

## Clearinghouse Rule 18-014

### PROPOSED ORDER OF DEPARTMENT OF HEALTH SERVICES TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services (“department”) proposes an order to **repeal** DHS 140.02, to **repeal and recreate** DHS 140.04 to 140.07, and to **create** DHS 140.03 (1m), 140.08 and 140.09.

#### RULE SUMMARY

##### **Statutes interpreted**

Sections 250.03 (1) (a) to (L), 251.05 (2) (a) to (c) and 251.20 (1) & (3), Stats.

##### **Statutory authority**

Sections 250.03 (1) (a) to (L), 251.05 (2) (a) to (c), 251.20 (1) & (3) and 227.11(2)(a)1. to 3., Stats.

##### **Explanation of agency authority**

The department serves as the state lead agency for public health. The department is responsible for developing policy and providing leadership in public health throughout the state that fosters local involvement and commitment, that emphasizes public health needs and that advocates for equitable distribution of public health resources and complementary private activities commensurate with public health needs. The Wisconsin State Legislature directs the department to promulgate rules that specify required services for each of Levels I, II and III local health departments, as well as any additional required services for Level II and Level III local health department that address objectives or services specified in the most recent public health agenda.

##### **Related statute or rule**

Sections 250.07 (1)(a)-(d) and 251.05(3) (a)-(e), Stats..

##### **Plain language analysis**

The department, through the Division of Public Health (DPH), oversees the provision of public health services throughout the state. It is the lead agency for public health and maintains the public health system in cooperation with local health departments and the 11 federally recognized tribes which operate health programs.

There are currently 86 local health departments in Wisconsin—a mix of county and city units—that are responsible for implementing public health programs and providing public health services at the community level. Local health departments are divided into 3 levels (I, II, and III) based on the number and type of services they provide. The number of LHDs at each level is fluid and may change as the current DHS 140 review process progresses. As of September 14, 2017, there were 3 Level I departments, 50 Level II departments and 33 Level III departments in Wisconsin.

Chapter DHS 140 specifies the required services for Levels I, II, and III local health departments, and additional required services for Level II and Level III local health departments. The required services include surveillance, investigation, control and prevention of communicable disease, other disease prevention, health promotion, and human health hazard and control. This chapter has not been updated since the rule was created in 1998. The field and science of public health have evolved, making the currently stated services outdated. The outdated required services in Chapter DHS 140 do not reflect modern services currently provided by local health departments within their jurisdictions. Additionally, some portions of the rule are unclear and are redundant.

The objective of the proposed rulemaking is to revise the required services of Levels I, II, and III local health departments. The department proposes this revision to clarify the rule, remove any duplication, and reflect current trends and practices in public health and required services of local health departments. Through this rule revision, Wisconsin statutes 250 and 251 are further defined and strengthened.

The proposed changes in required services are based on the Foundational Public Health Services Model, nationally recognized for modernizing public health practice. The model encompasses a basic set of public health services that should be made available in all jurisdictions. It consists of the following services essential to all health departments: assessment, all hazards preparedness and response, communications, policy development and support, community partnership development, organizational competencies, communicable disease control, chronic disease and injury prevention, environmental public health, maternal child and family health and access and linkage with clinical healthcare. Inclusion of the Foundational Public Health Services Model within Chapter DHS 140 lays a solid foundation of the minimum level of services for local health departments to protect and promote the health and safety of the people of Wisconsin.

The department also proposes to incorporate updated references, including the most recent public health agenda. Chapter DHS 140 includes numerous citations to a previous version of the state public health agenda, which are now outdated. It also incorporates concepts that align with nationally public health accreditation requirements.

The proposed rule change will impact local health departments. The impact is expected to be insignificant for most departments. There is no change to proposed Level I services as they are required by statute and current rule or are services that local health departments are already providing. The food safety and recreational licensing program was transferred from the Department of Health Services to the Department of Agriculture Trade and Consumer Protection. This transfer led to the necessity to remove the Level III food safety and recreational licensing requirement from Chapter DHS 140 which may result in a slight increase in the number of Level III local health departments.

No reasonable alternatives exist to the rulemaking. Without proposed revisions to Chapter DHS 140, the array of services provided by Wisconsin local health departments will be outdated and will fail to reflect current, national trends and practices in public health.

#### **Summary of, and comparison with, existing or proposed federal regulations**

There appears to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

## **Comparison with rules in adjacent states**

### **Illinois:**

The Illinois Department of Public Health outlines local health department's required personnel and practice standards in 77 Ill. Admin. Code 600. An executive officer, public health administrator, and medical health officer are required personnel. Practice standards are activities that demonstrate a local health department is fulfilling the core functions of public health. To obtain provisional certification, local health departments must commit to a series of planning activities conducted within the local health department jurisdiction resulting in the development of an organizational capacity assessment, a community health needs assessment, and a community health plan. A 5-year certification may be granted once the community health needs assessment and a community health plan are submitted.

### **Iowa:**

641 Iowa Admin. Code Chap. 80 outlines local public health services. The purpose of the local public health services contract is to implement the core public health functions, deliver essential public health services, and increase the capacity of local boards of health to promote health people and healthy communities. Local health departments are or may be contractors of the Iowa Department of Public Health and are required to provide evidence that they engage in an annual evaluation. Additionally, the Iowa Department of Public Health participates in the national Gaining Ground initiative to support voluntary accreditation and quality improvement. See <http://idph.iowa.gov/mphi/gaining-ground>.

### **Michigan:**

Requirements of local health departments are set forth in MCL 333.2431. Local health departments are required to report annually to the Michigan Department of Community Health on their satisfaction of requirements, including having a plan of organization and demonstrated ability to provide required services. Local health departments must keep records and afford access to the records by authorized state, federal, and local officials for audit and review purposes necessary to verify and assure the accuracy and acceptability of the reports, as a condition of receiving state funding. The state engages in an annual review of the program statement and budget for local health departments.

### **Minnesota:**

The Minnesota Department of Health enters into agreements with community health boards for the development and maintenance of a system of community health services. Community health boards must submit a community health assessment and community health improvement plan to the Minnesota Department of Health at least every five years, implementing a performance management process, and annually report to the commissioner on a set of performance measures and be prepared to provide document of ability to meet performance measures. Minn. Stat. 145A.07 subd. 1a. (2)-(4).

### **Summary of factual data and analytical methodologies**

The department relied on the following sources to draft the proposed rule and to determine the impact on local health departments.

The department formed an Advisory Committee consisting of local health officers from the State of Wisconsin as well as a member from the Wisconsin Counties Association. Advisory Committee members reviewed current services offered by local health departments and considered numerous public health models. The Advisory Committee also considered the impact of the proposed rule on local health departments. Committee members recommended utilizing the Foundational Public Health Service model as the basis for revising this rule. Proposed rule revision language was drafted based on the recommendations of this committee.

In addition, the department reviewed the following:

- Center for Disease Control and Prevention (CDC). *Becoming the Chief Health Strategist: The Future of Public Health*. By John Auerbach. September 2016. Center for Sharing Public Health Services. Accessed August 2017. <http://phsharing.org/wp-content/uploads/2016/09/Plenary-CDC.pdf>
- Kansas Health Institute (KHI). *State-By-State Comparison of Foundational Public Health Services*. By Jason Orr and Sarah M. Hartsig. KHI/17-03. January 2017. Kansas Association of Local Health Departments website. Accessed August 2017. <http://www.kalhd.org/wp-content/uploads/2017/02/FPHS-State-by-State-Comparison.pdf>
- National Association of County and City Health Officials (NACCHO). *Statement of Policy: Foundational Public Health Services*. By NACCHO Public Health Transformation Workgroup. NACCHO/12-18. December 2012. Updated February 2016. NACCHO website. Accessed August 2017. <http://www.naccho.org/uploads/downloadable-resources/12-18-Foundational-Public-Health-Services.pdf>
- Public Health National Center for Innovations (PHNCI). *Foundational Public Health Services Factsheet*. 2016. PHNCI website. Accessed August 2017. [http://phnci.org/uploads/resource-files/PHNCI-FPHS-Factsheet\\_FINAL-1.pdf](http://phnci.org/uploads/resource-files/PHNCI-FPHS-Factsheet_FINAL-1.pdf)
- RESOLVE. *Defining and Constituting Foundational Capabilities and Areas VI*. Public Health Leadership Forum. March 2014. Accessed August 2017. <http://www.resolve.org/site-foundational-ph-services/files/2014/04/V-1-Foundational-Capabilities-and-Areas-and-Addendum.pdf>

#### **Analysis and supporting documents used to determine effect on small business**

None. The proposed rule affects only local health departments.

#### **Effect on small business**

Revisions to ch. DHS 140 are expected to have no impact on small businesses.

#### **Agency contact person**

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**Statement on quality of agency data**

The data sources referenced and used to draft the rules and analyses are accurate, reliable, and objective and are discussed in the “Summary of factual data and analytical methodologies.”

**Place where comments are to be submitted and deadline for submission**

Comments on the proposed rules may be submitted by accessing the department’s rules site, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Once a public hearing has been scheduled, additional commenting will be enabled through the Wisconsin State Legislature’s site, at <http://docs.legis.wisconsin.gov/code>. The notice of public hearing and the deadline for submitting comments will be published both to the department’s rules site, and in the Administrative Register, at <https://docs.legis.wisconsin.gov/code/register>.

**RULE TEXT**

**SECTION 1.** DHS 140.02 is repealed.

**SECTION 2.** DHS 140.03 (1m) is created to read:

DHS 140.03 (1m): “Community health improvement plan” means the written plan developed by a local health department with the involvement of key policy makers and the general public to implement the services and functions specified under s. 250.03 (1) (L), pursuant to s. 251.05 (3) (c), Stats., and the requirements of this chapter.

**SECTION 3.** DHS 140.04 to DHS 140.07 are repealed and recreated to read:

**DHS 140.04 Level I local health department.**

(1) REQUIRED SERVICES. A level I local health department shall provide leadership for developing and maintaining the public health system within its jurisdiction by conducting all of the following:

(a) *Surveillance and investigation.*

1. Collect and analyze public health data to do all of the following:
  - a. Identify health problems, environmental public health hazards, and social and economic risks that affect the public’s health.
  - b. Guide public health planning and decision-making at the local level.
  - c. Develop recommendations regarding public health policy, processes, programs, or interventions, including the community health improvement plan.
2. Conduct timely investigations of health problems and environmental public health hazards in coordination with other governmental agencies and stakeholders.
3. Establish written protocols for obtaining laboratory services at all times.

(b) *Communicable disease control.*

1. Conduct activities required of local health departments under ch. DHS 144, relating to immunization of students.

2. Comply with the requirements of ch. DHS 145, relating to prevention, monitoring, conducting epidemiological investigations, and control of communicable diseases, including outbreaks.

3. Improve public recognition and awareness of communicable diseases and other illnesses of public health importance.

4. Provide or facilitate community-based initiatives to prevent communicable diseases.

(c) *Other disease prevention.*

1. Develop and implement interventions intended to reduce the incidence, prevalence or onset of chronic diseases or to prevent or ameliorate injuries that are the leading causes of disability and premature death in the local health department's jurisdiction, as identified in the community health assessment or the most recent state public health agenda.

2. Link individuals to needed personal health services.

3. Identify and implement strategies to improve access to health services.

(d) *Emergency preparedness and response.*

1. Participate in the development of response strategies and plans in accordance with local, state, and national guidelines to address public health emergencies as defined in s. 323.02 (16), Stats.

2. Participate in public health preparedness exercises.

3. Communicate and coordinate with health care providers, emergency service providers, and other agencies and organizations that respond to a disaster, outbreak or emergency.

4. Define the role of public health personnel in responding to a disaster, outbreak, or emergency, and activate these personnel during any such occurrence.

5. Maintain and execute an agency plan for providing continuity of operations during a disaster, outbreak, or emergency, including a plan for accessing resources necessary for response or recovery.

6. Issue and enforce emergency health orders, as permitted by law.

7. Establish processes to ensure the local health department is immediately notified of an actual or potential disaster, outbreak, or emergency.

8. Implement strategies intended to protect the health of vulnerable populations during a disaster, outbreak, or emergency.

(e) *Health promotion.*

1. Develop and implement interventions, policies, and systems to promote practices that support positive public health outcomes and resilient communities.

2. Disseminate relevant, accurate information and evidence-informed prevention guidance to the public health system and community.

3. Use a variety of accessible, transparent, and inclusive methods of communication to convey and to receive information from the public and stakeholders.

4. Provide accurate, timely, and understandable information, recommendations, and instructions to the public during a disaster, outbreak, or emergency.

(f) *Human health hazard control.*

1. Assist in the conduct of activities authorized under s. 251.06 (3) (f) and 254.59, Stats.

2. Declare dilapidated, unsafe or unsanitary housing to be a human health hazard, when permitted under s. 254.593, Stats.

3. Identify public health hazards through laboratory testing, inspections, reporting, and investigation for the purpose of preventing further incidence of occupational disease, environmental disease, and human health hazard exposure.

(g) *Policy and planning.*

1. Coordinate planning and serve as a source of information and expertise in the development and implementation of policies affecting public health.
2. Foster and support community involvement and partnerships in development, adoption, and implementation of policies affecting public health, including engagement of diverse populations and consideration of adversely impacted populations.
3. Conduct a community health assessment resulting in a community health improvement plan at least every 5 years.
4. Develop a written community health improvement plan at least every 5 years, by assessing applicable data, developing measurable health objectives, and partnering with persons, agencies, and organizations to cultivate community ownership throughout the entire development and implementation of the plan.
5. Engage members of the community in assessment, implementation, monitoring, evaluation, and modification of community health planning.
6. Promote land use planning and sustainable development activities to create positive health outcomes.

(h) *Leadership and organizational competencies.*

1. Establish and sustain relationships with governmental and nongovernmental partners and stakeholders.
2. Engage stakeholders in the development and implementation of the local health department's organizational goals.
3. Use principles of public health law, including local and state laws, in the planning, implementation, and enforcement of public health initiatives.
4. Promote and monitor progress towards achieving organizational goals, objectives identified in community health improvement plan, and identifying areas for improvement.
5. Implement processes within public health programs that create health equity.
6. Maintain a competent and diverse workforce intended to ensure the effective and equitable provision of public health services.
7. Provide continuing education and other training opportunities necessary to maintain a competent workforce.
8. Implement and maintain the technology needed to support public health operations while simultaneously protecting personally identifiable information and other confidential health information, pursuant to ss. 19.21 and 146.82, Stats.

(i) *Public health nursing services.* Conduct a general public health nursing program which shall apply nursing and public health principles to collaboratively assess, develop, implement, and evaluate the services required in s. DHS 140.04 (1)(a)-(h), in cooperation with the local board of health.

DHS 140.04 (2) ANNUAL REPORTING. A level I local health department shall submit the following to the department:

- (a) By May first, a copy of the annual report submitted by the local health officer during the previous year, as required by s. 251.06 (3) (h), Stats.
- (b) Public health data, in a format prescribed by the department.

(NOTE): Reports and data described in this section must be submitted to the regional office assigned to the local health department's jurisdiction. Information about regional offices may be obtained by accessing: <https://www.dhs.wisconsin.gov/dph/regions.htm>.

DHS 140.04 (3) OPTIONAL SERVICES. A level I local health department may provide any services, in addition to the services required under s. DHS 140.04(1), that a level II local health department is required to provide under s. DHS 140.05 or a level III local health department is required to provide under s. DHS 140.06.

**DHS 140.05 Level II local health department.**

(1) REQUIRED SERVICES. In addition to the level I local health department required services described in s. DHS 140.04, a level II local health department shall do all of the following:

(a) Address communicable disease control, chronic disease and injury prevention, environmental public health, family health, and access and linkage to health services, in addition to services already provided under s. DHS 140.04, by doing all of the following:

1. Identifying and promoting either a community need that has not already been selected as a local priority by the local health department in its most recent community health improvement plan or an objective specified in the department of health service's most recent state public health agenda, developed pursuant to s. 250.07, Stats.

2. Providing support to implement services through leadership, resources, and engagement of the public health system.

3. Utilizing evidence-informed resources and practices to provide services.

4. Evaluating the additional services and reporting to the community and local board of health on progress and performance.

(b) Develop and maintain a plan to employ qualified public health professionals and assure a competent public health workforce by doing all of the following:

1. Including core public health competencies and credentialing requirements in all department job descriptions, unless prohibited by local governing body.

2. Assessing staff core public health competencies every two years to identify department training needs.

3. Completing annual performance evaluations and personal development plans, unless prohibited by local governing body.

(c) Conduct quality improvement.

(d) Provide training and resources related to quality improvement to local health department staff and the local governing body.

(e) Establish explicit organizational performance measures for the local health department's mission, vision, values, and strategic goals.

(f) Apply nursing and public health principles to collaboratively assess, develop, implement, and evaluate the services required under s. DHS 140.05 (1) (a)-(f).

DHS 140.05 (2) OPTIONAL SERVICES. A level II local health department may provide any services, in addition to the services required under s. DHS 140.05 (1), that a level III local health department is required to provide under s. DHS 140.06.



**DHS 140.06 Level III local health department.** (1) In addition to the level I local health department required services described in s. DHS 140.04 and to the level II local health department required services described in s. DHS 140.05, a level III local health department shall do all of the following:

(a) Lead the collection of data to guide public health planning and decision-making at the local level in alignment with the most recent state public health agenda.

(b) Provide public health expertise within the jurisdiction to elected officials, stakeholders, and community partners, including data and research.

(c) Identify and address factors impacting population health by implementing evidence-informed and emerging practices.

(d) Develop, advocate, adopt, and implement policies or strategies to improve the physical, environmental, social, and economic conditions affecting health.

(e) Establish and implement an environmental health program as directed by the local board of health or other local governing body by doing all of the following:

1. Participating and providing environmental health expertise in the development of community plans.

2. Providing or arranging for the availability of services authorized under ch. 254, Stats., such as for toxic substances, indoor air quality, animal borne or vector borne disease, and human health hazards.

3. Collecting, reviewing, and analyzing environmental and community health data, and managing, controlling, and preventing environmental factors that may adversely affect the health, safety, or well-being of individuals or the community.

4. Implement agreements established with state agencies to provide or arrange for environmental health services.

5. Administering regulations of the board of health or other local governing body.

(f) Provide or arrange for other services that the local health department determines appropriately address objectives or services in the most recent state public health agenda.

(g) Develop and implement methods to collect performance data, evaluate goals, conduct quality improvement, and report progress to advise organizational decisions.

(h) Develop and implement a plan that integrates quality improvement at the individual, team, and organization levels.

(i) Apply nursing and public health principles to collaboratively assess, develop, implement, and evaluate the services required under s. DHS 140.06 (1)(a)-(h).

**SECTION 4.** DHS 140.07 and 140.08 are created to read:

**DHS 140.07 Local health officer qualifications.**

**(1) DEFINITIONS.** In this section:

(a) “Similar field” means a field of academic study, or combination of graduate-level courses that the state health officer determines provides the knowledge and skills required to adequately meet the responsibilities of a level I, II, or III local health officer.

DHS 140.07 **(2) LEVEL I.** A local health officer of a level I local health department shall meet the requirements stated in s. 251.06 (1) (a), Stats., or shall obtain approval in writing from the state health officer indicating that the individual has met the requirements of s. 251.06 (1) (d), Stats.

DHS 140.07 (3) LEVEL II. A local health officer of a Level II local health department shall meet the requirements stated in s. 251.06 (1) (b), Stats., or shall obtain approval in writing from the state health officer indicating that the individual has met the requirements of s. 251.06 (1) (d), Stats.

DHS 140.07 (4) LEVEL III. Pursuant to ss. 251.06 (1) (c) and (d), Stats., a level III local health officer shall have any of the following qualifications:

(a) At least 3 years of experience in a full-time administrative position in either a public health agency or public health work and one of the following:

1. A master's degree in public health, public administration, or health administration.
2. Approval in writing from the state health officer indicating that the individual has submitted adequate documentation to demonstrate possession of a master's degree in a similar field.

(b) A bachelor's degree, 5 years of experience in a full-time administrative position in either a public health agency or public health work, and one of the following:

1. At least 16 graduate semester credits towards a master's degree in public health, public administration, or health administration.
2. Approval in writing from the state health officer indicating that the individual has submitted adequate documentation to demonstrate possession of 16 graduate semester credits towards a master's degree in a similar field.

(c) A license to practice medicine and surgery under ch. 448, Stats., and at least one of the following:

1. Three years of experience in a full-time administrative position in either a public health agency or public health work.
2. Eligibility for certification by the American board of preventive medicine in public health or general preventive medicine.
3. A master's degree in public health, public administration, health administration.
4. Approval in writing from the state health officer indicating that the individual has submitted adequate documentation to demonstrate possession of a master's degree in a similar field.

DHS 140.08 **Local health department level designation.** (1) The department shall review the operations of each local health department at least every 5 years, and based on this review, the state health officer shall issue a written finding as to whether the local health department satisfies the requirements for a level I, II, or III local health department. In the alternative, the state health officer may determine that the operations of a local health department satisfy the requirements for a level I, II, or III local health department based on a national accreditation process that fulfills the requirements specified under ch. 251, Stats., and this chapter.

**SECTION 5. EFFECTIVE DATE:** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.