

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

The Wisconsin Department of Health Services (“the Department”) proposes an order to **repeal** DHS 12.03 (12) (Note), (17) (a) 2. (Note 2), (22) and (22) (Note), 13.03 (16) (Note), 36.03 (11m) and (11m) (Note), 65, 92.04 (11) (a) (Note), 98.12 (2) and (2) (Note), 114, 125.03 (6) and (7), 134.82 (3) (f) (Note), 143, 157.96 (8) (Note), 190, 199.02 (Note), 199.03 (12) and (12) (Note); to **amend** DHS 12.03 (12), (17) (a) 2., 13.03 (16), 36.03 (10m), 92.04 (11) (a), 97.03 (1) (b), 97.04 (2) (b), 125.02, 125.03 (5m), 125.05 (1), (3) (a) 1. and (c), (5) (a), and (6) (intro), 134.82 (3) (f), 157.96 (8), 199.02, 199.03 (2), (3), (5) and (8), 199.04 (1) (intro.), (1) (d) 2. and (e), and (2), 199.05 (2) (a) and (b), (3) (a) 3. and (b) 1. and 3., (5) (a) 1. and 2. (intro.) and (b) (intro.), (6) (a) 1. to 3. and (b) 1. to 3., 199.06 (1) (a) (intro.) and 1. to 3., (b) and (c), (2) to (4), and (5) (a) to (c), 199.07 (1) (intro.), (2), and (3) (b) to (d); and to **create** DHS 125.03 (5g) and (5r), 199.03 (4m), relating to the Department’s biennial review of rules under s. 227.29, Stats.

### **RULE SUMMARY**

#### **Statute interpreted**

Section 227.29, Stats.

#### **Statutory authority**

Chapter DHS 12: ss. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), 50.065 (1) (ag) 1. a., (2) (d), (4), (5), (6) (b) and (c), and 227.11 (2), Stats.

Chapter DHS 13: s. 227.11 (2), Stats.

Chapter DHS 36: ss. 49.45 (30e) (b), 51.42 (7) (b), and 227.11 (2) (a), Stats.

Chapter DHS 65: ss. 49.45 (30e) (b), 51.42 (7) (b), and 227.11 (2) (a), Stats.

Chapter DHS 92: ss. 51.30 (12) & 227.11 (2) (a), Stats.

Chapter DHS 97: ss. 46.056 (1) & 227.11 (2), Stats.

Chapter DHS 98: ss. 51.37 (9), 51.375 (3), 971.17 (3) (e), 980.08 (6m), and s.227.11 (2), Stats.

Chapter DHS 114: s. 9122 (3ty) (c). of 1997 Wisc. Act 237.

Chapter DHS 125: ss. 154.19 (3) (a) and 154.27, Stats.

Chapter DHS 134: s. 50.02 (2) and (3), Stats.

Chapter DHS 143: s. 9145 (4) of 1991 Wis. Act 39.

Chapter DHS 157: s. 227.11 (2), 254.33, 254.34 (1) (a) & (b), and 254.37 (3), Stats.

Chapter DHS 190: s. 227.11 (2), Stats

Chapter DHS 199: s. 255.15 (1m) (c), Stats.

## **Explanation of agency authority**

Under s. 227.29 (1) (a) to (e), Stats., the Department is required to complete an agency review of rules and enactments on a biennial basis and make changes to: unauthorized rules, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency's authority to promulgate any such rule; rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority; rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary; rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling; or rules that the agency determines are economically burdensome.

Furthermore, explanation of agency authority for each rule chapter in the proposed rules is as follows:

Chapter DHS 12: The Department is authorized to promulgate rules defining entity types subject to caregiver background check requirements, specifying the information that must be made available for inspection, specifying sanctions, establishing rehabilitation procedures, and specifying persons subject to caregiver background checks. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

Chapter DHS 13: The Department administers several statutes related to reporting, investigation, and disposition of allegations of abuse or neglect of a client or misappropriation of client's property in certain specified settings. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

Chapter DHS 36: The Department is authorized to promulgate rules establishing the scope of psychosocial service programs, standards for certification, and criteria for determining the need for psychosocial rehabilitation services. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

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

Chapter DHS 92: The Department is authorized to promulgate rules to implement the statutes governing accessibility to health care treatment records relating to mental health and alcohol and other drug abuse. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

Chapter DHS 97: The Department is authorized to administer the Wisconsin Resource Center. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

Chapter DHS 98: The Department is authorized to promulgate rules for supervision in communities of persons who are committed to the Department and placed under its control after being found not guilty by reason of mental illness or defect of having committed a crime, or after being found to be sexually violent persons or who are otherwise sex offenders. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

Chapter DHS 114: The Department is authorized to promulgate rules to establish criteria and procedures

for the awarding of grants for neonatal intensive care unit training from the appropriation under s. 20.435 (5) (er), Stats. The appropriation was repealed by 1997 Wis. Act 237.

Chapter DHS 125: The Department is authorized to promulgate rules standards and procedures related to do-not-resuscitate orders.

Chapter DHS 134: The Department is authorized to establish and enforce regulations and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in community-based residential facilities and nursing homes and for the construction, general hygiene, maintenance and operation of those facilities.

Chapter DHS 143: The rule chapter does not cite to any statutory authority. The rule was initially promulgated by the Department of Public Instruction,<sup>1</sup> and was later transferred to the Department under Section 9145 (4) of 1991 Wis. Act 39.

Chapter DHS 157: Under s. 254.34 (1) (a) and (b), Stats., the Department is designated as the state radiation control agency and given statutory authority to promulgate, administer and enforce rules promulgated under this subchapter. Section 254.33, Stats. authorizes the Department to advise, consult and cooperate with other agencies of the state and other jurisdictions. Section 254.37 (3), Stats. gives the Department authority to promulgate and enforce rules pertaining to ionizing radiation. Within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

Chapter DHS 190: At the time of initial promulgation in 1964, DHS 190 was named H 56. At that time, the State Board of Health cited to ss. 140.05 (3) and 140.055 (1), Stats., for authority to promulgate the rule. H 56 was repealed and HSS 190 was created in 1985. At that time, the Department cited ss. 140.05 (3) and 227.014 (2), Stats., to promulgate the rule chapter. Sections 140.05 and 227.014, Stats., were subsequently renumbered to ss. 250.04 and 227.11, Stats. The Department administers s. 250.04, Stats., and, within certain parameters, s. 227.11 (2), Stats., authorizes the Department to promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute.

Chapter DHS 199: The Department is authorized to promulgate rules establishing criteria for recipients of certain tobacco-related grants it administers, including performance-based standards for grant recipients that propose to use the grant for media efforts.

### **Related statute or rule**

Sections 227.11 (2) and s. 227.29.

### **Plain language analysis**

The Department has identified needed administrative rule changes under s. 227.29., and based on information provided to the department by the Legislative Reference Bureau. The Department proposes the following rule changes:

- 1. Chapter DHS 12, relating to caregiver background checks.** The proposed rulemaking seeks to remove outdated references to “treatment foster home,” a term which is no longer defined or used in Wisconsin Statutes.
- 2. Chapter DHS 13, relating to reporting and investigation of caregiver misconduct.** The

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<sup>1</sup> See Order of the Department of Public Instruction Adopting Rules, available at [https://docs.legis.wisconsin.gov/code/register/1975/237b/rules/pi\\_10.pdf](https://docs.legis.wisconsin.gov/code/register/1975/237b/rules/pi_10.pdf)

proposed rulemaking seeks to remove, in the definition of “nurse aide,” references to a version of DHS 129 that was subsequently repealed and replaced, and replace it with a citation that is consistent with the current version of DHS 129.

**3. Chapter DHS 36, relating to comprehensive community services for persons with mental disorders and substance-use disorders.** The proposed rulemaking seeks to remove references to “infirmities of aging,” a term which was defined in s. 55.01 (3) and repealed by 2005 Wis. Act 388.

**4. Chapter DHS 65, relating to supportive services for families with disabled children.** The proposed rulemaking seeks to repeal ch. DHS 65 in its entirety because it is an unauthorized rule. Section 46.985, Stats., was the authorizing statute, and it was repealed by 2015 Wis. Act 55.

**5. Chapter DHS 92, relating to confidentiality of treatment records.** The proposed rulemaking seeks to remove a provision permitting access to records under s. 51.30 (4) (b) 14., Stats., which was repealed by 2001 Wis. Act 16.

**6. Chapter DHS 97, relating to complaint procedures of inmates of the Wisconsin Resource Center.** The proposed rulemaking seeks to revise outdated provisions that refer to the Department’s “division of mental health and substance abuse services,” which has been replaced with the “division of care and treatment services.”

**7. Chapter DHS 98, relating to field supervision of clients.** The proposed rulemaking seeks to remove a provision which refers to s. DOC 331.03 (4), which was repealed.

**8. Chapter DHS 114, relating to neonatal intensive care unit training grants.** The proposed rulemaking seeks to repeal ch. DHS 114 in its entirety because the program no longer exists. The program was based on an appropriation under s. 20.435 (5) (er), which was repealed effective July 1, 2000 by 1997 Wis. Act 237 s. 9422 (3ty).

**9. Chapter DHS 125, relating to do-not resuscitate orders directed at emergency health care personnel.** The proposed rulemaking seeks to revise naming conventions for emergency medical services levels based on 2017 Wis. Act 12.

**10. Chapter DHS 134, relating to facilities serving people with developmental disabilities.** The proposed rulemaking seeks to remove references to s. 101.123 (4), Stats, which was repealed effective July 5, 2020.

**11. Chapter DHS 143, relating to hearing impaired children.** The proposed rulemaking seeks to repeal ch. DHS 143 in its entirety because it is obsolete. The rule chapter was previously based on the children with special health care needs (CSHCN) program, which was replaced with the children and youth with special health care needs (CYSHCN) program based on the federal Omnibus Budget Reconciliation Act of 1989. The federal act shifted service provision away from the direct-service model provided in ch. DHS 143 to the currently-utilized community-based service system for children and youth with special needs.

**12. Chapter DHS 157, relating to radiation protection.** The proposed rulemaking seeks to remove a reference to s. NR 809.81, which was repealed effective November 1, 2002.

**13. Chapter DHS 190, relating to institution sanitation.** The proposed rulemaking seeks to repeal ch. DHS 190 in its entirety because the rule chapter is outdated and obsolete. The rule chapter was created to establish safety and hygiene standards for residents of private institutions under s. 58.01, Stats. All of those entities are currently regulated by the department of children

and families or the department of corrections, which have separate rules providing specific safety and hygiene standards.

**14. Chapter DHS 199, relating to tobacco control activities.** The proposed rulemaking seeks to remove all provisions that reference the tobacco control board, and replace them with the department. The tobacco control board was created under s. 15.195 (1), Stats. 2003 Wis. Act 33 repealed s. 15.195 (1), and transferred tobacco control activities to the department.

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

There appears to be no existing or proposed federal regulations that would affect these administrative rule changes.

### **Comparison with rules in adjacent states**

#### **Illinois:**

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

#### **Iowa:**

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

#### **Michigan:**

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

#### **Minnesota:**

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

### **Summary of factual data and analytical methodologies**

The Department relied upon requirements under s. 227.29, Stats., and information provided to the Department by the legislative reference bureau.

### **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**

The proposed rules are not anticipated to have an impact on small businesses.

### **Agency contact person**

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### **Statement on quality of agency data**

See "summary of factual data and analytical methodologies" section above.

### **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 12.03 (12) is amended to read:

DHS 12.03 (12) “Foster home” means any facility operated by a person required to be licensed under s. 48.62 (1), Stats., in which care and maintenance are provided for no more than 4 foster children, or, if all are siblings, for no more than 6 children, and also includes ~~a treatment foster home that also provides structured professional treatment by trained individuals,~~ and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats.

**SECTION 2.** DHS 12.03 (12) (Note) is repealed.

**SECTION 3.** DHS 12.03 (17) (a) 2. is amended to read:

DHS 12.03 (17) (a) 2. Issuance or renewal by a county department or child-placing agency of a foster home ~~or treatment foster home~~ license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

**SECTION 4.** DHS 12.03 (17) (a) 2. (Note 2) and 12.03 (22) and (22) (Note) are repealed.

**SECTION 5.** DHS 13.03 (16) is amended to read:

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

**SECTION 6.** DHS 13.03 (16) (Note) is repealed.

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

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

**SECTION 8.** DHS 36.03 (11m) and (11m) (Note) are repealed.

**SECTION 9.** DHS 65 is repealed.

**SECTION 10.** DHS 92.04 (11) (a) is amended to read:

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

**SECTION 11.** DHS 92.04 (11) (a) (Note) is repealed.

**SECTION 12.** DHS 97.03 (1) (b) and 97.04 (2) (b) are amended to read:

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

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

**SECTION 13.** DHS 98.12 (2) and (2) (Note) are repealed.

**SECTION 14.** DHS 114 is repealed.

**SECTION 15.** DHS 125.02 and 125.03 (5m) are amended to read:

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

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

**SECTION 16.** DHS 125.03 (5g) and (5r) are created to read:

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

DHS 125.03 (5r) "Emergency medical services practitioner" has the meaning given in s. 256.01 (5), Stats.

**SECTION 17.** DHS 125.03 (6) and (7) are repealed.

**SECTION 18.** DHS 125.05 (1), (3) (a) 1. and (c), (5) (a), and (6) (intro.) are amended to read:

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

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

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

DHS 125.05 (5) (a) Even if resuscitation is not attempted, the ~~emergency medical technician, first responder~~ emergency medical services practitioner, emergency medical responder or emergency health care facility staff member shall document the patient contact in the patient's medical record or the ambulance run report form, as appropriate.

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

**SECTION 19.** DHS 134.82 (3) (f) is amended to read:

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

**SECTION 20.** DHS 134.82 (3) (f) (Note) is repealed.

**SECTION 21.** DHS 143 is repealed.

**SECTION 22.** DHS 157.96 (8) is amended to read:

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

**SECTION 23.** DHS 157.96 (8) (Note) is repealed.

**SECTION 24.** DHS 190 is repealed.

**SECTION 25.** DHS 199.02 is amended to read:

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

**SECTION 26.** DHS 199.02 (Note) is repealed.

**SECTION 27.** DHS 199.03 (2), (3), (5), and (8) are amended to read:

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

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

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

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

**SECTION 28.** DHS 199.03 (4m) is created to read:

DHS 199.03 (4m) “Department” means the department of health services.

**SECTION 29.** DHS 199.03 (12) and (Note) are repealed.

**SECTION 30.** DHS 199.04 (1) (intro.), (1) (d) 2., and (e), and (2) are amended to read:



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

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

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

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

**SECTION 31.** DHS 199.05 (2) (a) and (b), (3) (a) 3. and (b) 1. and 3., (5) (a) 1. and 2. (intro) and (b) (intro.), (6) (a) 1. to 3., and (b) 1. to 3. are amended to read:

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

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

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

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

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

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

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

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

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

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

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

DHS 199.05 (6) (b) *Ranking applications for continuation grants.*

1. Using evaluation criteria specified in sub. (5) (b), the ~~board~~ department or its designated evaluation committee shall conduct a non-competitive evaluation of each application.

2. The ~~board~~ department shall assign a numerical score to each continuation grant application.

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

**SECTION 32.** DHS 199.06 (1) (a) (intro.) and 1. to 3., (b), and (c), (2) to (4), and (5) (a) to (c), are amended to read:

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

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

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

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

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

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

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

DHS 199.06 (3) APPEAL. Except as provided in s. DHS 199.05 (5) (a) 1. And sub. (1) (a) 1., an applicant for either an initial grant or a continuation grant may appeal to the ~~board~~ department an adverse decision of the ~~board~~ department. The appeal shall be in writing and shall fully identify all contested issues. The appeal shall be filed with the ~~board~~ department within 10 working days of the date on which the notice of awards is postmarked.

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

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

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

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

**SECTION 33.** DHS and 199.07 (1) (intro.), (2), and (3) (b) to (d) are amended to read:

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

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

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

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

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

**SECTION 34.** EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro), Stats.