



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
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CLEARINGHOUSE REPORT TO AGENCY

[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 01-157

AN ORDER to renumber Comm 122.02 (1) to (4) and 128.02 (1) to (8); to amend chapter Comm 122 (title) and Comm 122.01 (intro.) and (3), 122.02 (3), 122.03, 122.04 (intro.), (1) to (5) and (7), 122.05 (1) (a), 122.06 (1) (intro.) and 122.06 (2) (intro.) and (h), 122.07 to 122.09, 128.03 (1) and (2) (intro.), (a) and (f), 128.04 (1) (a) and (b) and 128.05 (2) (h); and to create Comm 122.02 (1), 122.035, 122.04 (9), 122.06 (1) (g), 128.02 (1) and (2), 128.025, 128.03 (2) (h) and 128.05 (1) (g), relating to health care loan assistance.

Submitted by **DEPARTMENT OF COMMERCE**

12-21-01 RECEIVED BY LEGISLATIVE COUNCIL.

01-15-02 REPORT SENT TO AGENCY.

RS:RW:tlujal

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 01-157

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.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Comm 122.03 (2), the intended meaning of the phrase "or for similar reasons" is not clear.

b. The phrase "a level of dental services" in s. Comm 122.035 (2) (a) to (c) is not clear. For example, how does the phrase differ from "dental services"? See also s. Comm 128.025.

c. Is the term "unduplicated" as used in ss. Comm 122.035 (2) and 128.025 commonly understood so that no definition or description is necessary?

d. Under s. Comm 122.07 (2) and (3), the term "unserved months" is used, but not defined. A definition or description would help to clarify the intended scope of the term. For example, how will "partial" months be calculated; how will months be treated if no money has been paid?

e. Section Comm 128.025, as drafted, appears to pose some problems. For example, how will a dental hygienist control whether the employing dentist actually fulfills the dental service requirements? It appears that if a hygienist begins employment with a dentist who intends, but is not able to meet the numerical standards, the hygienist may be required to pay back a loan due to the dentist's decisions. The agency should review this aspect of the rule.

f. The agency may wish to include an initial applicability section in the rule to provide a clear indication of which loans will be affected by the rule.



State of Wisconsin \ Department of Commerce

HEARING DRAFT of PROPOSED RULES

Rule No.: Chapters Comm 122 and 128

Relating to: Health Care Loan Assistance

The Department of Commerce proposes an order to renumber ss. Comm 122.02 (1) to (4), and Comm 128.02 (1) to (8); to amend ch. Comm 122 (title), ss. Comm 122.01 (intro.) and (3), Comm 122.02 (3), Comm 122.03, Comm 122.04 (intro.), (1) to (5) and (7), Comm 122.05 (1) (a), Comm 122.06 (1) (intro.), Comm 122.06 (2) (intro.) and (h), Comm 122.07 to 122.09, Comm 128.03 (1), (2) (intro.), (a) and (f), Comm 128.04 (1) (a) and (b), and Comm 128.05 (2) (h); and to create ss. Comm 122.02 (1), Comm 122.035, Comm 122.04 (9), Comm 122.06 (1) (g), Comm 128.02 (1) and (2), Comm 128.025, Comm 128.03 (2) (h), and Comm 128.05 (1) (g), relating to health care loan assistance.

Analysis of Proposed Rules

Statutory Authority: Sections 560.02 (4), 560.183 and 560.184, Stats.
Statutes Interpreted: Sections 560.02 (4), 560.183 and 560.184, Stats.

The current rules for health care loan assistance in chapters Comm 122 and 128 apply to physicians and health care providers such as physician assistants. 2001 Wisconsin Act 16 requires the Department of Commerce to also provide loan assistance to dentists and dental hygienists.

The proposed rules add dentists and dental hygienists to the health care loan assistance program administered by the Department. The proposed rules closely follow the current rules for providing loan assistance to physicians and health care providers. However, because dental practice has distinct differences from medical practice, the proposed rules specify practice requirements for dentists and dental hygienists regarding volume of medical assistance and Badger Care patients. The proposed rules also include qualifications for loans and criteria for repayment of loans.

SECTION 1. Chapter Comm 122 (title) is amended to read:

Chapter Comm 122
PHYSICIAN AND DENTIST LOAN ASSISTANCE PROGRAM

SECTION 2. Comm 122.01 (intro.) and (3) are amended to read:

Comm 122.01 Purpose. The purpose of this chapter is to establish provisions necessary for the administration of those aspects of the physician and dentist loan assistance program and the expanded loan assistance program which relate to the following:

(3) The procedures under which physicians and dentists may apply for assistance under this chapter and the procedures under which the department may make determinations in regard to physician and dentist applications.

SECTION 3. Comm 122.02 (1) to (4) are renumbered (2) to (5).

SECTION 4. Comm 122.02 (1) is created to read:

Comm 122.02 (1) "Dental health shortage area" has the meaning contained in s. 560.183 (1) (ad), Stats.

SECTION 5. Comm 122.02 (3), as renumbered, is amended to read:

Comm 122.02 (3) "Educational loan" means a health education assistance loan, a plus loan, a national direct student loan, a stafford loan, a health professions students loan, a supplemental loan for students, a guaranteed student loan from a state education financial aid office, a university sponsored student loan, a trust fund loan, a scholastic loan, a foundation loan or any other loan that the department determines is exclusively for educational purposes, and that was obtained by the physician or dentist from a public or private lending institution for education in an accredited school of medicine, an accredited school of dentistry, or for post graduate medical or dental training.

SECTION 6. Comm 122.03 is amended to read:

Comm 122.03 Mental health shortage area. (1) The department shall identify as a mental health shortage area any geographic area that conforms to the definition in s. Comm 122.02 ~~(4)~~ (5).

(2) In addition to conforming to s. Comm 122.02 ~~(4)~~ (5), a written agreement between the department and a physician specializing in psychiatry shall require that the physician enter into an agreement with the board or boards created under s. 51.42, Stats., which operate in the mental health shortage area, to provide at least 8 hours of psychiatric care per week to clients of the

board or boards. The department may waive this requirement on a year-to-year basis upon a showing in writing by the physician that additional psychiatric services are not required by the county in the mental health shortage area, that the s. 51.42, Stats., board is not able to provide for such services at their reasonable and customary rate, or for similar reasons. ✓

SECTION 7. Comm 122.035 is created to read:

Comm 122.035 Dental health shortage area. (1) The department shall identify as a dental health shortage area any geographic area that conforms to the definition in s. Comm 122.02 (1). *circle?*

(2) In addition to conforming to s. Comm 122.02 (1), the dentist shall agree to the following: *§ 560.183(1)(ad) ?*

(a) In year 1 of the dentist's agreement with the department, the dentist shall provide a level of dental services to at least 50 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$8,000 in claims paid.

(b) In year 2 of the dentist's agreement with the department, the dentist shall provide a level of dental services to at least 70 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$11,000 in claims paid.

(c) In year 3 of the dentist's agreement with the department, the dentist shall provide a level of dental services to at least 90 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$15,000 in claims paid.

SECTION 8. Comm 122.04 (intro.), (1) to (5) and (7) are amended to read:

Comm 122.04 Priorities among eligible applicants. If the cost of repaying the educational loans of all eligible applicants, when added to the cost of educational loan repayments scheduled under existing agreements, exceeds the total amount in the appropriations under s. 20.143 (1) ~~(f)~~, ~~(g)~~, and ~~(jm)~~ (j), (k), (l), (m) and (n), Stats., the department shall establish priorities among eligible applicants based on the following considerations:

(1) EXTREMELY HIGH NEED FOR MEDICAL OR DENTAL CARE. The degree to which there is an extremely high need for medical or dental care in the eligible practice area in which the physician or dentist proposes to practice. ✓

(2) PHYSICIAN AND DENTIST RETENTION. The likelihood of long term retention of the physician or dentist. ✓

(3) PER CAPITA INCOME. The average per capita income in the eligible practice area in which the physician or dentist plans to practice. ✓

(4) FINANCIAL SUPPORT FOR PHYSICIAN OR DENTIST RECRUITMENT AND RETENTION. The extent of local financial support provided to recruit or retain the physician or dentist for the eligible practice area. ✓

(5) LENGTH OF SERVICE. The degree to which the physician or dentist is new to the eligible practice area.

(7) GEOGRAPHIC DISTRIBUTION. The geographical distribution of physicians and dentists with whom the department has existing agreements and the geographical distribution of eligible applicants.

SECTION 9. Comm 122.04 (9) is created to read:

Comm 122.04 (9) PROVISION OF MEDICAL ASSISTANCE AND BADGER CARE SERVICES. If already in practice, the degree to which a dentist provides medical assistance and badger care services in the dental practice.

SECTION 10. Comm 122.05 (1) (a) is amended to read:

Comm 122.05 (1) (a) Evidence pertaining to dates of accredited medical or dental school attendance and graduation.

SECTION 11. Comm 122.06 (1) (intro.) is amended to read:

Comm 122.06 Breach of agreement. (1) The following actions, if taken by a physician or dentist who has entered into an agreement with the department under the state physician and dentist loan repayment program for repayment of loans entirely from state funds, after July 1, 1998, shall constitute a breach of that agreement:

SECTION 12. Comm 122.06 (1) (g) is created to read:

Comm 122.06 (1) (g) Failing to meet the additional requirements outlined for psychiatrists in s. Comm 122.03 and dentists in s. Comm 122.035.

SECTION 13. Comm 122.06 (2) (intro.) and (h) are amended to read:

Comm 122.06 (2) (intro.) The following actions, if taken by a physician or dentist who has entered into an agreement with the department under the expanded loan assistance program under s. 560.183 (9), Stats., shall constitute a breach of that agreement:

(h) Failing to use a sliding fee scale or comparable method of determining payment arrangements for patients who are not eligible for medicare or medical assistance and who are unable to pay the customary fee for the physician's or dentist's services. Sliding fee scales may vary from clinic to clinic but, at a minimum, ~~should~~ shall address persons with incomes below 200% of the federal poverty level.

SECTION 14. Comm 122.07 to 122.09 are amended to read:

Comm 122.07 Penalties for breach of agreement. (1) A physician or dentist who breaches an agreement with the department in the first year of the physician's or dentist's obligation shall repay to the department the amount already received plus an amount equal to the total months of obligation multiplied by \$1,000.

(2) A physician or dentist who breaches an agreement with the department in the second year of the physician's or dentist's obligation shall repay to the department the amount already received plus an amount equal to the number of unserved months multiplied by \$1,000.

(3) A physician or dentist who breaches an agreement with the department in the third year of the physician's or dentist's obligation shall repay to the department the amount already received for unserved months plus an amount equal to the number of unserved months multiplied by \$1,000.

Comm 122.08 Waiver of penalties. The department may waive any penalty for breach of agreement if the physician or dentist is unable to serve or repay due to a permanent physical or mental impairment that prevents the physician or dentist from working in the physician's or dentist's profession. The physician or dentist shall provide verification of his or her condition from an appropriate board certified specialist or specialists that will reasonably convince the department that the physician or dentist will be unable to continue working in the physician's or dentist's profession.

Comm 122.09 Suspension. A physician's or dentist's contract may be suspended by the department, without penalty, for a period of time agreed upon by the physician and the department for certain hardships, including an extended illness or family leave that exceeds the maximum of 7 weeks allotted each year, or termination of employment that requires the physician or dentist to seek employment in another eligible practice area.

SECTION 15. Comm 128.02 (1) to (8) are renumbered (3) to (10).

SECTION 16. Comm 128.02 (1) and (2) are created to read:

Comm 128.02 (1) "Dental health shortage area" has the meaning contained in s. 560.184 (1) (ag), Stats.

(2) "Dental hygienist" has the meaning contained in s. 560.184 (1) (aj), Stats.

SECTION 17. Comm 128.025 is created to read:

Comm 128.025 Medical assistance and badger care requirements for dental hygienists. In addition to conforming to s. Comm 128.02(1), the dental hygienist shall work for a dentist who agrees to the following:

(1) In year 1 of the dental hygienist's agreement with the department, his or her dentist shall provide a level of dental services to at least 50 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$8,000 in claims paid.

(2) In year 2 of the dental hygienist's agreement with the department, his or her dentist shall provide a level of dental services to at least 70 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$11,000 in claims paid.

(3) In year 3 of the dental hygienist's agreement with the department, his or her dentist shall provide a level of dental services to at least 90 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$15,000 in claims paid.

SECTION 18. Comm 128.03 (1), (2) (intro.), (a) and (f) are amended to read:

Comm 128.03 (1) Any health care provider who practices in an eligible practice area and who provides primary or dental care is eligible for loan repayment as provided in s. 560.184 (4), Stats.

(2) If the cost of repaying the educational loans of all eligible applicants, when added to the cost of educational loan repayments scheduled under existing agreements, exceeds the total amount in the appropriations under s. 20.143 (1) ~~(f), (o), and (j)~~ (jc), (jL) and (kr), Stats., the department shall establish priorities among eligible applicants based upon the following considerations:

(a) *Extremely high need for medical or dental care.* The degree to which there is an extremely high need for medical or dental care in the eligible practice area in which the eligible applicant proposes to practice.

(f) *Length of service.* The degree to which the medical or dental ~~service~~ provider is new to the eligible practice area.

SECTION 19. Comm 128.03 (2) (h) is created to read:

Comm 128.03 (2) (h) *Provision of medical assistance and badger care services.* If already in practice, the degree to which the dental hygienist provides medical assistance and badger care services in the dental practice.

SECTION 20. Comm 128.04 (1) (a) and (b) are amended to read:

Comm 128.04 (1) (a) Evidence of health or dental care professional educational program attendance.

(b) Evidence of licensure or certification as a nurse-midwife, nurse practitioner, dental hygienist or physician assistant.

SECTION 21. Comm 128.05 (1) (g) is created to read:

Comm 128.05 (1) (g) Failing to meet the additional requirements outlined for dental hygienists in s. Comm 128.025.

SECTION 22. Comm 128.05 (2) (h) is amended to read:

Comm 128.05 (2) (h) Failing to use a sliding fee scale or comparable method of determining payment arrangements for patients who are not eligible for medicare or medical assistance and who are unable to pay the customary fee for the health care provider's services. Sliding fee scales may vary from clinic to clinic but, at a minimum, ~~should~~ shall address persons with incomes below 200% of the federal poverty level.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
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www.commerce.state.wi.us

Scott McCallum, Governor
Philip Edw. Albert, Secretary

March 1, 2002

Donald J. Schneider
Senate Chief Clerk
Room 501
119 Martin Luther King Blvd
Madison, Wisconsin 53703

John A. Scocos
Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 01-157

RULE NO.: Chapters Comm 122 and 128

RELATING TO: Health Care Loan Assistance

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Philip Edw. Albert', written over a horizontal line.

Philip Edw. Albert
Secretary



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Scott McCallum, Governor
Philip Edw. Albert, Secretary

March 1, 2002

Senator Fred Risser
President of the Senate
Room 220 South, State Capitol
Madison, Wisconsin 53702

Representative Scott Jensen
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Jensen:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 01-157

RULE NO.: Chapters Comm 122 and 128

RELATING TO: Health Care Loan Assistance

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

Philip Edw. Albert
Secretary

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 01-157

RULE NO.: Chapters Comm 122 and 128

RELATING TO: Health Care Loan Assistance

Agency contact person for substantive questions.

Name: Jane Thomas

Title: Rural Health Specialist

Telephone No. 608/267-3837

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

(Continued on reverse side)

OT 32409874

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

7. Review rules for permit action deadline [s. 227.15(2)(h)]

- a. Accepted
- b. Accepted in part
- c. Rejected
- d. Comments attached

**COMMENTS ON LEGISLATIVE COUNCIL
CLEARINGHOUSE REPORT**

Clearinghouse Rule No.: 01-157
Rule No.: Chapters Comm 122 and 128
Relating to: Health Care Loan Assistance

5. a. In s. Comm 122.03 (2), the phrase in question was changed to "or for other reasons approved by the department."

5. b. In ss. Comm 122.035 and 128.025, the words "a level of" were deleted.

5. c. In ss. Comm 122.035 and 128.025, a definition of "unduplicated" was added in a new subsection.

5. d. In s. Comm 122.07 (2) and (3), the wording was revised to eliminate the term "unserved months". The same change has been included under s. Comm 128.06 (2) and (3). Partial months will not be used; calculations will be based on whole months. If no money has been paid, there is no need to calculate months because no money will need to be paid back.

5. e. Under s. Comm 128.025, the Department reviewed the issue of how a dental hygienist will control whether the employing dentist actually fulfills the dental service requirements. To address this issue, a new provision has been added under s. Comm 128.025 (3). Similarly, a new provision has been added under s. Comm 122.035 (4) for dentists.

5. f. The effective date clause at the end of the rules indicates the initial applicability of the rules. Any loan agreement signed after that date will be affected by the rules.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 01-157

RULE NO.: Chapters Comm 122 and 128

RELATING TO: Health Care Loan Assistance

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

As required by 2001 Wisconsin Act 16, the proposed rules add dentists and dental hygienists to the health care loan assistance program administered by the Department. In order to allow some flexibility in enforcement of the minimum number of Medicaid and Badger Care patients a dentist must service, the rules include a waiver provision. This provision may be applied on a case-by-case and year-to-year basis upon a Department review that shows the dentist made a significant effort to meet the minimum number of patients.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

No issues were raised by small businesses during the hearings.

(Continued on reverse side)

3. Nature and estimated cost of preparation of any reports by small businesses.

None known.

4. Nature and estimated cost of other measures and investments required of small businesses.

None known.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

The cost of the review for the waiver provision is expected to be minimal and can be absorbed in the Department's administration of the health care loan assistance program.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

None known.

RULE REPORT

Department of Commerce

Rule No.: Chapters Comm 122 and 128

Relating to: Health Care Loan Assistance

Agency contact person for substantive questions:

Name Jane Thomas

Title Rural Health Specialist

Telephone Number 608/267-3837

Agency contact person for internal processing:

Name Ronald Acker

Title Code Consultant

Telephone Number 608/267-7907

1. Agency statutory authority under which the agency intends to promulgate the rule(s).
Sections 560.02 (4), 560.183 and 560.184, Stats.
2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).
None known.
3. Citation of court decisions which are applicable to the proposed rule(s).
None known.

4. Description of the proposed rule(s).

The proposed rules add dentists and dental hygienists to the health care loan assistance program administered by the Department. The proposed rules closely follow the current rules for providing loan assistance to physicians and health care providers. However, because dental practice has distinct differences from medical practice, the proposed rules specify practice requirements for dentists and dental hygienists regarding volume of medical assistance and Badger Care patients. The proposed rules also include qualifications for loans and criteria for repayment of loans.

5. Reason for the proposed rule(s).

The proposed rules have been developed in response to the amendments made in sections 560.183 and 560.184, Stats., by 2001 Wisconsin Act 16.

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Chs. Comm 122 & 128

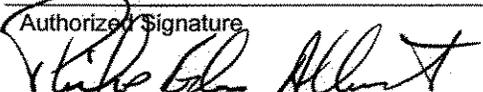
Subject
 Health Care Loan Assistance

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None known.

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes	\$	\$ -	
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)	
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
Total State Costs by Category	\$ 0	\$ - 0	
B. State Costs by Source of Funds			
GPR	\$ 0	\$ - 0	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -	
GPR Earned		-	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
Total State Revenues	\$ 0	\$ - 0	

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By: Ronald Acker	Telephone No. 608/267-7907	Agency Department of Commerce
Authorized Signature 	Telephone No.	Date (mm/dd/ccyy) 12/20/01

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Chs. Comm 122 & 128

Subject
 Health Care Loan Assistance

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 None

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules add dentists and dental hygienists to the health care loan assistance program currently administered by the Department of Commerce. There are no new administrative activities required to implement these rule additions. Therefore, the proposed rules will not have any effect on costs or revenues at the state or local level.

Long-Range Fiscal Implications

None known.

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Agency

Department of Commerce

Date (mm/dd/ccyy)

12/20/01

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 01-157		Hearing Location: Madison	
Rule Number: Chapters Comm 122 and 128		Hearing Date: January 29, 2002	
Relating to: Health Care Loan Assistance			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		No comments/recommendations were presented.	

RA:\HearingComments\Comm122&128



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapters Comm 122 and 128

Relating to: Health Care Loan Assistance

Clearinghouse Rule No.: 01-157

The Department of Commerce proposes an order to renumber ss. Comm 122.02 (1) to (4), and Comm 128.02 (1) to (8); to amend ch. Comm 122 (title), ss. Comm 122.01 (intro.) and (3), Comm 122.02 (3), Comm 122.03, Comm 122.04 (intro.), (1) to (5) and (7), Comm 122.05 (1) (a), Comm 122.06 (1) (intro.), Comm 122.06 (2) (intro.) and (h), Comm 122.07 to 122.09, Comm 128.03 (1), (2) (intro.), (a) and (f), Comm 128.04 (1) (a) and (b), Comm 128.05 (2) (h), and Comm 128.06 (2) and (3); and to create ss. Comm 122.02 (1), Comm 122.035, Comm 122.04 (9), Comm 122.06 (1) (g), Comm 128.02 (1) and (2), Comm 128.025, Comm 128.03 (2) (h), and Comm 128.05 (1) (g), relating to health care loan assistance.

Analysis of Proposed Rules

Statutory Authority: Sections 560.02 (4), 560.183 and 560.184, Stats.
Statutes Interpreted: Sections 560.02 (4), 560.183 and 560.184, Stats.

The current rules for health care loan assistance in chapters Comm 122 and 128 apply to physicians and health care providers such as physician assistants. 2001 Wisconsin Act 16 requires the Department of Commerce to also provide loan assistance to dentists and dental hygienists.

The proposed rules add dentists and dental hygienists to the health care loan assistance program administered by the Department. The proposed rules closely follow the current rules for providing loan assistance to physicians and health care providers. However, because dental practice has distinct differences from medical practice, the proposed rules specify practice requirements for dentists and dental hygienists regarding volume of medical assistance and Badger Care patients. The proposed rules also include qualifications for loans and criteria for repayment of loans.

SECTION 1. Chapter Comm 122 (title) is amended to read:

Chapter Comm 122
PHYSICIAN AND DENTIST LOAN ASSISTANCE PROGRAM

SECTION 2. Comm 122.01 (intro.) and (3) are amended to read:

Comm 122.01 Purpose. The purpose of this chapter is to establish provisions necessary for the administration of those aspects of the physician and dentist loan assistance program and the expanded loan assistance program which relate to the following:

(3) The procedures under which physicians and dentists may apply for assistance under this chapter and the procedures under which the department may make determinations in regard to physician and dentist applications.

SECTION 3. Comm 122.02 (1) to (4) are renumbered (2) to (5).

SECTION 4. Comm 122.02 (1) is created to read:

Comm 122.02 (1) "Dental health shortage area" has the meaning contained in s. 560.183 (1) (ad), Stats.

SECTION 5. Comm 122.02 (3), as renumbered, is amended to read:

Comm 122.02 (3) "Educational loan" means a health education assistance loan, a plus loan, a national direct student loan, a stafford loan, a health professions students loan, a supplemental loan for students, a guaranteed student loan from a state education financial aid office, a university sponsored student loan, a trust fund loan, a scholastic loan, a foundation loan or any other loan that the department determines is exclusively for educational purposes, and that was obtained by the physician or dentist from a public or private lending institution for education in an accredited school of medicine, an accredited school of dentistry, or for post graduate medical or dental training.

SECTION 6. Comm 122.03 is amended to read:

Comm 122.03 Mental health shortage area. (1) The department shall identify as a mental health shortage area any geographic area that conforms to the definition in s. Comm 122.02 ~~(4)~~ (5).

(2) In addition to conforming to s. Comm 122.02 ~~(4)~~ (5), a written agreement between the department and a physician specializing in psychiatry shall require that the physician enter into an agreement with the board or boards created under s. 51.42, Stats., which operate in the mental health shortage area, to provide at least 8 hours of psychiatric care per week to clients of the

board or boards. The department may waive this requirement on a year-to-year basis upon a showing in writing by the physician that additional psychiatric services are not required by the county in the mental health shortage area, that the s. 51.42, Stats., board is not able to provide for such services at their reasonable and customary rate, or for other reasons approved by the department.

SECTION 7. Comm 122.035 is created to read:

Comm 122.035 Dental health shortage area. (1) The department shall identify as a dental health shortage area any geographic area that conforms to the definition in s. Comm 122.02 (1).

(2) In addition to conforming to s. Comm 122.02 (1), the dentist shall agree to the following:

(a) In year 1 of the dentist's agreement with the department, the dentist shall provide dental services to at least 50 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$8,000 in claims paid.

(b) In year 2 of the dentist's agreement with the department, the dentist shall provide dental services to at least 70 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$11,000 in claims paid.

(c) In year 3 of the dentist's agreement with the department, the dentist shall provide dental services to at least 90 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$15,000 in claims paid.

(3) In this section, "unduplicated" means that a recipient may only be counted once for the year regardless of the number of visits during the year.

(4) The department may waive the requirements of sub. (2) on a case-by-case and year-to-year basis upon an administrative review that shows the dentist made a significant effort to achieve the targets contained in sub. (2) and that the dentist has credible plans, as determined by the department, to meet the following year's targets, if applicable.

SECTION 8. Comm 122.04 (intro.), (1) to (5) and (7) are amended to read:

Comm 122.04 Priorities among eligible applicants. If the cost of repaying the educational loans of all eligible applicants, when added to the cost of educational loan repayments scheduled under existing agreements, exceeds the total amount in the appropriations under s. 20.143 (1) ~~(f)~~, ~~(g)~~, and ~~(jm)~~ (jc), (jm) and (kr), Stats., the department shall establish priorities among eligible applicants based on the following considerations:

(1) **EXTREMELY HIGH NEED FOR MEDICAL OR DENTAL CARE.** The degree to which there is an extremely high need for medical or dental care in the eligible practice area in which the physician or dentist proposes to practice.

(2) PHYSICIAN AND DENTIST RETENTION. The likelihood of long term retention of the physician or dentist.

(3) PER CAPITA INCOME. The average per capita income in the eligible practice area in which the physician or dentist plans to practice.

(4) FINANCIAL SUPPORT FOR PHYSICIAN OR DENTIST RECRUITMENT AND RETENTION. The extent of local financial support provided to recruit or retain the physician or dentist for the eligible practice area.

(5) LENGTH OF SERVICE. The degree to which the physician or dentist is new to the eligible practice area.

(7) GEOGRAPHIC DISTRIBUTION. The geographical distribution of physicians and dentists with whom the department has existing agreements and the geographical distribution of eligible applicants.

SECTION 9. Comm 122.04 (9) is created to read:

Comm 122.04 (9) PROVISION OF MEDICAL ASSISTANCE AND BADGER CARE SERVICES. If already in practice, the degree to which a dentist provides medical assistance and badger care services in the dental practice.

SECTION 10. Comm 122.05 (1) (a) is amended to read:

Comm 122.05 (1) (a) Evidence pertaining to dates of accredited medical or dental school attendance and graduation.

SECTION 11. Comm 122.06 (1) (intro.) is amended to read:

Comm 122.06 Breach of agreement. (1) The following actions, if taken by a physician or dentist who has entered into an agreement with the department under the state physician and dentist loan repayment program for repayment of loans entirely from state funds, after July 1, 1998, shall constitute a breach of that agreement:

SECTION 12. Comm 122.06 (1) (g) is created to read:

Comm 122.06 (1) (g) Failing to meet the additional requirements outlined for psychiatrists in s. Comm 122.03 and dentists in s. Comm 122.035.

SECTION 13. Comm 122.06 (2) (intro.) and (h) are amended to read:

Comm 122.06 (2) (intro.) The following actions, if taken by a physician or dentist who has entered into an agreement with the department under the expanded loan assistance program under s. 560.183 (9), Stats., shall constitute a breach of that agreement:

(h) Failing to use a sliding fee scale or comparable method of determining payment arrangements for patients who are not eligible for medicare or medical assistance and who are unable to pay the customary fee for the physician's or dentist's services. Sliding fee scales may vary from clinic to clinic but, at a minimum, ~~should~~ shall address persons with incomes below 200% of the federal poverty level.

SECTION 14. Comm 122.07 to 122.09 are amended to read:

Comm 122.07 Penalties for breach of agreement. (1) A physician or dentist who breaches an agreement with the department in the first year of the physician's or dentist's obligation shall repay to the department the amount already received plus an amount equal to the total months of obligation multiplied by \$1,000.

(2) A physician or dentist who breaches an agreement with the department in the second year of the physician's or dentist's obligation shall repay to the department the amount already received plus an amount equal to the number of ~~unserved~~ months remaining in the agreement multiplied by \$1,000.

(3) A physician or dentist who breaches an agreement with the department in the third year of the physician's or dentist's obligation shall repay to the department the amount already received for ~~unserved~~ the months remaining in the agreement plus an amount equal to the number of ~~unserved~~ months remaining in the agreement multiplied by \$1,000.

Comm 122.08 Waiver of penalties. The department may waive any penalty for breach of agreement if the physician or dentist is unable to serve or repay due to a permanent physical or mental impairment that prevents the physician or dentist from working in the physician's or dentist's profession. The physician or dentist shall provide verification of his or her condition from an appropriate board certified specialist or specialists that will reasonably convince the department that the physician or dentist will be unable to continue working in the physician's or dentist's profession.

Comm 122.09 Suspension. A physician's or dentist's contract may be suspended by the department, without penalty, for a period of time agreed upon by the physician and the department for certain hardships, including an extended illness or family leave that exceeds the maximum of 7 weeks allotted each year, or termination of employment that requires the physician or dentist to seek employment in another eligible practice area.

SECTION 15. Comm 128.02 (1) to (8) are renumbered (3) to (10).

SECTION 16. Comm 128.02 (1) and (2) are created to read:

Comm 128.02 (1) "Dental health shortage area" has the meaning contained in s. 560.184 (1) (ag), Stats.

(2) "Dental hygienist" has the meaning contained in s. 560.184 (1) (aj), Stats.

SECTION 17. Comm 128.025 is created to read:

Comm 128.025 Medical assistance and badger care requirements for dental hygienists.

(1) In addition to conforming to s. Comm 128.02(1), the dental hygienist shall work for a dentist who agrees to the following:

(a) In year 1 of the dental hygienist's agreement with the department, his or her dentist shall provide dental services to at least 50 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$8,000 in claims paid.

(b) In year 2 of the dental hygienist's agreement with the department, his or her dentist shall provide dental services to at least 70 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$11,000 in claims paid.

(c) In year 3 of the dental hygienist's agreement with the department, his or her dentist shall provide dental services to at least 90 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$15,000 in claims paid.

(2) In this section, "unduplicated" means that a recipient may only be counted once for the year regardless of the number of visits during the year.

(3) The department may waive the requirements of sub. (1) on a case-by-case and year-to-year basis upon an administrative review that shows the dentist for whom the dental hygienist works made a significant effort to achieve the targets contained in sub. (1) and that the dentist has credible plans, as determined by the department, to meet the following year's targets, if applicable. If, in the opinion of the department, the dentist did not make a significant effort nor has credible plans to meet future targets as established in sub. (1), the dental hygienist may be required to repay any monies paid to the hygienist by the department without additional penalties and may not receive additional loan assistance for subsequent periods.

SECTION 18. Comm 128.03 (1), (2) (intro.), (a) and (f) are amended to read:

Comm 128.03 (1) Any health care provider who practices in an eligible practice area and who provides primary or dental care is eligible for loan repayment as provided in s. 560.184 (4), Stats.

(2) If the cost of repaying the educational loans of all eligible applicants, when added to the cost of educational loan repayments scheduled under existing agreements, exceeds the total amount in the appropriations under s. 20.143 (1) ~~(f), (e), and (j)~~ (j), (l) and (k), Stats., the department shall establish priorities among eligible applicants based upon the following considerations:

(a) *Extremely high need for medical or dental care.* The degree to which there is an extremely high need for medical or dental care in the eligible practice area in which the eligible applicant proposes to practice.

(f) *Length of service.* The degree to which the medical or dental service provider is new to the eligible practice area.

SECTION 19. Comm 128.03 (2) (h) is created to read:

Comm 128.03 (2) (h) *Provision of medical assistance and badger care services.* If already in practice, the degree to which the dental hygienist provides medical assistance and badger care services in the dental practice.

SECTION 20. Comm 128.04 (1) (a) and (b) are amended to read:

Comm 128.04 (1) (a) Evidence of health or dental care professional educational program attendance.

(b) Evidence of licensure or certification as a nurse-midwife, nurse practitioner, dental hygienist or physician assistant.

SECTION 21. Comm 128.05 (1) (g) is created to read:

Comm 128.05 (1) (g) Failing to meet the additional requirements outlined for dental hygienists in s. Comm 128.025.

SECTION 22. Comm 128.05 (2) (h) is amended to read:

Comm 128.05 (2) (h) Failing to use a sliding fee scale or comparable method of determining payment arrangements for patients who are not eligible for medicare or medical assistance and who are unable to pay the customary fee for the health care provider's services. Sliding fee scales may vary from clinic to clinic but, at a minimum, ~~should~~ shall address persons with incomes below 200% of the federal poverty level.

SECTION 23. Comm 128.06 (2) and (3) are amended to read:

Comm 128.06 (2) A provider who breaches an agreement with the department in the second year of the provider's obligation shall repay to the department the amount already received plus an amount equal to the number of unserved months remaining in the agreement multiplied by \$500.

(3) A provider who breaches an agreement with the department in the third year of the provider's obligation shall repay to the department the amount already received for ~~unserved~~ the months remaining in the agreement plus an amount equal to the number of ~~unserved~~ months remaining in the agreement multiplied by \$500.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
