

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 6/3/19
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DHS 105.17, personal care providers	
4. Subject Personal care providers	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected N/A
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ 2,784.68 for one personal care agency for two years. This includes adoption of written policies, procedures and documents that outline the agency's operations and services to be provided and routine evaluation and revision of policies. Establishment of a quality assessment and assurance committee, meeting quarterly and developing quality assurance activities.	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The 2009 - 2011 biennial budget bill expanded the types of entities that could be certified by the Department of Health Services ("department") as Medicaid personal care providers to include free-standing personal care agencies (PCAs), in addition to counties, federally recognized American Indian tribes and bands, home health agencies, and independent living centers. Section DHS 105.17 was revised July 2010 in response to the addition of free-standing PCAs. Since 2010, the department has certified 389 free-standing PCAs, with an additional 8 free-standing PCAs in the process of being certified. The department has determined that existing standards contained in s. DHS 105.17 are not adequate to monitor compliance with Medicaid requirements and to prevent fraud, waste, and abuse by PCAs in the Medicaid program. In addition, the department determined that provisions relating to the health, safety, and rights of clients receiving services from PCAs or subcontractors could be strengthened. The department therefore intends to revise s. DHS 105.17 and propose changes relating to governing bodies, staff qualifications, minimum age requirements, supervision of personal care workers, quality improvement, facility closure and provider certification.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Wisconsin has 273 certified personal care agencies that may be affected by this rule. Four are county operated, 6 are	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

operated by an Independent Living Center and the remaining are private. The department formed an Advisory Committee consisting of personal care agency administrators, the President of the Wisconsin Personal Services Association and a county representative. Members of the Advisory Committee were approved by the Governor's Office of Regulatory Compliance. The public was notified of all Advisory Committee meetings pursuant to Wisconsin's Open Meetings law. Committee members reviewed the initial draft and their comments guided the development of the proposed rule. In addition, the department requested comments on the economic impact of the proposed rule by publishing a solicitation in the Administrative Register and on its website.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

None.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

There will be an economic impact on personal care agencies but not on the other entities listed above. Please refer to Attachment A for an explanation of the impact on personal care agencies.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule will strengthen the department's ability to monitor compliance with Medicaid requirements and to prevent fraud, waste, and abuse by PCAs in the Medicaid program.

16. Long Range Implications of Implementing the Rule

The rule will strengthen the department's ability to monitor compliance with Medicaid requirements and to prevent fraud, waste, and abuse by PCAs in the Medicaid program.

17. Compare With Approaches Being Used by Federal Government

There are no comparable federal regulations.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Wisconsin offers personal care as an optional Medicaid state plan service but Illinois does not. Illinois does offer some type of personal care services under waivers. Title 77, Chapter 6, Part 245, Home Health, Home Services and Home Nursing Code. Illinois State Code requires that all home services agencies in Illinois be licensed.

Each provider must develop a quality improvement program that reviews, at least quarterly, a sample of active and closed client records to assure that policies are followed in providing services. Home services workers must not have a disqualifying background check and shall complete at least 8 hours of training and competency evaluations that shows the person is competent to provide services. The competency evaluation shall cover communication skills, performing personal care tasks, basic hygiene, confidentiality of client personal records, health information, promoting dignity, disaster procedures and abuse and neglect prevention and reporting.

Iowa:

Wisconsin offers personal care as an optional Medicaid state plan service but Iowa does not. Iowa Administrative Code 441—78.53 (249A) Health home services.

Michigan:

Michigan offers personal care as an optional Medicaid state plan service. There is no state licensing for home health agencies or personal care services.

Minnesota:

Minnesota offers personal care as an optional Medicaid state plan service. Minn. Stat. §256B.0625 subd. 19c., Minn. Stat. §256B.0659 subd. 13 and subd. 25.

19. Contact Name

20. Contact Phone Number

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The US Department of Labor, Bureau of Labor Statistics indicates that as of May 2017 (most recent data reported) the average salary for a Registered Nurse in Wisconsin is \$69,200 for an hourly rate of \$33.27.

We estimate that a total of 42 hours by an RN will be needed to comply with the proposed rule. Additional RN duties include:

Adopt written policies, procedures and documents that outline the agency's operations and services to be provided:
10 hours of RN time.

Establish a quality assessment and assurance committee, meet quarterly and develop quality assurance activities.
2 hours per meeting by 3 agency staff, 4 meetings per year equals 24 RN hours
2 hours preparation time per 4 meetings per year by 1 RN equals 8 RN hours

42 RN hours time at an hourly rate of \$33.27 equals \$1,397.34.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The department solicited information and advice from individuals, businesses, associations representing businesses, and local governmental units who may be affected by the proposed rule for use in analyzing and determining the economic impact that the rules would have on businesses, individuals, public utility rate payers, local governmental units, and the state's economy as a whole from 11/12/18-11/26/18.

Public comments were received that define a qualified trainer to mean a person trained by an RN and that would require an RN to evaluate a qualified trainer annually. Commentors cited workforce considerations and said that this would cause a financial hardship to the agency. The department did include this language in the updated proposed rule.

Additional language was included in the proposed rule that would require a branch office to be a physical location and eliminate the use of technology to meet client needs, particularly in rural areas. Recognizing the financial impact and impact of residents in rural Wisconsin as outlined by public comments, the department did not include this language in the updated proposed rule.

The department sought to require personal care workers to be a minimum of 18 years old. Public commentors stated that they employ staff who are 16 years old and suggested a minimum age of 16 years. The department changed the minimum working age to 16 in the updated proposed rule.

Public comments were received regarding requiring the use and anticipated cost of an electronic visit verification system. The department did not include this language in the updated proposed rule.

The department also received comments regarding the qualifications for the substitute administrator. In the updated proposed rule, the substitute administrator is not required to meet the qualifications of the administrator.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The department also received comments regarding proposed training requirements for agency staff. The department did not include any additional training requirements for agency staff.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

See the comments in numbers 2 and 4 that show the agency's consideration to reduce the impact of the rule on small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The department did not include proposed rules in the final rule draft that were not found acceptable by the Advisory Committee.

5. Describe the Rule's Enforcement Provisions

The enforcement provisions for DHS 105.17 are contained in Chapter DHS 106, provider rights and responsibilities.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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