

**ADMINISTRATIVE RULES  
REPORT TO LEGISLATURE  
CLEARINGHOUSE RULE 10-034**

**By the Department of Health Services relating to Ch. DHS 131, Hospices.**

**Basis and Purpose of Proposed Rule**

Section 50.95 (1), Stats., requires the Department to promulgate rules to establish standards for the care, treatment, health, safety, rights, welfare and comfort of individuals with terminal illness, their families and other individuals who receive palliative care or supportive care from a hospice. The proposed order repeals and recreates ch. DHS 131 relating to hospices. Hospice is an organization that provides palliative care and supportive care to an individual with a terminal illness where he or she lives or stays. Through this rulemaking order the Department proposes to align ch. DHS 131 with the revised federal Medicare regulations by adopting many of the new federal requirements. This will eliminate the inconsistencies between the state and federal regulations that have occurred since the new federal regulations went into effect. The Department also proposes to eliminate outdated regulations and to reflect current professional standards of practice.

**Responses to Legislative Council Rules Clearinghouse Recommendations**

The Department accepted the comments made by the Legislative Council Rules Clearinghouse and modified the proposed rule where suggested except as follows.

Clearinghouse comment 2. a.: It is awkward to include nurse practitioners in the definition of “attending physician.” The department might consider changing the term to “attending provider”.

Department Response:

The Department considered changing the term “attending physician” to “attending provider”. However to change the term would require changing “attending physician” and “physician” to “attending provider” throughout the document and that could create confusion. Additionally, the Department wants to keep nurse practitioner in the definition to be consistent with the federal definition of attending physician.

**Final Regulatory Flexibility Analysis**

The fiscal impact on small business as defined in s. 227.114(1), Stats., should be minimal. Most of the changes to this rule are technical in nature and similar to recently adapted federal regulations. Hospices electing to be certified by the Medicare program are required to meet these federal regulations. As of January 1, 2010; 75 of 76 licensed hospices (99 %) in Wisconsin are federally certified. According to Department criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rule are small businesses and if operating expenditures, including annualized capital expenditures increase more than the prior year’s consumer price index or reduces revenues by more than the prior year’s consumer price index. Since most hospices in Wisconsin are operated by hospitals, home health agencies, nursing homes, and other health care providers, data shows that one facility (1.3 %) in Wisconsin meets the definition of a small business. As a result, the proposed rule will not have a significant economic impact on a substantial number of small businesses.

## Changes to the Analysis or Fiscal Estimate

### Analysis

No changes were made to the rule's analysis.

### Fiscal Estimate

No changes were made to the fiscal estimate.

## Public Hearing Summary

The Department began accepting public comments on the proposed rule via the Wisconsin Administrative Rules Website on March 17, 2010. One public hearing was held on April 26, 2010 in Madison. Seven individuals attended the hearing. Comments were accepted until 4:30 p.m. on April 27, 2010.

## List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted comments on the proposed rule, the position taken by the commenter and whether or not the individual provided written or oral comments.

Name and Address	Position Taken (Support or Opposed)	Action (Oral or Written)
1. Theresa M. Delavan 2620 Elwood Blvd. Wausau WI 54403	Support	Observer
2. Joann Kowalski HospiceCare Inc. 5395 E. Cheryl Parkway Madison WI 53711	Position not taken	Oral and Written
3. Marilyn Miller HospiceCare Inc. 5395 E. Cheryl Parkway Madison WI 53711	Position not taken	Written
4. Meg Steinke HospiceCare Inc. 5395 E. Cheryl Parkway Madison WI 53711	Position not taken	Written
5. Kim Waldman HospiceCare Inc. 5395 E. Cheryl Parkway Madison WI 53711	Position not taken	Written
6. Dennis Yaden HospiceCare Inc. 5395 E. Cheryl Parkway Madison WI 53711	Position not taken	Written
7. Jane M. Quinn HospiceCare Inc. 5395 E. Cheryl Parkway Madison WI 53711	Position not taken	Written

**Public Comments and Department Responses**

The number(s) following each comment corresponds to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

<b>Rule Provision</b>	<b>Public Comment</b>	<b>Department Response</b>
DHS 131.18 (2) (a)	Federal regulations state that a patient may discontinue hospice care at any time. We ask that language affirming the patient’s right to end services is included in DHS 131. 2, 3, 4, 5, 6, 7	The Department has amended s. DHS 131.18 (2) (a) 1. as requested by the commenter.
DHS 131.18 (3)	<p>1. DHS 131, in its current form and in the proposed rule, requires the hospice to provide a written notice of discharge at least 14 days prior to the date of discharge, with a proposed date for a pre-discharge planning conference. The 14-day timeframe is an arbitrary length of time. Rather than a prescriptive timeframe, we ask the Department consider language stating that discharge planning occur over a reasonable period of time necessary to meet the needs of the patient and family.</p> <p>2. DHS 131.18 (3) does not require a notice when a hospice is discharging a patient because the hospice determines that the patient is no longer terminally ill. This is when the patient/family may experience a major transition and should be afforded patient education, family counseling and other services.</p> <p>3. The 14 day notice is required if a patient elects care other than hospice care or if the patient elects active treatment. In these circumstances, the patient is choosing to receive other services. We should respect their decision-making and not send a written notice that could be perceived as coercing them to retain our services by continuing the relationship for another 14 days. 2, 3, 4, 5, 6, 7</p>	<p>1. No change was made to the proposed rule. The Department believes a minimum 14 day notice is needed to ensure that adequate time is afforded to schedule and conduct a pre-discharge planning conference and to develop a comprehensive discharge plan in preparation for discharge.</p> <p>2. No change was made to the proposed rule. Medicare payment for hospice care ends when the determination is made that a patient is no longer terminally ill. If a hospice is required to provide a 14 day notice, the hospice will not receive payment for services provided after the determination is made. This information was verified in person with a physician representative from the National Government Services (NGS) Medicare. This issue was thoroughly discussed by the members of the DHS 131 workgroup. The recommendation of all members of the workgroup, except the commenter, was to not require a notice when a patient is no longer terminally ill. The workgroup was comprised of representatives from several hospices. Concern was also expressed by the workgroup that if the rule requires the 14 day notice some hospices may seek payment from the patient or the patient’s family since the hospice would not be reimbursed by Medicare for services provided.</p> <p>3. No change was made to the proposed rule. Although the</p>

Rule Provision	Public Comment	Department Response
		patient has the right to discontinue services at any time, the patient may need assistance to find alternate services. The patient can always decline assistance and end their relationship with the hospice prior to the 14 days.
DHS 131.18 (3)	<p>The emphasis of the discharge procedure is on the notice, rather than discharge planning. We ask the Department to consider replacing the written notice requirement with language that the hospice inform the patient of the decision to discharge and offer discharge planning.</p> <p style="text-align: right;">2, 3, 4, 5, 6, 7</p>	The Department has amended the rule at s. DHS 131.18 (4) as requested by the commenter.