

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis (EIA)

1. Type of estimate and analysis:

☒ Original ☐ Updated ☐ Corrected

2. Date:

July 11, 2025

3. Administrative Rule Chapter, Title and Clearinghouse Number (if assigned):

Chapter DHS 122, Long-term care facility bed additions and capital expenditures review.

4. Subject:

An emergency rule relating to redistribution of closed nursing home beds.

5. Fund sources affected

☒ GPR ☒ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

6. Chapter 20, stats., appropriations affected:

Section 20.435 (6) (a), (6) (n), and (6) (jm), Stats.

7. Fiscal effect of implementing the rule:

☐ No fiscal effect ☒ Increase existing revenues ☒ Increase costs ☐ Decrease costs
☐ Indeterminate ☐ Decrease existing revenues ☒ Could absorb in agency's budget

8. The rule will impact the following:

☒ State's economy ☒ Specific businesses/sectors
☐ Local governmental units ☐ Public utility rate payers
☐ Small businesses (complete Attachment A if checked)

9. Estimate of implementation and compliance costs to businesses, local governmental units, and individuals, per s. 227.137 (3) (b) 1., Stats.:

In accordance with s. 227.137 (5), Stats., s. 227.137, Stats., does not apply to emergency rules. Only a fiscal estimate under s. 227.14 (4), Stats., is required for emergency rules, and the Department will solicit information and advice from affected entities and prepare an economic impact analysis under s. 227.137, Stats., as promulgation of the corresponding permanent rule progresses further.

10. Would implementation and compliance costs to businesses, local governmental units, and individuals be \$10 million or more over any 2-year period, per s. 227.137 (3) (b) 2., Stats.?

☐ Yes ☐ No ☒ Not applicable: Section. 227.137 does not apply to emergency rules.

11. Policy problem addressed by the rule:

The proposed rules will resolve a conflicts between s. 150.40, Stats., and provisions within ch. DHS 122 related to the redistribution of closed nursing home beds. Section 150.40, Stats., states that, upon closure of a nursing home, the Department may redistribute those beds within the same county if the number of nursing home beds for each 1,000 persons age 65 or older is less than 80% of the statewide average and the total occupancy level for other nursing homes in the county is equal to or more than the statewide average nursing home occupancy rate.

Section DHS 122.05 (1) (c), which has not been substantially revised since 1987, states that "applications to replace or redistribute closed beds may be submitted only from counties which are eligible to compete for new beds under par. (b)." Section DHS 122.05 (1) (b) provides that the only applicants who are eligible to apply for new beds are those whose projects are in counties where "[t]he countywide occupancy rate . . . is greater than 94%," This number

is significantly higher than the 80% threshold required by s. 150.40, Stats., and only one Wisconsin County currently meets or exceeds the 94% provided in the rule—thereby rendering it virtually impossible to redistribute nursing home beds under the rule as written. Additionally, the restriction to the “planning area” conflicts with the statutory authority to redistribute within the county in which the closed beds are located. Additional application review and selection criteria provided in s. DHS 122.07, which supplement the baseline criteria required under s. 150.39, Stats., also inhibit the Department’s ability to redistribute closed nursing home beds under s. 150.40, Stats.

Bed closure without redistribution adversely impacts Wisconsin residents. Since January 2020, 36 nursing homes have closed in Wisconsin, resulting in 1,696 decommissioned beds, but the restrictive language in s. DHS 122.05 limits the Department’s ability to redistribute those beds. More than 10 counties in Wisconsin have fewer than 20 nursing home beds available per 1,000 residents age 65 or older, and many of those counties are in rural parts of the state where there are few alternatives to nursing home care. The overall decrease in available beds has resulted in lengthened hospital stays or abrupt discharges due to the lack of available post-acute care.

Given the ongoing need to permit redistribution of closed nursing home beds in Wisconsin, the Department proposes to repeal s. DHS 122.05 (1) (c) and related rules regarding applications to allow nursing home beds to be redistributed in accordance s. 150.40, Stats. If promulgated, the standards for redistribution under s. 150.40, Stats., and application and review criteria under ss. 150.33, 150.35, and 150.39, Stats., would apply to redistribution of closed nursing home beds.

Finally, the Department estimates that more than 800 additional beds could close over the next 24 months and complying with all the rule promulgation procedures under ch. 227, subch. II, could further exacerbate this pressing issue. Emergency rules, followed promptly by corresponding permanent rules, are therefore necessary under s. 227.24 (1), Stats.

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:

The Department held a preliminary public hearing on the statement of scope, SS 036-25, on June 19, 2025. Representatives from the Wisconsin Association of Health Plans, the Wisconsin Health Care Association/Wisconsin Center for Assisted Living (“WHCA/WiCAL”), and LeadingAge Wisconsin appeared at that hearing. Representatives for WHCA/WiCAL and LeadingAge both recognized that the current processes contained in existing rules are antiquated and inflexible and need to be updated.

In accordance with s. 227.137, the Department will formally solicit information and advice from entities affected by the proposed rule as promulgation of the corresponding permanent rule progresses further.

13. Identify the local governmental units that participated in the development of this EIA:

Not applicable – s. 227.137, Stats., does not apply to emergency rules.

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):

Nursing homes that apply for beds to be redistributed under s. 150.40, Stats., will incur costs. Section 150.13 requires payment of an application fee “equal to 0.37 percent of the estimated project cost, but not less than \$1,850 and not more than \$37,000.” Additionally, a nursing home whose application for redistributed beds will have to

undergo plan review and obtain approval from the Department. Plan review fees vary depending on square footage and the estimated cost of work, and are listed in s. [DHS 132.815 \(2\) \(b\)](#) and [\(c\)](#). *See also* Table 132.815. No nursing home is required to apply for redistributed beds, and a nursing home whose application for redistributed beds is accepted will be able to increase the number of residents it serves, which would ultimately increase revenue for the nursing home.

The objective of the proposed rule is to ensure the number of available nursing home beds across the state does not decrease when a nursing home closes. In other words, the proposed rules will maintain the same number of licensed nursing home beds, and there will not be a significant fiscal effect on the state's economy as a whole. It is estimated that costs to the Department to review applications or conduct plan review will be offset by fees collected.

15. Benefits of implementing the rule and alternative(s) to implementing the rule:

The proposed rules will remove restrictive provisions that limit who can apply for redistributed beds from closed nursing homes. The existing rules are in conflict with the statute, and there is no alternative to rulemaking.

16. Long-range implications of implementing the rule:

There are several long-term benefits to promulgating the proposed emergency rule and its corresponding permanent rule. First, by retaining nursing home beds within the county after a nursing home closes, individuals in need of long-term care can continue to reside within their local communities and will not have to find a facility further away from their families, friends, and others in their support network. Second, the proposed rules will help retain care options in rural areas, where access to care is more limited. Third, and finally, the proposed rules will help reduce the strain on hospitals, emergency departments, and other facilities that serve as the only care options when nursing homes close and beds are not redistributed.

17. Comparison with approaches taken by the federal government:

Federal regulations do not set numerical limits on the number of beds in individual nursing homes, or the overall number of nursing home beds licensed within each state. Federal regulations instead establish minimum staffing requirements and standards of care to maintain the health and safety of residents. See 42 CFR 483.5 and 483.10 to 483.75.

18. Comparison with approaches taken in neighboring states (Illinois, Iowa, Michigan, and Minnesota):

Illinois:

Illinois does not limit the total number of nursing home beds, but a certificate of need ("CON") permit must be obtained from the Illinois Health Facilities & Services Review Board ("HFSRB") before an applicant does any of the following: (1) adds new category of service; (2) substantially increases its bed capacity; (3) substantially changes the scope of functional operation of a facility; or (4) Commences capital expenditures is above established thresholds (\$8.9 million for long-term care facilities). 20 ILCS 3960/1 *et seq.* The HFSRB is responsible for issuing permits for construction or modification projects proposed by healthcare facilities. The Board is an independent nine-member commission appointed by the Governor with Illinois Senate confirmation. Facilities are. Facilities are required to obtain an exemption Long-term care facilities are not required to obtain a permit when closing or undergoing a change in ownership, although those transactions must be reported.

Iowa:

Iowa requires that its Health Facilities Council review applications for CON to expand services or licensed beds. IAC 10A.713. The criteria this council considers are provide in IAC 10A.714.

Michigan:

Michigan does not have an express statewide numerical limit for nursing home beds, but instead imposes statewide CON standards. A provider must demonstrate to an independent 11-member commission a need for additional services or beds to the and obtain a CON from that commission before an applicant constructs, upgrades, relocates, or acquires a facility, or otherwise increases the number of licensed beds. MCL s. 333.22209. Whether a CON is appropriate is tied to average occupancy rates. *See* Michigan Department of Health and Human Services, *Certificate of Need (CON) Review Standards for Nursing Home and Hospital Long-Term Care Unit Beds*, available at https://www.michigan.gov/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Health-Care-Providers/Certificate-of-Need/CON-Review-Standards/NH-Review-Standard-Docs/NH_Standards.pdf?rev=b0806264982443ddb87b1276c870126a.

Minnesota:

Minnesota currently has a moratorium on licensing or certifying new nursing home bed certifications and construction projects that exceed \$1,000,000. *See* Minn. Stat. s. 144A.071. Section 144A.073, Minn. Stats., permits exceptions to the moratorium, which must be applied for, considered by the interagency long-term care planning committee, and ultimately approved by the Minnesota Commissioner of Health. *See* Minn. Stat. ss. 144A.071 144A.073; *see also* Minn. R. pp. 4655.1070 to 4655.1098. Exceptions to the nursing home moratorium that were granted between 2022 and 2025 are listed on the Minnesota Department of Health’s website at: <https://www.health.state.mn.us/facilities/regulation/nursinghomes/moratoriumapp/index.html>.

19. Contact name and phone number:

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

ADMINISTRATIVE RULES
EIA Attachment A: Proposed Rule Impact on Small Businesses

- 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):**
- 2. Summary of the data sources used to measure the rule's impact on small businesses:**
- 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. Description of the methods incorporated into the rule that will reduce its impact on small businesses:**
- 5. Description of the rule's enforcement provisions:**
- 6. Did the agency prepare a cost-benefit analysis?**
 - ☐ Yes (if checked, attach to this EIA)
 - ☐ No