Filed with LRB: **September 8, 2008**
Publication Date: **September 10, 2008**
Effective Dates: **September 10, 2008 through the date on which the final rules take effect**
Hearing Dates: **November 26, 2008, April 13, 2009**

DEPARTMENT OF REGULATION AND LICENSING
EMERGENCY RULE ORDER

An order of the Department of Regulation and Licensing to create RL 91.01 (3) (k), relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

ANALYSIS
Statutes interpreted: Section 460.04 (2), Stats.
Statutory authority: Section 227.11 (2), Stats., and s. 460.04 (2), Stats., 2007 Wisconsin Act 104.

Explanation of agency authority:
2007 Wisconsin Act 104 amends ch. 460, Stats., which regulates the profession of massage therapy and bodywork. The effect of the Act requires the Department of Regulation and Licensing to amend administrative rules for application for certification as a massage therapist or bodyworker. As required by 2007 Wisconsin Act 104, the rule creates the requirement for applicants to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

Related statutes or rules:
Section RL 91.01, Wis. Admin. Code.

Plain language analysis:
The massage therapy and bodywork statutes and administrative rules regarding application for certification, reciprocal certification and renewal do not have a requirement for training and proficiency in the use of an AED. This rule implements a provision of 2007 Wisconsin Act 104, requiring applicants for a credential to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

SECTION 1 creates a requirement for applicants for a credential to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification.

Summary of, and comparison with, existing or proposed federal regulation:
There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states:
Minnesota: Minnesota does not have regulations or state requirements for massage therapy.
Michigan: Michigan does not have regulations or state requirements for massage therapy.
Iowa: Laws and rules for Iowa do not require automated external defibrillator (AED) training. One of the requirements for Iowa licensure is proof of current CPR and First Aid cards, Chapter 131, 131.2(6) states: The applicant shall submit proof of completion of a cardiopulmonary resuscitation (CPR) course and a first-aid course that were certified by the American Red Cross, by the American Heart Association, or by the National Safety Council. One of the following shall be required:
a. Official transcript documenting completion of a CPR class and a first-aid class within one year prior to submitting the application for licensure; or
b. Copy of the current certification card(s) or renewal card(s).
Illinois: Illinois does not appear to require proficiency and training in the use of AEDs as a requirement for licensure and renewal of massage therapists. Massage Therapists are licensed under Title 68: Professions & Occupations: Chap. VII, Dept. of Financial and Professional Regulation, Subchapter B, Professions and Occupations Part 1284 Massage Licensing Act, ss. 1284.30 Application for Licensure and 1284.60 Renewals

Summary of factual data and analytical methodologies: 2007 Wisconsin Act 104 created a requirement for applicants for a credential as a massage therapy or bodyworker to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial certification. This requirement of the Act has been set forth in the newly created rule provision, as directed by the legislature.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Training for certification and renewal of certification may vary. The Madison Wisconsin Chapter of the American Red Cross (Badger Chapter) offers AED/CPR initial certification for $80.00 and $52.00 for review. Both trainings are valid for one year. Based on these figures, AED certification costs for a certified massage therapist could cost approximately $132.00 for the certification biennium and less so in subsequent bienniums (initial biennium in which AED certification was achieved: $132.00 initial certification plus $52.00 for review). A price sheet obtained from the Badger Chapter of the American Red Cross for January to December of 2008 is attached.
As of July 2008, there were 3,162 massage therapists and bodyworkers with active certifications.

Anticipated costs incurred by private sector: The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate: The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, Office of Exams, and the Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at $3,032.

Effect on small business: This emergency rule will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling 608-266-8608.

Agency contact person: Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before October 1, 2008, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 91.01 (3) (k) is created to read:

RL 91.01 (3) (k) Has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

FINDING OF EMERGENCY

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

This emergency rule will be effective upon publication in the Wisconsin State Journal.