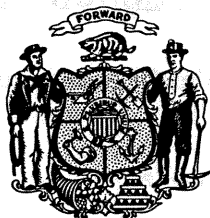


## WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**


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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-001**

AN ORDER to repeal HFS 133.03 (6); to renumber HFS 133.03 (7) to (9); to amend HSS 82.03 (2) (a) and Note and (7), 82.04 (4) (b) and (5), 83.07 (6) (b) 2., (11) (title) and (intro.), (13) (a) and (14), 88.03 (2) (a), (b) 1. and (c), (3) (d) and (7) (a) and 88.04 (4), 131.14 (5) and (6) (title) and (intro.), (8), (10) and (11) (a), 132.14 (6), 132.31 (6) (e) and 134.14 (5); to repeal and recreate HSS 82.03 (4) (a) and (b), 83.07 (7) and Note, 88.03 (4), 131.14 (7) and 133.03 (5); and to create HFS 124.03 (7), 132.14 (8), 133.03 (9) and 134.14 (5m), relating to non-expiring licenses and certification and a required annual or biennial report for certified adult family homes, licensed adult family homes, community-based residential facilities, hospice programs, nursing homes, home health agencies and facilities for the developmentally disabled, and a required annual report for hospitals.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

01-07-00 RECEIVED BY LEGISLATIVE COUNCIL.

02-07-00 REPORT SENT TO AGENCY.

RS:LR:jal;ksm

## **LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☐

NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached

YES ☐

NO ☒

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☐

NO ☒

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

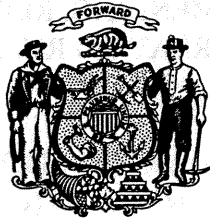
NO ☒

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## CLEARINGHOUSE RULE 00-001

### Comments

**[NOTE:** All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

### 2. Form, Style and Placement in Administrative Code

- a. In s. HFS 83.07 (7), a comma should be inserted before the notation "Stats."
- b. In s. HFS 131.14 (5), strike through the word "sooner" on the last line.
- c. SECTION 14 of the rule repeals and recreates s. HFS 131.14 (7). It is only necessary to repeal and recreate s. HFS 131.14 (7) (intro.) and (a), since par. (b) is substantially unchanged in the rule.

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING AND  
CREATING RULES

To repeal HFS 133.03 (6); to renumber HFS 133.03 (7) to (9); to amend HSS 82.03 (2) (a) and Note and (7) and 82.04 (4) (b) and (5), HFS 83.07 (6) (b) 2., (11) (title) and (intro.), (13) (a) and (14), HFS 88.03 (2) (a), (b) 1. and (c), (3) (d) and (7) (a) and 88.04 (4), HFS 131.14 (5) and (6) (title) and (intro.), (8), (10) and (11) (a), HFS 132.14 (6) and 132.31 (6) (e) and HFS 134.14 (5); to repeal and recreate HSS 82.03 (4) (a) and (b), HFS 83.07 (7) and Note, HFS 88.03 (4), HFS 131.14 (7) and HFS 133.03 (5); and to create HFS 124.03 (7), HFS 132.14 (8), HFS 133.03 (9) and HFS 134.14 (5m), relating to non-expiring licenses and certification and a required annual or biennial report for certified adult family homes, licensed adult family homes, community-based residential facilities, hospice programs, nursing homes, home health agencies and facilities for the developmentally disabled, and a required annual report for hospitals.

Analysis Prepared by the Department of Health and Family Services

This order amends the Department's rules for licensing community-based residential facilities, hospices, nursing homes, home health agencies, facilities for the developmentally disabled, rural medical centers and licensed adult family homes, for certifying certified adult family homes and for approving hospitals, to do the following: (1) provide for non-expiring licenses and certification; (2) replace a process for applying for renewal of a license or certification with a requirement that the licensee or certificate holder submit an annual or biennial report to the Department in the form and containing the information that the Department requires; and (3) in regard to hospitals, for which there has not been a requirement in statute or rule for renewal of an approval, add a requirement that the approval holder submit an annual report to the Department in the form and containing the information that the Department requires. These were changes made in the program statutes by 1997 Wisconsin Act 27.

The order also clarifies in ss. HSS 82.03 (7) and HFS 83.07 (13) (b) that the referenced days are calendar days.

The Department's authority to repeal, renumber, amend, repeal and recreate and create these rules is found in ss. 50.02 (2), 50.032 (2), 50.033 (2), 50.36 (1), 50.49 (2), 50.51 (2) and 50.95, Stats. The rules interpret ss. 50.03 (4) (c) 1. and 2., 50.032 (2) and (2r), 50.033 (2) and (2m), 50.355, 50.49 (6), (b) and (d), 50.52 (4), 50.535 and 50.93 (2) (a) and (3m), Stats.

SECTION 1. HSS 82.03(2)(a) and Note are amended to read:

HSS 82.03(2) APPLICATION FOR CERTIFICATION. (a) Application for certification ~~or renewal of certification~~ shall be made on a department-approved form provided by the certifying agency. The application form shall be signed by the applicant.

**Note:** To obtain a copy of the application form, contact the certifying agency in the county in which the prospective family home is located or write or call: Program Certification Unit, bureau of community Programs, Division of Community Services, P.O. Box 7851, Madison, WI 53707, (608) 266-0120 Resident Care Review Section, Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 2969, Madison, WI 53701-2969; (608) 266-8481.

SECTION 2. HSS 82.03(4)(a) and (b) are repealed and recreated to read:

HSS 82.03(4)(a) An adult family home certification is valid indefinitely unless suspended or revoked.

(b) Every 12 months, on a schedule determined by the department, an adult family home shall submit an annual report to the certifying agency in the form and containing the information that the department requires. If a complete annual report is not timely filed, the certifying agency shall issue a warning to the sponsor of the certified adult family home. If a certified adult family home that has not filed a timely report fails to submit a complete report to the certifying agency within 60 days after the date established under the schedule determined by the department, the certifying agency may decertify the adult family home.

SECTION 3. HSS 82.03 (7) is amended to read:

HSS 82.03 (7) ADMINISTRATIVE REVIEW. If an applicant or sponsor desires to contest a decision not to certify a home under sub. (3), ~~not to renew a certification under sub. (4) (b)~~ or to decertify a home under sub. (6), the applicant or sponsor shall, within 15 calendar days after the date of the notice of the decision, submit to the certifying agency a written request for an administrative review of the decision. The request shall include the applicant's or sponsor's reason why he or she disagrees with the action. The administrator of the certifying agency or his or her designee shall review the facts and send a written decision to the applicant or sponsor and, if the certifying agency is not the department, to the department, within 30 calendar days after receipt of the request for review. If the certifying agency is not the department, the applicant or sponsor may, within 15 calendar days after the date of the certifying agency's decision, submit to the department a written request for an administrative review of the applicant or sponsor's original request and the certifying agency's decision. The department shall review the facts and send a written decision to the applicant or sponsor and to the certifying agency within 45 calendar days after the receipt of the request for review. The department's decision shall be final.

SECTION 4. HSS 82.04 (4) (b) and (5) are amended to read:

HSS 82.04 (4) (b) If the certifying agency suspects or has reason to believe that the applicant, sponsor, substitute provider or other household member may pose a threat to the health, safety or welfare of residents, the certifying agency may require a physical examination, an alcohol or drug abuse assessment or a mental health evaluation of the person as a condition of initial or continued certification or renewal of certification.

(5) VEHICLE LIABILITY INSURANCE. An applicant ~~for initial certification or renewal of certification~~ or sponsor who plans to transport residents in his or her vehicle shall provide the

certifying agency with documentation of current automobile liability insurance coverage ~~and with documentation of renewal so that coverage is in force for the entire term of certification.~~ The sponsor shall maintain that coverage in force.

SECTION 5. HFS 83.07(6)(b) 2. is amended to read:

HFS 83.07 (6) (b) 2. A license is issued only for the premises and persons named in the application and is not transferable or assignable. The license shall be visibly displayed in a public area in the CBRF readily accessible to residents, staff and visitors. Any license granted shall state the maximum resident capacity allowed, which shall include the number of respite care residents, the client group or groups the CBRF may serve, the name of the licensee, the date, ~~the expiration date,~~ any condition of licensure and any additional information that the department may prescribe.

SECTION 6. HFS 83.07 (7) and Note are repealed and recreated to read:

HFS 83.07 (7) REPORTING. A license is valid indefinitely unless suspended or revoked. Every 24 months, on a schedule determined by the department, a licensee shall submit a biennial report in the form and containing the information that the department requires, including payment of the fees required under s. 50.037(2)(a), Stats. If a complete biennial report is not timely filed, the department shall issue a warning to the licensee. If a licensee who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license. X

**Note:** For copies of the application form and the annual report form, DCS 310, write or phone the appropriate regional office of the Department's Division of Supportive Living. See Appendix A for the addresses and phone numbers of those offices.

SECTION 7. HFS 83.07 (11) (title) and (intro.), (13) (a) and (14) are amended to read:

HFS 83.07(11) (title) LICENSE DENIAL, OR REVOCATION OR NON-RENEWAL. (intro.)The department may refuse to grant a license ~~or may refuse to renew a license~~ if it determines that the applicant is not fit and qualified pursuant to s. 50.03(4)(a)1., Stats., and s. HFS 83.11(1) or fails to meet the requirements for licensure in this chapter and ch. 50, Stats. The department may revoke ~~or refuse to renew~~ a license pursuant to s. 50.03(5g), Stats., if the applicant or licensee or any administrator, employee, or any other person affiliated with or living in the CBRF who has contact with residents:

(13) APPEAL. (a) Any person whose application for a license is denied or whose license is revoked ~~or not renewed~~ may request a hearing on that decision under ss. 227.42 and 50.03 ~~(g)~~ (5g)(f), Stats.

(14) POSTING OF CITATIONS AND NOTICES. (a) The licensee shall post next to the CBRF license any citation of deficiency, notice of revocation, ~~notice of non-renewal~~ and any other notice of enforcement action initiated by the department on forms and in correspondence received from the department. Citations of deficiency, notices of revocation ~~and non-renewal~~ and other notices of enforcement action shall be posted immediately upon their receipt. Citations of

deficiency shall remain posted for 30 days following receipt or until compliance is achieved, whichever is longer. Notices of revocation, ~~non-renewal~~ and other notices of enforcement action shall remain posted until a final determination is made.

(b) The licensee shall make available, upon request, to a resident or prospective resident, the resident's or prospective resident's guardian, and the resident's or prospective resident's family members, designated representative and case manager, the results of all department ~~license renewal~~ surveys, monitoring visits and complaint investigations, if any, for the period of 12 months preceding the request.

SECTION 8 HFS 88.03(2) (a), (b) 1. and (c) and (3) (d) are amended to read:

HFS 88.03(2) APPLICATION. (a) Application for a license ~~or for renewal of a license~~ shall be made on a department-approved form available from the licensing agency.

(b) 1. Before an applicant ~~for an initial license~~ may be licensed to operate an adult family home, the applicant shall submit to the licensing agency a completed and signed application form, the program statement described under sub d. 2, the licensure fee required under s. 50.033(2), Stats., and a check or money order in an amount sufficient to cover the fees for conducting the criminal records check required under sub. (3)(b).

(c) An applicant requesting a license ~~or renewal of a license~~ shall provide any additional information requested by the licensing agency that may assist the agency in evaluating the applicant or licensee's character or qualifications. In assessing character and qualifications, the licensing agency may consider evidence of abuse or fraud, substantial or repeated violations of applicable or related statutes and rules in the licensee's operation of or employment in any service or facility serving adults or children or in the licensee's care of dependent persons, or a conviction or a pending criminal charge for a crime substantially related to caring for a dependent population or the funds or property of adults or minors or activities of the adult family home.

(3)(d) *Health check.* If the licensing agency suspects or has reason to believe that a license applicant, licensee, service provider or household member may pose a threat to the health, safety or welfare of residents, the licensing agency may require a physical examination, an alcohol or drug abuse assessment or a mental health evaluation of the person as a condition for issuance ~~or renewal~~ of a license.

SECTION 9. HFS 88.03(4) is repealed and recreated to read:

HFS 88.03 (4) LICENSE ISSUANCE. (a) An adult family home license is valid indefinitely unless suspended or revoked.

(b) Every 24 months, on a schedule determined by the department, a licensed adult family home shall submit a biennial report to the licensing agency in the form and containing the information that the department requires, including payment of the fee required under sub. (2). If a complete biennial report is not timely filed, the department shall issue a warning to the licensee. If a licensed adult family home that has not filed a timely report fails to submit a complete report to

the licensing agency within 60 days after the date established under the schedule determined by the department, the licensing agency may revoke the license.

SECTION 10. HFS 88.03(7)(a) is amended to read:

HFS 88.03(7)(a) Any person whose application for a license is denied under sub. (3) ~~or whose license is not renewed under sub. (4)~~ or revoked under sub. (6)(d) or suspended under sub. (6)(e) may request a hearing on that decision under s. 227.42, Stats.

SECTION 11. HFS 88.04(4) is amended to read:

HFS 88.04(4) INSURANCE. (a) *Vehicle*. An applicant for ~~an initial or a license or for renewal of a license~~ who plans to transport residents in his or her vehicle shall provide the licensing agency with a certificate of insurance documenting liability coverage. If a service provider transports residents under direction of the licensee, the service provider shall have vehicle insurance and a valid driver's license and, if requested by the licensing agency, shall provide evidence to the licensing agency on at 12 month intervals, on a form provided by the licensing agency, of a that the vehicle is in safe operating condition on a form provided by the licensing agency.

(b) *Home*. ~~An applicant for an initial license or for renewal of a license~~ A license applicant shall provide the licensing agency with documentation of home owners or renters insurance coverage. The licensee shall maintain coverage in force for the entire term of the license.

SECTION 12. HFS 124.03(7) is created to read:

HFS 124.03(7). Every 12 months, on a schedule determined by the department, a hospital shall submit to the department an annual report in the form and containing the information that the department requires, including payment of the fee required under s. 50.135(2)(a), Stats. If a complete annual report is not timely filed, the department shall issue a warning to the holder of the certificate of approval. If a hospital that has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the approval of the hospital.

SECTION 13. HFS 131.14(5) and (6) (title) and (intro.) are amended to read:

HFS 131.14 (5) ~~INITIAL~~ REGULAR LICENSE. The department shall inspect a hospice prior to ~~issuance of an initial~~ issuing a regular license unless under sub. (3)(a) applies and the hospice need not be inspected. A regular license shall be is valid for 12 months from the date of issuance indefinitely unless sooner revoked or suspended, and may be renewed.

(6) (title) PROVISIONAL AND ~~INITIAL~~ REGULAR LICENSING FEE. (intro.)  
The fee for a provisional or ~~initial~~ regular license shall be \$300, except that:

SECTION 14. HFS 131.14(7) is repealed and recreated to read:



HFS 131.14 (7) ONGOING LICENSURE. A regular license shall be valid indefinitely if both of the following conditions are satisfied:

(a) Every 12 months, on a schedule determined by the department, the hospice submits an annual report to the department in the form and containing the information that the department requires, including payment of the fee required under par. (b). If a complete annual report is not timely filed, the department shall issue a warning to the licensee. If a hospice that has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

(b) Unless waived under sub. (6)(b), the report is accompanied by a licensing fee which shall be an amount equal to 0.15% of the net annual income of the hospice, based on the hospice's most recent annual fiscal report except that if that amount is less than \$200 the fee shall be \$200 and if that amount is greater than \$1000 the fee shall be \$1000. The fee for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week shall be \$10. No fee may be charged to a hospice for which the initial licensing fee was waived under sub. (6)(b) unless one or more of the conditions under which the initial licensing fee was waived have changed.

SECTION 15. HFS 131.14(8), (10) and (11) (a) are amended to read:

HFS 131.14(8) ACTION BY THE DEPARTMENT. Within 60 days after receiving a complete application for a license ~~or for renewal of a license~~ the department shall either approve the application and issue a license or deny the application. The department shall deny a license to any applicant who has a history, determined under sub. (3)(b)1. to 3., of substantial noncompliance with federal or this state's or any state's requirements, who fails under sub. (3)(b)4. to 9. to qualify for a license, or who is found not in substantial compliance with this chapter. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial and shall identify the process under sub. (11) for appealing the denial.

(10) ~~SUSPENSION, OR REVOCATION OR NONRENEWAL~~. The department by written notice to the applicant or recipient may suspend, ~~or revoke or refuse to renew~~ a license if the department finds that there has been a substantial failure to comply with the requirements of ss. 50.90 to 50.98, Stats., or this chapter. The notice shall identify the violation and the statute or rule violated, and shall describe the process under sub. (11) for appealing the decision.

(11)(a) Any person aggrieved by the department's decision to deny ~~an initial a license or the renewal of a license~~ or to suspend or revoke a license may request a hearing on that decision under s. 227.42, Stats., which shall be limited to the issues stated as the bases for denial, suspension or revocation in the written notice under sub. (10).

SECTION 16. HFS 132.14(6) is amended to read:

HFS 132.14(6) TYPES OF LICENSE. (a) *Probationary license*. If the applicant has not been previously licensed under this chapter or if the facility is not in operation at the time

application is made, the department shall issue a probationary license. A probationary license shall be valid for 12 months from the date of issuance unless sooner suspended or revoked under s. 50.03(5), Stats. If the applicant is found to be fit and qualified under sub. (4) and in substantial compliance with this chapter, the department shall issue a regular license upon expiration of the probationary license. The regular license ~~shall be is valid for a period of one year from date of issue~~ indefinitely unless ~~sooner~~ suspended or revoked.

(b) *Regular license.* If the applicant has been previously licensed, the department shall issue a regular license if the applicant is found to be in substantial compliance with this chapter. A regular license ~~shall be is valid for a period of one year from the date of issuance~~ indefinitely unless ~~sooner~~ suspended or revoked.

SECTION 17. HFS 132.14(8) is created to read:

HFS 132.14(8) **REPORTING.** Every 12 months, on a schedule determined by the department, a nursing home licensee shall submit a report to the department in the form and containing the information that the department requires, including payment of the fee required under s. 50.135(2)(a), Stats. If a complete report is not timely filed, the department shall issue a warning to the licensee. If a nursing home licensee who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

SECTION 18. HFS 132.31(6)(e) is amended to read:

HFS 132.31(6)(e) *Summary of complaints.* The facility shall attach a statement which summarizes complaints or allegations of violations of rights established under this section to an application for a ~~new license or a renewal of its license.~~ Such The statement shall contain the date of the complaint or allegation, the names of the persons involved, the disposition of the matter, and the date of disposition. The department shall consider the statement in reviewing the application.

SECTION 19. HFS 133.03(5) is repealed and recreated to read:

HFS 133.03(5) **LICENSURE TERM.** (a) A home health agency regular license is valid indefinitely unless suspended or revoked.

SECTION 20. HFS 133.03 (6) is repealed.

SECTION 21. HFS 133.03(7) to (9) are renumbered 133.03 (6) to (8).

SECTION 22. HFS 133.03(9) is created to read:

HFS 133.03(9) **REPORTING.** Every 12 months, on a schedule determined by the department, a licensed home health agency shall submit to the department an annual report in the form and containing the information that the department requires, including payment of the fee required under s. 50.135(2)(a), Stats. If a complete annual report is not timely filed, the department shall issue a warning to the licensee. If a licensed home health agency that has not filed a timely

report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

SECTION 23. HFS 134.14(5) is amended to read:

HFS 134.14(5) TYPES OF LICENSE. (a) *Probationary license*. If the applicant has not previously been licensed under this chapter or if the facility is not in operation at the time application is made, the department shall issue a probationary license. A probationary license shall be valid for 12 months from the date of issuance unless sooner suspended or revoked under s. 50.03(5), Stats. If the applicant is found to be in compliance with this chapter, a regular license shall be issued ~~for a period of one year beginning on the date of issuance of the probationary license.~~

(b) *Regular license*. If the applicant has been previously licensed, the department shall issue a regular license if the applicant is found to be in compliance with this chapter. A regular license ~~shall be is valid for a period of one year beginning on the date of issuance~~ indefinitely unless ~~sooner~~ suspended or revoked

SECTION 24. HFS 134.14 (5m) is created to read:

HFS 134.14 (5m) ANNUAL REPORT. Every 12 months, on a schedule determined by the department, a facility for the developmentally disabled licensee shall submit a report to the department in the form and containing the information that the department requires, including payment of the fee required under s. 50.135(2)(a), Stats. If a complete report is not timely filed, the department shall issue a warning to the licensee. If the licensee of a facility for the developmentally disabled who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

The repeals and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in 227.22(2), Stats.

Wisconsin Department of Health  
and Family Services

Dated:

By: \_\_\_\_\_  
Joseph Leean  
Secretary

SEAL: