

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 7/6/2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Certification of Programs for Training and Testing Nurse Aides, Medication Aides and Feeding Assistants	
4. Subject Nurse aide training and testing programs.	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected N/A
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$The new provisions will have no fiscal impact on current providers.	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The COVID-19 pandemic has exacerbated the shortage of certified nursing assistants (CNAs) and feeding assistants because the residents that facilities serve are at a higher risk for COVID-19 due to age and pre-existing conditions, which therefore puts staff at increased risk of contracting COVID-19. There is currently a high demand to bring new CNAs into the workforce, and Emergency Order 21--which was issued in relation to Governor Evers's public health emergency declaration on March 12, 2020--suspended various requirements in ch. DHS 129 to allow for expedited training programs to quickly train new CNAs to help meet the increased need. The Governor's public health emergency declaration and Emergency Order 21 have since expired, but the increased need for CNAs continues. Training programs cannot currently provide expedited training because Emergency Order 21 expired. Training programs may seek waivers or variances under DHS 129.04, but those have to be granted on a case-by-case basis and will add extra administrative strain, delay the provision of training new CNAs, and provide uncertainty while programs request and wait for the results of a waiver or variance request. Furthermore, s. DHS 129.04 (2) (d) provides a hearing procedure for waiver or variance denials, which could add further delay and uncertainty. Temporarily suspending the provisions of ch. DHS 129 that are included in the proposed emergency rule order will help preserve the public peace, health, safety, or welfare. The emergency rule will provide the flexibility needed for nursing homes, technical colleges, and private training programs to offer emergency or expedited training programs to quickly train new CNAs and meet the increased demand in Wisconsin.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. As of June 12, 2020, 119 nurse aide training programs are operated by various entity types within state. The type of entity and number of programs is provided below: Nursing homes - 26	

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Wisconsin Technical Colleges - 56
High schools - 4
Home health agency - 1
Hospitals - 8
Facilities serving people with developmental disabilities - 4
Universities - 2
Private - 17
USDA Forest Service - 1

Many nursing homes, technical colleges, and private providers--which, compositely, comprise 99 of the 119 existing CNA training programs--sought to provide expedited training programs and formed the basis for the provisions in Emergency Order 21 with respect to ch. DHS 129. The emergency rule will allow those providers who previously provided expedited training under Emergency Order 21 and any of the other providers listed who seek to provide expedited training during the duration of the emergency rule, which will create opportunities to train and hire CNAs at a quicker pace during the COVID-19 pandemic than would be available without the emergency rule.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.
None.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

There will be no fiscal impact on nursing aide training programs. As explained in section 12, the emergency rule will create more opportunities to quickly and efficiently train and hire new CNAs.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Preservation of the public peace, health, safety, or welfare necessitates adoption of an emergency rule. The following rules should be addressed because many facilities that employ certified nursing assistants (CNAs) and feeding assistants are losing these staff because the residents in those working environments put staff at a higher risk to contract COVID-19. There is currently a high demand to bring new CNAs into the workforce via "emergency" or expedited training programs, but those programs are not compliant with many of the requirements under ch. DHS 129. If emergency rules are not passed, those emergency training programs will either have to: (1) individually seek waivers or variances, which will add delay and uncertainty regarding training new CNAs; or (2) close, which will result in a supply of CNAs that is inadequate to meet the state's increased demand.

There are no reasonable alternatives to emergency rulemaking. Programs previously provided expedited training programs in accordance with Emergency Order 21, but that order has expired and the need to continue providing expedited CNA training programs continues. It would add significant burden and delay for every expedited training program to seek a variance or waiver, which would further delay the provision of necessary care for vulnerable populations throughout the Wisconsin as the COVID-19 pandemic continues.

16. Long Range Implications of Implementing the Rule

The long-range implications of implementing this rule are minimal. In accordance with s. 227.24, Stats., emergency rules are only in effect for 150 days and, upon request to/approval from JCRAR, can be extended twice for up to 60 days each. Once the emergency rule expires, the normal requirements of ch. DHS 129 will return in full force and effect.

17. Compare With Approaches Being Used by Federal Government

Federal conditions of participation for the registry of nurse aides, nurse aide training and testing programs, and training of paid feeding assistants are contained in 42 CFR 483.150 through 483.160. These regulations establish conditions and standards for the approval of nurse aide training and competency evaluation programs, for the maintenance and operation of a registry, and for conducting training and testing programs for nurse aides and paid feeding assistants. In response to the COVID-19 pandemic, the Centers for Medicare and Medicaid Services granted blanket waivers to federal requirements for (1) training and certification of nurse aides, and (2) paid feeding assistants

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State and federal regulations for registry services and training and testing of nurse aide and paid feeding assistants are comparable, however the department previously supplemented these requirements through rulemaking to address therapeutic interventions and non-pharmacological pain control interventions, techniques of restorative nursing, client rights and reporting abuse or neglect of a client or misappropriation of a client's property.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Comparison with rules in adjacent states

Illinois:

Illinois adopted significant portions of the federal regulation including the standards for the denial, suspension and revocation of program approval in 77 Admin Code 395, Long-Term Care Assistants and Aides Training Programs Code. Illinois specifies a comprehensive list of topics that must be addressed in any approved program including patient rights, communication, psychological needs of patient and family, hand washing, body mechanics, basic anatomy, nutrition, etc. Each set of topics includes course objectives and proficiency measures. On March 24, 2020, Illinois Governor J.B. Pritzker issued Executive Order 2020-12 which made changes to the requirements for CNAs due to COVID-19, and the state department of public health filed emergency rules to make changes to the health care worker background check code in order to implement the provisions of Executive Order 2020-12

Iowa:

Iowa Code Chapter 81 – 16 Nurse Aide Requirements and Training and Testing Program closely mirrors federal requirements by including standards for denial, suspension and revocation of program approval. Like Illinois, Iowa code contains an extensive list of topics that must be included in any approved training program including bathing, dressing, toileting, assistance with eating, skin care, transfers, responding to behaviors, restorative care and avoiding the need for restraints. On March 22, 2020, Iowa Governor Kim Reynolds issued an executive order allowing licensing boards to grant emergency licenses to applicants.

Michigan:

Michigan has no state rule regarding certified nurse aide training programs or maintenance of a registry and relies solely on federal regulations.

Minnesota:

Minnesota has no state rule regarding certified nurse aide training programs or maintenance of a registry and relies solely on federal regulations.

19. Contact Name

Pat Benesh

20. Contact Phone Number

608 264-9896

This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule is not anticipated to have any negative effect on small business.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Nurse aide training programs are not defined by the North American Industry Classification System (NAICS), as most of these programs operate within the Wisconsin Technical College System or within a healthcare facility. Specific revenue, expense, and staffing data is therefore not available from this source. The department instead relies on data obtained through the Department of Health Services/Division of Quality Assurance Databases – Nurse Aides - Training Options.

As of June 12, 2020, 119 nurse aide training programs are operated by various entity types within state. The type of entity and number of programs is provided below:

Nursing homes - 26
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Home health agency - 1
Hospitals - 8
Facilities serving people with developmental disabilities - 4
Universities - 2
Private - 17
USDA Forest Service - 1

Based on a review of department licensing data, including, financial reports submitted by the entities, Medicaid reimbursement data, number of beds, and whether the entity is a part of a larger healthcare organization, the department has determined that the affected nursing homes, hospitals, and facilities serving people with developmental disabilities are not small businesses as defined by s. 227.114 (1) (a), Stat. The technical colleges, high schools, universities and the USDA Forest Service also do not meet the definition of a small business.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Based on the foregoing analysis, the emergency rules are anticipated to have little to no economic impact on small businesses.

5. Describe the Rule's Enforcement Provisions

Wis. Admin. Code ch. DHS 129.05(2) (d) states that the Department of Health Services may deny or withdraw approval

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of a new or existing program for any of the following reasons.

(d) Enforcement.

1. The department may deny or withdraw approval of a new or existing program for any of the following reasons:

- a. The program cannot provide satisfactory evidence that the program meets the standards for program approval.
- b. The program did not conduct any training classes within the previous 24 consecutive months.
- c. The program fails to allow the department to conduct an on-site visit of the training program.

2. The department may withdraw program approval immediately or prescribe the time within which the deficiencies identified during an onsite review shall be corrected. All notices of deficiency shall be given in writing to the program contact, identified in s. DHS 129.05 (1) (c). The program contact may submit a plan of correction to the department. If the program fails to correct the deficiency within the specified time, the approval may be withdrawn.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
