

# Wisconsin Administrative Register

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## WISCONSIN ADMINISTRATIVE REGISTER

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## Emergency Rules Now in Effect

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

*Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at [www.legis.state.wi.us/rsb/code](http://www.legis.state.wi.us/rsb/code).*

*Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.*

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### Agriculture, Trade and Consumer Protection

**EmR1112** — Rule adopted to create **sections ATCP 99.126 (6) and ATCP 99.235 (5)** and to amend **sections ATCP 99.126 (1) and ATCP 99.235 (1)**, relating to grain dealer and grain warehouse keeper agricultural producer security fund assessments.

This emergency rule was approved by the governor on July 14, 2011.

The statement of scope for this rule, SS 002–11, was approved by the governor on July 14, 2011, published in Register 667, on July 31, 2011, and approved by The Board of Agriculture, Trade and Consumer Protection on August 12, 2011.

#### Finding of Emergency

In Wisconsin, grain dealers (persons who purchase grain from producers), grain warehouse keepers (persons who store grain that is owned by others), milk contractors (persons who purchase milk from producers, and vegetable contractors (persons who purchase vegetables from producers for use in processing), must obtain a license to do these activities and are collectively referred to as “contractors”. Most contractors are “contributing contractors”, which means they must pay

annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers. The annual assessments are calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor’s balance sheet.

All else equal, a contractor who purchases small amounts will pay lower assessments than one who purchases large amounts. All else equal, a contractor who is in a conservative financial position will pay lower assessments than one who carries higher levels of liabilities relative to their assets or equity. All else equal, a contractor who has participated in the fund for more than five years will pay lower assessments than one who has participated for less than five years. The annual assessment, calculated from the factors discussed above, vary considerably from one contractor to another. An annual assessment may be as low as \$100, or as high as several hundred thousand dollars.

The grain dealer and grain warehouse keeper license years begin on September 1 of each year. At that point, DATCP calculates the assessment for the new license year that will be due in four quarterly payments over the course of that year. Calculations are based on purchase data and financial statement data for the grain dealer or grain warehouse keeper’s most recently completed fiscal year and annual financial statement.

For the license years that will begin on September 1, 2011, a very unusual combination of business financing and recent high commodity prices has led to unusually high assessment calculations for one grain company. In fact, if the existing rule remains unmodified, there will be one individual elevator that will be charged over \$1.2 million in assessments (for both grain dealer and grain warehouse combined). This is roughly four times greater than the previous highest annual assessment and roughly six times higher than the second highest annual assessment in the grain (dealer and warehouse combined) producer security fund program. Further, this potential assessment for next license year is more than double the highest assessment that has ever occurred in the milk contractor portion of the fund. This is significant because the dollar amount of a large milk contractor’s annual purchase of milk tends to be much higher the dollar amount of a large grain dealer’s annual purchase (or store) of grain.

In the majority of cases, the assessment calculation formulas reasonably charge contractors for the overall risk that they pose to the fund in the event that they should default on amounts owed to producers. However, at least in the short term, this is not true for this one elevator. DATCP will analyze whether or not it is appropriate for this emergency rule to also be promulgated as a permanent rule, and if so, begin a separate rulemaking process at a later date.

This temporary emergency rule is necessary to protect the welfare of the many hundreds of grain farmers who do business with this grain elevator, and to help prevent major disruptions in the grain industry.

<b>Publication Date:</b>	<b>September 2, 2011</b>
<b>Effective Dates:</b>	<b>September 2, 2011 through January 29, 2012</b>
<b>Hearing Date:</b>	<b>October 5, 2011</b>

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## Children and Families (2)

### *Safety and Permanence, Chs. DCF 37–59*

**1. EmR1034** — Rule adopted to create sections **DCF 57.485 and 57.49 (1) (am)**, relating to determination of need for new group homes.

#### **Exemption From Finding of Emergency**

Section 14m (b) of 2009 Wisconsin Act 335 provides that the department is not required to provide evidence that promulgating a rule under s. 48.625 (1g), Stats., 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.

Section 14m (b) also provides that notwithstanding s. 227.24 (1) (c) and (2), Stats., an emergency rule promulgated under s. 48.625 (1g), Stats., remains in effect until the permanent rules promulgated under s. 48.625 (1g), Stats., take effect.

**Publication Date:** September 2, 2010  
**Effective Dates:** September 2, 2010 through the date permanent rules become effective  
**Hearing Date:** October 21, 2010

**2. EmR1106** — Rule adopted to revise **Chapters DCF 52, 54, and 57**, relating to regulation of rates charged by residential care centers for children and youth, child–placing agencies, and group homes.

#### **Finding of Emergency**

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2009 Wisconsin Act 28 directed the department to implement rate regulation effective January 1, 2011. Implementation was delayed and this rule is phasing–in rate regulation at the earliest feasible date.

**Publication Date:** April 18, 2011  
**Effective Dates:** April 18, 2011 through September 16, 2011  
**Hearing Date:** May 18, 2011  
**Extension Through:** November 13, 2011

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## Employment Relations Commission

**EmR1113** — Rule adopted to create Chapters **ERC 70 to 74 and ERC 80**, relating to initial annual certification elections.

These emergency rules were approved by the Governor on September 13, 2011.

The statement of scope for this rule, SS 004–11, was approved by the governor on July 20, 2011, published in Register 667, on July 31, 2011, and approved by the Wisconsin Employment Relations Commission as required by s. 227.135 (2) on August 15, 2011.

#### **Finding of Emergency**

An emergency exists because the public peace, health, safety and welfare necessitate putting these rules into effect so

that the Wisconsin Employment Relations Commission can meet its election obligations under ss. 111.70 (4) (d) 3. b. and 111.83 (3) (b), Stats., and nonstatutory provisions ss. 9132 (1) (b) and 9155 (1) (b) of 2011 Wisconsin Act 10 as amended by nonstatutory provisions ss. 3570f and 3570h of 2011 Wisconsin Act 32.

**Publication Date:** September 15, 2011  
**Effective Dates:** September 15, 2011 thru February 12, 2012

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## Justice (2)

**1. EmR1114** — Rule to create **Chapter Jus 17 and Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; and the certification of firearms safety and training instructors.

This emergency rule was approved by the governor on October 14, 2011.

The statement of scope for this rule, SS 020–11, was approved by the governor on August 31, 2011, published in Register No. 669, on September 14, 2011, and approved by Attorney General J.B. Van Hollen on September 26, 2011.

#### **Finding of Emergency**

Under section 101 of 2011 Wis. Act 35, most of the provisions of that Act — including the provisions governing the licensing and certification processes covered by the rules proposed here and the provisions authorizing the carrying of a concealed weapon by the holder of a license, an out–of–state license, or a certification card—will have an effective date of November 1, 2011. In particular, s. 175.60(9), Stats., will require DOJ to begin receiving and processing license applications and issuing or denying licenses as soon as that provision takes effect on November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system to take effect on November 1, 2011.

DOJ cannot comply with the requirements of s. 175.60(9), Stats., and related statutory requirements until it has in effect administrative rules establishing the procedures and standards that will govern DOJ’s enforcement and administration of those requirements. It follows that, in order for DOJ to meet its statutory duties that take effect on November 1, 2011, it must complete the promulgation of such administrative rules prior to that date.

Under the non–emergency rulemaking procedures of ch. 227, Stats., before the proposed rules could be promulgated, numerous notice, hearing, and publication requirements would have to be fulfilled—including, but not limited to a public hearing on the proposed rules, preparation of a detailed report including a summary of public comments and DOJ’s responses to those comments, and legislative review of the proposed rules. DOJ has determined that it is impossible for all of the required steps in that non–emergency rulemaking process to be completed by November 1, 2011. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can the requisite rules be promulgated and in effect in time for DOJ to meet its statutory duties that take effect on November 1, 2011. The public welfare thus necessitates that the proposed rules be promulgated as emergency rules under s. 227.24, Stats. Once the proposed emergency rules have been promulgated, DOJ will promptly follow up with the promulgation of a permanent version of the rules under the full rulemaking procedures.

**Publication Date:** October 25, 2011  
**Effective Dates:** November 1, 2011 through March 29, 2012

**2. EmR1115** — Rule to create **section Jus 17.13**, relating to the recognition by Wisconsin of concealed carry licenses issued by other states.

This emergency rule was approved by the governor on October 14, 2011.

The statement of scope for this rule, SS 009–11, was approved by the governor on August 4, 2011, published in Register No. 668, on August 31, 2011, and approved by Attorney General J.B. Van Hollen on September 12, 2011.

#### Finding of Emergency

Section 100(1) of 2011 Wis. Act 35 expressly authorizes and requires DOJ to use the emergency rulemaking procedures of s. 227.24, Stats., to promulgate the emergency rule required under s. 165.25 (12), Stats., and further provides that DOJ is not required to provide evidence that promulgating this rule as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

**Publication Date:** October 25, 2011  
**Effective Dates:** November 1, 2011 through March 29, 2012

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### Natural Resources (6)

#### *Fish, Game, etc., Chs. NR 1—*

**1. EmR1036** — Rule adopted to create **section NR 40.04 (2) (g)**, relating to the identification, classification and control of invasive species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** September 29, 2010  
**Effective Dates:** September 29, 2010 through  
*See bold text above*  
**Hearing Date:** October 25 to 29, 2010

**2. EmR1039** (DNR # IS–49–10(E)) — Rule adopted to create **sections NR 40.02 (7g), (7r), (25m), (28m) and (46m), 40.04 (3m) and 40.07 (8)**, relating to the identification, classification and control of invasive bat species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** November 3, 2010  
**Effective Dates:** November 3, 2010 through  
*See bold text above*  
**Hearing Date:** November 29, 2010

**3. EmR1045** (DNR # IS–07–11(E)) — Rule to repeal **section NR 40.02 (28m)**, to amend **section NR 40.04 (3m)**, and to repeal and recreate **section NR 40.07 (8)**, (all as created by Natural Resource Board emergency order EmR1039, DNR # IS–49–10(E)), relating to the identification, classification and control of invasive species.

#### Exemption From Finding of Emergency

Section 227.24 (1) (a), Stats., authorizes state agencies to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats., if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. However, s. 23.22 (2t) (a), Stats., authorizes the department to promulgate emergency rules to identify, classify, or control an invasive species without having to provide evidence that an emergency rule is necessary for the preservation of public peace, health, safety, or welfare or to provide a finding of emergency. **In addition, such emergency rules may remain in effect until whichever of the following occurs first: the first day of the 25th month beginning after the effective date of the emergency rule, the effective date of the repeal of the emergency rule, or the date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under s. 23.22 (2) (b) 6., Stats., takes effect.**

**Publication Date:** December 13, 2010  
**Effective Dates:** December 13, 2010 through  
*See bold text above*

**4. EmR1109** — Rule to amend **sections NR 10.01 (3) (ed) 1. a., 10.01 (3) (et) 2., 10.104 (7) (a) 1., and 10.104 (7) (b)**, relating to deer hunting seasons and carcass tag use.

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The rule is necessary in order to foster participation by hunters and landowners so they will continue to hunt and cooperate in CWD control and deer herd management. This rule proposal balances pressing social concerns about the quality of the deer hunt with the need for

effective herd control measures such as additional antlerless deer harvest in management units that are more than 20% over population goals or simply over population goals in units that are part of the CWD Management Zone. This rule will increase harvest of bucks in the CWD zone which have a higher prevalence of CWD and, because of their greater dispersal distances, have a higher likelihood of spreading CWD. However, the rule retains a herd control tool which requires that antlerless deer be harvested before additional bucks (beyond the initial one) may be taken. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control and regulate hunting of wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to more than 630,000 deer hunters prior to the start of the season. These regulations must be approved prior to printing nearly 1 million copies of the regulations publication.

**Publication Date:** July 2, 2011  
**Effective Dates:** September 17, 2011 through February 13, 2012

**5. EmR1111** — Rule to repeal and recreate **sections NR 10.01 (1) (b), (g) and (u) and 10.32** and to amend **section NR 10.01 (1) (v)**, relating to hunting and the 2011 migratory game bird seasons and waterfowl hunting zones.

#### Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

**Publication Date:** September 3, 2011  
**Effective Dates:** September 3, 2011 through January 30, 2012  
**Hearing Date:** October 3, 2011

**6. EmR1116** — Rule to amend **section NR 25.05 (1) (c)**, relating to commercial fishing in outlying waters.

This emergency rule was approved by the governor on October 19, 2011.

The statement of scope for this rule, SS 023–11, was approved by the governor on September 15, 2011, published in Register 669, on September 30, 2011, and approved by The Natural Resources Board on October 26, 2011.

#### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The current commercial season for whitefish from Lake Michigan and Green Bay closes one week before the season closure for state-licensed fishers in the State of Michigan. This limitation on fishing opportunities threatens the welfare of state-licensed commercial fishers in Wisconsin and makes

these Wisconsin businesses less competitive with counterparts in Michigan. The additional business revenue, approximately \$161,300, and improved competitiveness of the commercial fishing industry, rises to the standard of preservation and improvement of the public welfare required for emergency rule making.

The number of commercial fishers has been declining over the last 20 years from 145 to 57. While some of this decline has been due to consolidation, some of the reduction is due to adverse economics of the industry. This rule requires emergency action to enhance public welfare as it applies to the economic health of the commercial fishing industry, which requested this rule change.

**Publication Date:** October 26, 2011  
**Effective Dates:** October 26, 2011 through March 23, 2012

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### Revenue (3)

**1. EmR1104** — Rule adopted creating **section Tax 2.957**, relating to income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

#### Finding of Emergency

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax credits and deductions for businesses that relocate to Wisconsin.

It is necessary to promulgate this rule order so that these credits and deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Extension Through:** January 1, 2012  
**Hearing Date:** June 14, 2011

**2. EmR1105** — Rule adopted creating **section Tax 3.05**, relating to income and franchise tax deductions for job creation.

#### Finding of Emergency

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of income and franchise tax deductions for job creation.

It is necessary to promulgate this rule order so that these deductions, created to help bring much needed jobs to Wisconsin, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state

newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** April 7, 2011  
**Effective Dates:** April 7, 2011 through September 3, 2011  
**Extension Through:** January 1, 2012  
**Hearing Date:** June 14, 2011

**3. EmR1110** — The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 77.54 (56), Stats., creating **section Tax 11.10**, relating to wind, solar, and certain gas powered products.

The statement of scope for this emergency rule, SS 001–11, was approved by the governor on June 17, 2011, and published in Register 667 on July 14, 2011. This emergency rule was approved by the governor on June 20, 2011

#### **Finding of Emergency**

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The emergency rule is to reflect changes in Wisconsin's tax laws due to the creation of a sales and use tax exemption for certain energy–producing wind, solar, and gas powered products and the electricity or energy they produce.

It is necessary to promulgate this rule order so that this exemption, which is effective July 1, 2011, may be administered in a fair and consistent manner.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Legislative Reference Bureau, as provided in s. 227.24, Stats.

**Publication Date:** June 29, 2011  
**Effective Dates:** June 29, 2011 through November 25, 2011

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### **Safety and Professional Services (2)** **(Formerly Regulation and Licensing)**

**1. EmR0827** — Rule adopted creating **section 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.

#### **Exemption From 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.

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

**2. EmR0828** — Rules adopted to amend **section RL 181.01 (2) (c)**; and to create **sections RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2.**, relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

#### **Exemption From 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.

**Publication Date:** September 10, 2008  
**Effective Dates:** September 10, 2008 through the date on which the final rules take effect  
**Hearing Date:** November 26, 2008

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## Scope Statements

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### Administration — Office of Justice Assistance

SS 035–11

This statement of scope was approved by the governor on November 1, 2011.

#### Rule No.

OJA 1.

#### Relating to

Collection and analysis of motor vehicle traffic stop information.

#### Description of the Objective of the Rule

Repeal OJA 1 to reflect current statutes. 2011 Act 29 repealed the traffic stop data collection provisions created in 2009 Wisconsin Act 28 (the 2009–11 Biennial Budget) effective June 30, 2011. The Act specifically repeals the rule-making authority of the Office of Justice Assistance (OJA) relating to the types of information that law enforcement agencies must collect regarding the driver and occupants of each motor vehicle stopped by an officer (contained in OJA 1), and repeals the requirement that OJA analyze the information submitted to it by law enforcement agencies.

#### Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule

No new policies are being proposed, other than to reflect law changes.

#### Statutory Authority for the Rule Including the Statutory Citation and Language)

2011 Act 29 repealed statutory rule making authority (Wis. Stats. 16.964 (16)) used by the Office of Justice Assistance to promulgate OJA 1.

#### Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

There is no existing or proposed federal regulation that requires collection or analysis of data as formerly required under Wis. Stats 16.964 (16).

#### Description of All Entities that may be Impacted by the Rule

Wisconsin local law enforcement agencies formerly required to collect and submit data.

#### Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule

There are no existing federal regulations that require collection of similar data, and we are not aware of any proposed federal regulations that would require collection of traffic stop data.

### Contact Person

Tami Jackson

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608–266–6476

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### Children and Families

*Family and Economic Security, Chs. DCF 101–153*

SS 034–11

This statement of scope was approved by the governor on October 31, 2011.

#### Subject

DCF 101, Wisconsin Works criteria for review of placement in unsubsidized employment and providing case management services

#### Objective and Policy Analysis

The proposed permanent and emergency rules will specify the criteria for review of placement of an individual in unsubsidized employment and providing case management services under s. 49.147 (2) (am), Stats., as created by 2011 Wisconsin Act 32.

#### Statutory Authority

Effective January 1, 2012, s. 49.147 (2) (am), Stats., as created by 2011 Wisconsin Act 32, will provide that in lieu of placing the individual in a Wisconsin Works (W–2) subsidized employment position, a W–2 agency may provide case management services to an individual who applies for a W–2 employment position if the W–2 agency determines all of the following:

- The individual meets the eligibility requirements under s. 49.145 (2) and (3), Stats.
- The individual is willing to work and has no barriers to employment that cannot be addressed with W–2 services.
- The individual is job–ready, based on the individual’s employment history or education.
- The most appropriate placement for the individual is in unsubsidized employment.

A W–2 agency shall review the provision of case management services to an individual every 30 days, if the individual is not successful in obtaining unsubsidized employment after legitimate efforts to secure employment, to determine whether the individual, should be placed in a trial job, community service job, or transitional placement. The department shall promulgate rules that specify the criteria for the review process.

Section 49.147 (2) (b), Stats., as affected by 2011 Wisconsin Act 32, provides that a W–2 agency shall assist a participant in his or her search for unsubsidized employment. In determining an appropriate placement for a participant, a W–2 agency shall give priority to placement in unsubsidized employment and providing case management services under s. 49.147 (2) (am), Stats., over placements in trial jobs,

community service job, or transitional placement under 49.147 (3) to (5), Stats.

Section 227.11 (2) (a) (intro.), Stats., expressly confers rule–making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

#### **Entities that may be Affected by the Rule**

W–2 agencies and participants.

#### **Summary of Federal Requirements**

None.

#### **Staff Time Required**

120 hours.

#### **Contact Information**

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### **Health Services**

#### ***Health, Chs. DHS 110–138***

##### **SS 033–11**

The Governor approved this Statement of Scope for emergency rules on October 25, 2011.

The Governor approved this Statement of Scope for permanent rules on October 27, 2011.

#### **Rule No.**

DHS 115

#### **Relating to**

Fee for screening newborns for congenital and metabolic disorders.

#### **Description of the Objective of the Rule**

The objective of the rule is to comply with s. 253.13 (2), Stats., to impose a fee for screening newborns for congenital and metabolic disorders and other costs.

#### **Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule**

Section 253.13 (1), Stats., requires every infant born in a hospital or maternity home or other place be screened for congenital and metabolic disorders as specified in rule by the department. Hospitals, clinics and laboratories on behalf of hospitals, nurse–midwives, midwives, other birth attendants, or other birth facilities (henceforth referred to as “purchasers”), pay a fee to the Wisconsin State Laboratory of Hygiene (WSLH) for newborn screening sample collection cards (henceforth referred to as “card”) that will be used for the newborn’s blood sample for testing. The fee paid by the purchaser is generally billed to the parent, with most or all paid by health insurance, parents, or other programs. The fee for the card includes the State’s costs for testing for congenital and metabolic disorders and the provision of diagnostic and counseling services, special dietary treatment, and periodic evaluation of infant screening programs, costs of consulting with experts, and program operation costs.

Prior to October 1, 2011, the fee was established, by procedure, by the WSLH Board on behalf of and in consultation with the department. Pursuant to s. 253.13 (2), Stats., the department proposes to impose the fee by emergency rule followed by a permanent rule.

The alternative to promulgating a rule to impose the fee is not to comply with the requirement under s. 253.13 (2), Stats., to impose a fee for testing by rule.

#### **Statutory Authority for the Rule (Including the Statutory Citation and Language)**

The department is authorized to impose a fee by rule for testing newborns for congenital disorders and other costs by s. 253.13 (2), Stats., which provides:

(2) TESTS; DIAGNOSTIC, DIETARY AND FOLLOW–UP COUNSELING PROGRAM; FEES. The department shall contract with the state laboratory of hygiene to perform the tests specified under this section and to furnish materials for use in the tests. The department shall provide necessary diagnostic services, special dietary treatment as prescribed by a physician for a patient with a congenital disorder as identified by tests under sub. (1) or (1m) and follow–up counseling for the patient and his or her family. The department shall impose a fee, by rule, for tests performed under this section sufficient to pay for services provided under the contract. The department shall include as part of the fee established by rule amounts to fund the provision of diagnostic and counseling services, special dietary treatment, and periodic evaluation of infant screening programs, the costs of consulting with experts under sub. (5), the costs of administering the hearing screening program under s. 253.115, and the costs of administering the congenital disorder program under this section and shall credit these amounts to the appropriation accounts under s. 20.435 (1) (ja) and (jb).

The department is further authorized to promulgate rules interpreting the provisions of s. 253.13 (2), Stats., if the agency believes it necessary to effectuate the purpose of the statute by s. 227.11 (2) (a), Stats., which provides:

(2) Rule–making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule–making authority on the agency or augment the agency’s rule–making authority beyond the rule–making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency’s general powers or duties does not confer rule–making authority on the agency or augment the agency’s rule–making authority beyond the rule–making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

The department, in addition to being authorized to promulgate the rules as permanent rules, is authorized to promulgate the rules as emergency rules by 2011 Wisconsin Act 32, SECTION 9121 (9) which provides:

(9) CONGENITAL DISORDER TESTING FEES; RULES. Using the procedure under section 227.24 of the statutes, the department of health services shall promulgate rules required under section 253.13 (2) of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 253.13 (2) of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

#### **Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

The department estimates that it will take approximately 40 hours to develop the rule.

#### **Description of All Entities that may be Impacted by the Rule**

Hospitals, clinics and laboratories on behalf of hospitals, nurse–midwives, midwives, other birth attendants, other birth facilities, physicians, nurses, parents of newborns, insurers, the WSLH, and the Newborn Screening Program.

#### **Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

The department knows of no existing or federal regulation that addresses the activities of this rule.

#### **Contact Person**

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#### **Revenue**

SS 030–11

This scope statement was approved by the governor on October 21, 2011

#### **Rule No.**

Chapters Tax 1, 2, 3 and 8.

#### **Relating to**

Tax law changes made by 2011 Wisconsin Act 32 and other legislation.

#### **Description of the Objective of the Rule**

The objective of the proposed rule is to update the Wisconsin Administrative Code to reflect the following tax law changes:

- Section 71.78 (4) (m), Stats., as amended by 2011 Wisconsin Act 32 to provide the CEO of the WEDC with limited authority to examine returns. Existing provisions to be updated are in Section Tax 1.11.
- Section 71.83 (3), Stats., as renumbered and amended by 2009 Wisconsin Act 28 to change the amount of late filing fees for income, franchise, and partnership returns and withholding reports. The existing provision to be updated is in Section Tax 2.96.
- 2005 Wisconsin Act 25, which renumbered secs. 71.07 (3n) (b), 71.28 (3n) (b), and 71.47 (3n)(b), Stats., renumbered and amended secs. 71.07 (3n) (e), 71.28 (3n) (e), and 71.47 (3n) (e), Stats., amended secs. 71.07 (3n) (title) and (a) 2.(intro.), 71.28 (3n) (title) and (a) 2. (intro.), and 71.47 (3n) (title) and (a) 2. (intro.), Stats., and created secs. 71.07 (3n) (a) 4., 5., and 6., (b) 2., and (e) 2., 71.28 (3n) (a) 4., 5., and 6., (b) 2., and (e) 2., and 71.47 (3n) (a) 4., 5., and 6., (b) 2., and (e) 2., Stats., to clarify and expand the dairy investment credit; and 2011 Wisconsin Act 15, which amended secs. 71.07 (3n) (a) 2.(intro.), 5. (intro.), and 6.b. and (b) 1. and 2., 71.28 (3n) (a) 2. (intro.), 5. (intro.), and 6.b. and (b)1. and 2., and 71.47 (3n) (a) 2.(intro.), 5. (intro.), and 6. b. and (b) 1. and 2., Stats., to extend the dairy and livestock farm investment credit. Existing provisions to be updated are in Section Tax 2.99.
- 1993 Wisconsin Act 263, which created sec. 71.05 (1) (e), Stats. [subsequently renumbered 71.05 (1) (c) 3. by 1995 Wisconsin Act 56]; 1995 Wisconsin Act 56, which created sec. 71.05 (1) (c) 4., Stats.; 1999 Wisconsin Act 65, which created sec. 71.05 (1) (c) 6., Stats.; 1999 Wisconsin Act 167, which created sec. 71.05 (1) (c) 5., Stats.; 2003 Wisconsin Act 85, which repealed sec. 71.05 (1) (c) 2., Stats., and created sec. 71.05 (1) (c) 1m., Stats.; 2005 Wisconsin Act 335, which created sec. 71.05 (1) (c) 7., Stats.; 2007 Wisconsin Act 20, which created sec. 71.05 (1) (c) 8., Stats.; 2009 Wisconsin Act 28, which created sec. 71.05 (1) (c) 9., Stats.; 2009 Wisconsin Act 205, which created sec. 71.05 (1) (c) 10., Stats.; and 2011 Wisconsin Act 32, which repealed sec. 71.05 (1) (c) 9., Stats., and created sec. 71.05 (1) (c) 12., Stats. These provisions all concern income tax exemptions for certain bonds and notes. Existing provisions to be updated are in Section Tax 3.095.
- Sections 73.03 (27), 77.93 (intro.), 77.96 (6), and 77.97, Stats., as amended by 2011 Wisconsin Act 32 to change the recycling surcharge to the economic development surcharge. Existing provisions to be updated are in Chapter Tax 2.
- Section 71.255 (2m) (d), Stats., as amended by 2011 Wisconsin Act 32 to provide that the department may not disregard the tax effect or disallow the election for any controlled group member for any year of the controlled group election period. Existing provisions to be updated are in Chapter Tax 2.
- 2007 Wisconsin Act 85, which, in part, repealed secs. 125.52 (8), 125.53 (3), and 125.58 (4) (a) 1. to 4., Stats., renumbered and amended sec. 125.58 (4) (a) (intro.), Stats., repealed and recreated sec. 139.035, Stats., and created sec. 125.535, Stats., to authorize the direct shipment of wine. This update is part of a general

clean–up prompted by the provisions in 2011 Wisconsin Act 32 concerning three–tier beer laws. The existing provision to be updated (repealed) is Section Tax 8.24.

**Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule**

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

**Statutory Authority for the Rule Including the Statutory Citation and Language)**

Section 227.11(2)(a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 71.80 (1) (c), Stats., provides “[t]he department may make such regulations as it shall deem necessary in order to carry out this chapter.” This provision applies to the proposed rule changes relating to the authority to examine returns, late filing fees, the dairy investment credit and dairy and livestock farm investment credit, income tax exemptions for certain bonds and notes, and the controlled group election.

Section 77.96 (3), Stats., provides “[t]he department of revenue shall levy, enforce, and collect the surcharge under this subchapter.” This provision applies to the proposed rule changes relating to the economic development surcharge.

Section 125.03 (1) (a), Stats., provides “[t]he department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.” This provision applies to the proposed rule change relating to the direct shipment of wine.

**Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

The department estimates it will take approximately 100 hours to develop the proposed rule order.

**Description of All Entities that may be Impacted by the Rule**

Tax practitioners, taxpayers, and others who rely on up–to–date and accurate administrative rules.

**Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Contact Person**

Dale Kleven (608) 266–8253

**Revenue**

SS 031–11

This scope statement was approved by the governor on October 21, 2011

**Rule No.**

Chapters Tax 1 and 11.

**Relating to**

Tax law changes made by 2011 Wisconsin Act 32 and other legislation and additional information relating to interpretive rules adopted by the Streamlined Sales Tax Governing Board that are consistent with Wisconsin laws.

**Description of the Objective of the Rule**

The objectives of the proposed rule are listed below. Unless otherwise specified, the existing provisions to be updated are in Chapter Tax 11.

- To reflect the following tax law changes:
  - Section 77.52 (21), Stats., as revised by 2011 Wisconsin Act 32 to change the sales and use tax treatment of items provided free of charge by a retailer.
  - Section 77.54 (5) (am), Stats., as created by 2011 Wisconsin Act 32 to create a sales and use tax exemption for modular and manufactured homes used in real property construction activities outside Wisconsin.
  - Section 77.54 (11m), Stats., as created by 2011 Wisconsin Act 32 to create a sales and use tax exemption for vegetable oil or animal fat converted to motor vehicle fuel that is exempt from the taxes imposed under s. 78.01 (1), Stats.
  - The repeal of the regional transit authorities.
- So that it is consistent with the interpretive rules and amendments adopted by the Streamlined Sales Tax Governing Board to the extent those rules and amendments are consistent with Wisconsin’s laws and make changes to clarify rules based on suggestions made during last year’s compliance review conducted by the SSTGB.
- To provide specifically that if the due date of a payment falls on a day the Federal Reserve Bank is closed the payment is timely if it is made on the next day the Federal Reserve is open. Existing provisions to be updated are in Section Tax 1.12.
- To improve readability and provide clarity, remove potentially obsolete language and add or amend examples where needed for clarification purposes.
- To make corrections to incorrect statutory cross–references.
- To correctly reflect the occasional sale provisions contained in Wisconsin law.
- To reflect the department’s position relating to the Federal Anti–Head Tax Act (49 U.S.C. 40166) as it applies to Wisconsin sales and use tax.

**Description of Existing Policies Relevant to the rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule**

Existing policies are as set forth in the rules. New policies are being proposed to reflect law changes such as in the area of items provided free of charge by retailer and the changes being proposed due to the Federal Anti–Head Tax Act (49 U.S.C. 40166). If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

**Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 227.11 (2) (a), Stats., provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency

considers it necessary to effectuate the purpose of the statute...”

Section 77.52 (19), Stats., provides “[t]he department shall by rule provide for the efficient collection of the taxes imposed by this subchapter on sales of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services by persons not regularly engaged in selling at retail in this state or not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessions at fairs and carnivals, and the like. The department may authorize such persons to sell property or items, property or goods under sub. (1) (b), (c), or (d) or sell, perform, or furnish services on a permit or nonpermit basis as the department by rule prescribes and failure of any person to comply with such rules constitutes a misdemeanor.” This provision applies to proposed rule changes relating to Chapter Tax 11.

Section 77.65 (3), Stats., provides “[t]he department may enter into the agreement to simplify and modernize sales tax and use tax administration in order to substantially reduce the tax compliance burden for all sellers and for all types of commerce. The department may act jointly with other states that are signatories to the agreement to establish standards for the certification of a certified service provider and certified automated system and to establish performance standards for multistate sellers. The department may promulgate rules to administer this section, may procure jointly with other states that are signatories to the agreement goods and services in furtherance of the agreement, and may take other actions reasonably required to implement this section. The secretary of revenue or the secretary’s designee may represent this state before the states that are signatories to the agreement.” This provision also applies to proposed rule changes relating to Chapter Tax 11.

Section 73.029, Stats., provides “[t]he department of revenue may require electronic funds transfer only by promulgating rules.” This provision applies to proposed rule changes relating to Section Tax 1.12.

#### **Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

The department estimates it will take approximately 200 hours to develop the proposed rule order.

#### **Description of All Entities that may be Impacted by the Rule**

Tax practitioners, taxpayers, and others who rely on up-to-date and accurate administrative rules, persons issuing or receiving exemption certificates, persons providing services subject to the Federal Anti-Head Tax Act (49 U.S.C. 40166), persons providing training services along with the sale of prewritten computer software, persons engaged in barter type transactions, and persons selling prepaid calling services.

#### **Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

The Federal Anti-Head Tax Act (49 U.S.C. 40166) prohibits states and political subdivisions from taxing air commerce and transportation. The changes made by the rule will ensure that Wisconsin’s sales and use tax is in compliance with the Act.

#### **Contact Person**

Dale Kleven (608) 266–8253

#### **Revenue**

SS 032–11

This scope statement was approved by the governor on October 25, 2011

#### **Rule No.**

Section Tax 2.985 (emergency and permanent rule).

#### **Relating to**

Electronic medical records credit.

#### **Description of the Objective of the Rule**

The objective of the emergency and proposed permanent rules is to create Section Tax 2.985, relating to the electronic medical records credit. The rules will implement a program to certify health care providers as eligible for the electronic medical records credit under ss. 71.07 (5i), 71.28 (5i), and 71.47 (5i), Stats., and allocate to certified providers, tax credits for information technology (IT) hardware or software that is used to maintain medical records in electronic form.

#### **Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule**

Sections 71.07 (5i), 71.28 (5i), and 71.47 (5i), Stats., permit a health care provider, as defined in s. 146.81 (a) to (p), Stats., to claim as a credit, subject to limitations, against taxes imposed under ss. 71.02 and 71.08, Stats., up to the amount of those taxes, an amount equal to 50 percent of the amount the claimant paid in the taxable year beginning after December 31, 2011, for information technology hardware or software that is used to maintain medical records in electronic form.

Section 73.15 (3), Stats., requires the department to promulgate rules to implement a program to certify health care providers as eligible for the electronic medical records credit under ss. 71.07 (5i), 71.28 (5i), and 71.47 (5i), Stats., and to allocate to certified providers, tax credits for information technology (IT) hardware or software that is used to maintain medical records in electronic form.

The department intends to propose rules interpreting the provisions of ss. 71.07 (5i), 71.28 (5i), 71.47 (5i), and 73.15 (1) and (2), Stats., including addressing activities relating to: (1) eligibility; (2) application and documentation; (3) criteria for certification (4) criteria for allocation of credits; and (5) claiming credits.

Because health care providers may begin claiming the tax credits for amounts paid for IT hardware and software to maintain medical records in electronic form, beginning in taxable year 2012, the department will issue these rules first as emergency rules and then as permanent rules.

The alternative of not promulgating these rules would conflict with a directive in s. 73.15 (3) Stats., which requires the department to promulgate these rules.

#### **Statutory Authority for the Rule (Including the Statutory Citation and Language)**

The department is authorized by s. 73.15 (3), Stats., to promulgate rules to comply with the provisions under ss. 73.15 (1) and (2), Stats., which provide:

73.15 (1) The department of revenue shall implement a program to certify health care providers as eligible for the electronic medical records credit under ss. 71.07 (5i), 71.28 (5i), and 71.47 (5i).

(2) If the department of revenue certifies a health care provider under sub. (1), the department shall determine the amount of credits to allocate to the health care provider. The total amount of electronic medical records credits allocated to health care providers in any year may not exceed \$10,000,000.

(3) The department of revenue shall promulgate rules to administer this section.

The department is further authorized by s. 227.11 (2) (a), Stats., to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency believes it necessary to effectuate the purpose of the statutes enforced or administered by the agency. Section 227.11 (2) (a), Stats., provides:

227.11 (2) Rule–making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule–making authority on the agency or augment the agency’s rule–making authority beyond the rule–making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency’s general powers or duties does not confer rule–making authority on the agency or augment the agency’s rule–making authority beyond the rule–making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

The department is authorized to promulgate the rules as emergency rules under s. 227.24, (1) (a), Stats., which provides:

227.24 (1) (a) An agency may promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under this chapter if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.

#### **Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

The staff time needed to develop the rules is expected to range from 100 to 200 hours, depending upon the associated complexity. This includes research, rule drafting, and

processing the rules through public hearings, legislative review, and adoption. There are no other resources necessary to promulgate the rules.

#### **Description of All Entities that may be Impacted by the Rule**

Health care providers, as defined in s. 146.81 (1) (a) to (p), Stats., that incur IT hardware and software costs for maintaining medical records in electronic form.

#### **Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

The federal Office of the National Coordinator (ONC) for Health IT promulgated 45 CFR 170 relating to health IT standards, implementation specifications, and certification criteria and certification programs for health IT. These rules, in addition to the rules for meaningful use of certified EHR technology under 42 CFR 495, are being used by the Centers for Medicare and Medicaid (CMS) to administer an electronic health record incentive payment program. CMS will require health care providers participating in Medicare to adopt and use certified EHR technology or face penalties beginning in 2016.

#### **Contact Person**

Dale Kleven (608) 266–8253

### **Safety and Professional Services — Optometry Examining Board**

SS 036–11

This statement of scope was approved by the governor on November 1, 2011.

#### **Rule No.**

OPT 5.02

#### **Relating to**

Lens prescription.

#### **Description of the Objective of the Rule**

The objective is to allow for electronic signatures on a lens prescription.

#### **Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule**

The current definition for lens prescription states a “written order” which could be interpreted to not allow for an electronic signature. A contact lens prescription does not have the requirement of “written order” and requires a signature. This same section defines signature as a handwritten mark or an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Modification of the current definition for lens prescription would provide clarity and create a consistency between lens prescriptions and contact lens prescriptions. Health care entities are increasingly utilizing electronic signatures as a way to improve patient safety, inefficiencies and control costs.

#### **Statutory Authority for the Rule Including the Statutory Citation and Language)**

Section 15.08 (5) (b) Each examining board: shall promulgate rules for its own guidance and for the guidance of

the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

**Estimate of the Amount of Time that State Employees will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule**

25 hours

**Description of All Entities that may be Impacted by the Rule**

Licensees benefit by providing patient safety in an

economically advantageous manner.

Consumers have the benefit of increased access and safety as well as reaping the economic impact felt by the licensee.

**Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Rule**

None.

**Contact Person**

Sharon Henes, (608) 261–2377

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## Public Notices

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### Department of Health Services (Foster Care Medical Home)

The State of Wisconsin provides access to health care for low–income and medically needy persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47 and 49.688, Wisconsin Statutes. The Wisconsin Department of Health Services administers this program, which is called Medical Assistance or Medicaid (MA). In addition, Wisconsin has expanded this program to create the BadgerCare and BadgerCare Plus programs under the authority of Title XIX and Title XXI of the Social Security Act and ss. 49.471, 49.665, and 49.67 of the Wisconsin Statutes. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for reimbursement of covered services. A plan that describes the reimbursement system for the services (methods and standards for reimbursement) is now in effect.

Children in foster care paid for under Title IV–E of the Social Security Act are categorically eligible for Medical Assistance. Wisconsin also provides MA coverage for children who are not Title IV–E eligible who reside in foster care. Coverage for youths in foster care is available through a youth’s completion of high school or up to the age of 18, whichever period is longer. Wisconsin provides MA coverage to youths up to age 19 under BadgerCare and Healthy Start.

Section 1937 of the Social Security Act provided authority for States to provide for medical assistance to one or more groups of Medicaid–eligible individuals, specified by the State in an approved state plan amendment, through enrollment in coverage that provides benchmark or benchmark–equivalent health care benefit coverage. Wisconsin did so, effective February 1, 2008. The current groups who receive benefits under Wisconsin’s benchmark plan are pregnant women and infants with incomes between 200 and 300% of the Federal income poverty line, as well as newborns who are born to women with family incomes between 200 and 300% of the Federal income poverty line. As required under federal law, Early and Periodic Screening & Diagnostic Treatment Benefit (EPSDT) services are to be provided to individuals under 21 years of age as an additional benefit under section 1937 of the Act.

In addition to this public notice, Wisconsin’s tribes will be consulted at a meeting of the Tribal Health Directors at a date to be determined this quarter.

#### **Proposed Changes – Enhanced Services for Children in Out–of–Home Care**

Currently, there are approximately 6,000 children in foster care placements who receive Medicaid services in Wisconsin. Many of the foster care children need specialty care and are receiving that care on a fee–for–service basis under Medicaid. As a result, coordinated care may be limited among providers, and may not address the specific needs of children in foster care. The Departments of Health Services and Children and Families are creating a coordinated care benefit based on a medical home concept for children in foster care that provides an individualized treatment plan for each child that addresses the child’s trauma–related needs, delivers treatment services that are evidence–based and will result in improved behavioral, mental, and physical health for the child and a safer, more stable family setting for the child.

- The primary care provider and care team will assure that each child receives a complete trauma–informed health assessment, and an individual treatment plan, including evidence–based mental health interventions.
- Benefits will be provided based upon the BadgerCare Plus standard Plan, with added unique features to support children in foster care placements. Benefits will include: care coordination, hospitalizations, physicians visits, dental services, laboratory and x–ray services, prescription drugs, behavioral and mental health services, health and well–child screening services, immunizations and urgent and emergency care.
- The child will be eligible to continue to receive care coordination and services through this medical home model for 12 months after a child reunifies with his/her birth family, or moves to an adoptive family or relative guardian to assure continuity of care and treatment, provided they are still eligible for Medicaid after the child’s permanency plan is achieved.
- The initiative will begin in Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha counties and will include approximately 2,500 eligible children.
- Qualified health care providers for the medical home must be organized as an integrated health system with demonstrated capacity in trauma–informed care, evidence–based treatment, and must demonstrate that they have qualified physicians, nurse practitioners and other supportive staff, an adequate network of qualified providers for medical, dental and behavioral health services and the ability to contract with providers outside their network to ensure a full range of services for urgent care and other services to ensure continuity of care for the child.
- The Department of Health Services and the Department of Children and Families will set forth key performance–based measures related to health care and child outcomes that are based upon national standards within the Child Welfare and Medicaid programs.

The change in services is projected to decrease expenditures by \$300,000 GPR annually. The effective date of this change will be January 1, 2012.

### **Copies of Proposed Changes**

A copy of the proposed Medicaid program changes may be obtained free of charge by calling or writing as follows:

#### **Regular Mail**

Al Matano  
Division of Health Care Access and Accountability  
P.O. Box 309  
Madison, WI 53707–0309

#### **Phone**

Al Matano  
(608)267–6848

#### **FAX**

(608)261–7792

#### **E–Mail**

[Alfred.Matano@dhs.wisconsin.gov](mailto:Alfred.Matano@dhs.wisconsin.gov)

### **Written Comments:**

Written comments are welcome. Written comments on the changes may be sent by FAX, e–mail, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 261–7792. The e–mail address is: [Alfred.Matano@dhs.wisconsin.gov](mailto:Alfred.Matano@dhs.wisconsin.gov).

Regular mail can be sent to the above address.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 472 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin.

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