:

DHS 134.60 (2) (a) 1. “DD level I” means the classification of an individual who has a profound or severe intellectual disability; is under the age of 18; is severely physically ~~handicapped~~ disabled; is aggressive, assaultive or a security risk; or manifests psychotic-like behavior and may engage in maladaptive behavior persistently or frequently or in behavior that is life-threatening. This individual’s habilitation program emphasizes basic ADL skills and requires intensive staff effort.

SECTION 29. DHS 134.82 (3) (b) 2. is amended to read:

DHS 134.82 (3) (b) 2. The facility shall make special provisions for evacuating ~~physically handicapped persons~~ individuals with physical disabilities during drills.

SECTION 30. DHS 134.83 (5) (g) is amended to read:

DHS 134.83 (5) (g). Residents who are blind, non-ambulatory or physically ~~handicapped~~ disabled may not be housed above the street level floor in an existing facility of 2 or more stories that is not at least 2-hour fire-resistive construction unless the facility is one-hour protected noncombustible construction as defined in standard 220 of the NFPA’s National Fire Code, 1979 edition, fully sprinklered one-hour protected ordinary construction or fully sprinklered one-hour protected wood frame construction.

SECTION 31. DHS 134.84 (3) (c) (title) and (3) (c) are amended to read:

DHS 134.84 (3) (c). ~~*Physically handicapped facilities*~~ *Facilities for persons with physical disabilities*. Resident bathrooms and bathroom appliances shall be equipped for use by ~~physically handicapped persons~~ individuals with physical disabilities.

SECTION 32. DHS 152.04 (4) is amended to read:

DHS 152.04 (4). The department may not discriminate against or deny benefits to anyone on the basis of race, sex, age, national origin, marital status, creed, ~~handicap~~ disability, sexual orientation or ancestry

SECTION 33. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro), Stats.