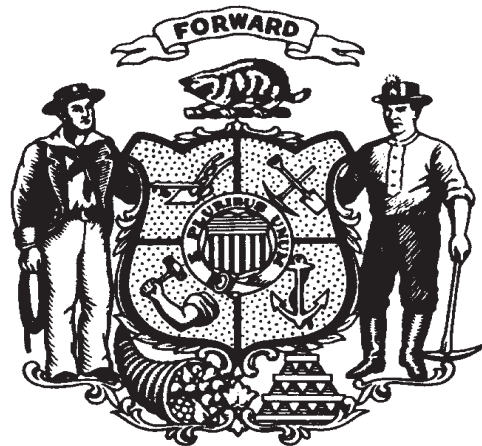


Wisconsin Administrative Register

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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.

Agriculture, Trade and Consumer Protection

Rules adopted creating **s. ATCP 11.72 (15), (16), (17) and (18)**, relating to importing, selling, offering to sell, allowing public access to or disposal of prairie dogs or any mammal known to have been in contact with a prairie dog since April 1, 2003.

Finding of emergency

(1) During May and June 2003, at least 12 people in Wisconsin have developed illnesses within one to two weeks after the people have had contact with prairie dogs. Symptoms of the human illness include fever, cough, rash and swollen lymph nodes. Several of these people have needed to be hospitalized.

(2) Preliminary laboratory results indicate that the cause of the human illness is an orthopox virus that could be transmitted by prairie dogs. Some of the pet prairie dogs have exhibited signs of illness. There have been reports of other mammals that have come in contact with prairie dogs also exhibiting signs of illness.

(3) It is necessary to reduce the opportunities for human interaction with prairie dogs or other mammals that have been in contact with prairie dogs in order to protect the health, safety and welfare of Wisconsin residents. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection is adopting this emergency rule to protect the health, safety and welfare of the public.

Publication Date: June 12, 2003
Effective Date: June 12, 2003
Expiration Date: November 9, 2003
Hearing Date: July 15, 2003
 [See Notice this Register]

Commerce

(Financial Resources for Bus. and Communities, Chs. Comm 105–128)

Rules were adopted revising **ch. Comm 108**, relating to the use of rapid response funds in economically depressed areas of Wisconsin to preserve economic development.

Finding of emergency

The Department of Commerce finds that an emergency exists and that the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare.

Analysis of Rules

Statutory Authority: ss. 560.02 (4) and 560.04, Stats.

Statute Interpreted: s. 560.04, Stats.

Pursuant to s. 560.04, Stats., the Department of Commerce (Commerce), as a part of its comprehensive duties involving community development and economic development, administers federal funds in the form of grants to eligible communities related to economic development. Under current rules, the maximum amount of funds that may be awarded to a community is \$1 million per calendar year and the maximum amount that a business may borrow from a local government under the economic development program is also \$1 million during any 5-year period. The timing and dollar limitations specified in the rules are barriers to providing a comprehensive and rapid response to changing economic conditions in a community.

Given the uncertainty inherent in today's marketplace, Commerce would like to maximize the use of federal community development block grant funds to positively impact local economies. Under the rules, as currently structured, Commerce's ability to respond rapidly to actual or potential plant closings or relocations in a specific geographical region is limited. The following emergency rule will allow Commerce to respond more rapidly to changing economic conditions.

This rule provides Commerce, working collaboratively with local communities, the ability to quickly respond to changing economic conditions due to potential plant closings, business relocations, layoffs, and other economic factors that could negatively affect the economic conditions in the community and state.

Publication Date: March 22, 2003
Effective Date: March 22, 2003
Expiration Date: August 19, 2003
Hearing Date: June 16, 2003

Employee Trust Funds

Rules adopted amending **s. ETF 20.25 (1) (a) and (2)** regarding the date as of which annual post-retirement annuity adjustments under ss. 40.27 (2) and 40.28 (2), Stats., will occur.

Finding of emergency

The Department of Employee Trust Funds, Employee Trust Fund Board, Teachers Retirement Board and Wisconsin Retirement Board find that an emergency exists and that an administrative rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Without emergency rule-making it will not be possible to avoid short-term harm to individual WRS annuitants who will already bear the effects of the market downturn though a zero percent fixed annuity dividend and a double-digit negative variable change.

The first annuity dividends actually affected by the 2002 rule-making (CR #02-049) are the dividends otherwise payable on March 1, 2003. Projections indicate that the fixed division dividend will likely be 0%, largely because of the effect of three years of market declines. The annual change to variable division annuities, which is more volatile because it reflects only the past year's market performance, will be negative and in the range of -26% to -30%. This means that the portion of an annuitant's annuity payable from the fixed division will not increase during 2003, while, if the annuitant receives a portion of his or her annuity from the variable annuity division, that portion of the annuity will be markedly reduced. Annuitants are concerned about the short-term effect of cuts to their annuities being made effective a month earlier this year than was the case in previous years.

The change from April 1 to March 1 was initiated with the best of intentions, primarily to get the additional money from dividend increases into the hands of annuitants as quickly as possible. In retrospect, the timing is unfortunate. When drafting of the rule began in early 2002, the year-end market earnings were unknown and a third consecutive year of market losses could not be predicted. The continued deterioration of investment returns in the latter part of 2002 has magnified the adverse, short-term effect of this change in the timing of dividends; that is, the size of the negative variable adjustment is larger.

Publication Date: February 27, 2003
Effective Date: February 28, 2003
Expiration Date: July 28, 2003

Financial Institutions – Securities

Rules adopted revising **ch. DFI-Sec 4**, relating to conforming Wisconsin's Securities Law rules concerning broker-dealer books and records to federally-mandated standards under the Securities Exchange Act.

Finding of emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

Congress in its passage of the National Securities Markets Improvement Act ("NSMIA") in 1996 prohibited state

securities regulators from establishing or enforcing under their state securities laws or rules, record-keeping requirements for securities broker-dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission ("SEC").

Following passage of NSMIA, the SEC commenced a rule-making process that spanned a several-year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker-dealer books and records rules for effectiveness commencing May 2, 2003. The SEC's revised books and records rules cover a comprehensive series of areas, including: (1) customer account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm's home office and at "local" offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker-dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective today, May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to immediately revise and amend Wisconsin's broker-dealer books and records rules to conform to the federal rules that now have become effective, and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. A subcommittee of the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC's books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rule treatment as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker-dealers as set forth in rules DFI-Sec 4.03 (1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a-3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross-referenced in federal SEC rules 17a-3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a-4. New subsections (3) and (4) replace the current Wisconsin rules in DFI-Sec 4.03 (3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker-dealer offices triggering the definition of "branch office" under current rule DFI-Sec 1.02 (7) (a), are the same records prescribed under the new federal provisions in new federal Rule 17a-3, and must be held for the retention periods specified in new federal Rule 17a-4.

(2) Section 2 repeals current Wisconsin rule DFI-Sec 4.03 (6) [which permitted broker-dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI-Sec 4.03 (1) and (3)],

because under NSMIA, states no longer have the authority to permit alternative forms of broker–dealer records different from the records prescribed by federal law.

(3) Section 3 is a renumbering of current rule DFI–Sec 4.03 (7) to reflect the repeal of DFI–Sec 4.03 (6) in Section 2 above.

(4) Under Section 4, the existing Wisconsin Rule of Conduct provision in DFI–Sec 4.05 (5) [requiring broker–dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross–reference to the new federal provision on that subject in SEC rule 17a–3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

Publication Date: May 7, 2003
Effective Date: May 7, 2003
Expiration Date: October 4, 2003
Hearing Date: August 11, 2003
[See Notice this Register]

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **chs. HFS 101 to 107**, relating to the Medicaid Family Planning Demonstration Project.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On June 25, 1999, the Department submitted a request for a waiver of federal law to the Centers for Medicare and Medicaid Services (CMS), the agency within the United States Department of Health and Human Services that controls states' use of Medicaid funds. On June 14, 2002, the Centers for Medicaid and Medicare granted the waiver, effective January 1, 2003. The waiver allows the state to expand Medicaid services by providing coverage of family planning services for females of child–bearing age who would not otherwise be eligible for Medicaid coverage. Under the waiver, a woman of child–bearing age whose income does not exceed 185% of the federal poverty line will be eligible for most of the family planning services currently available under Medicaid, as described in s. HFS 107.21. Through this expansion of coverage, the Department hopes to reduce the number of unwanted pregnancies in Wisconsin.

Department rules for the operation of the Family Planning Demonstration Project must be in effect before the program begins. The program statute, s. 49.45 (24r) of the statutes, became effective on October 14, 1997. It directed the Department to request a federal waiver of certain requirements of the federal Medicaid Program to permit the Department to implement the Family Planning Demonstration Project not later than July 1, 1998, or the effective date of the waiver, whichever date was later. After CMS granted the waiver, the Department determined that the Family Planning Demonstration Project could not be implemented prior to January 1, 2003, and CMS approved this starting date. Upon approval of the waiver, the Department began developing policies for the project and subsequently the rules, which are in this order. The Department is publishing the rules by emergency order so the rules take effect in February 2003, rather than at the later date required

by promulgating permanent rules. In so doing, the Department can provide health care coverage already authorized by CMS as quickly as possible to women currently not receiving family planning services and unable to pay for them. The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: January 31, 2003
Effective Date: January 31, 2003*
Expiration Date: June 30, 2003
Hearing Dates: April 25 & 28, 2003

* The Joint Committee for Review of Administrative Rules suspended this emergency rule on April 30, 2003

Health and Family Services (4) (Health, Chs. HFS 110—)

1. Rules adopted amending **chs. HFS 110 to 113**, relating to licensing of EMT's and certification of first responders, incorporating responding to acts of terrorism as a training component.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

2001 Wisconsin Act 109 amended s. 146.50 (6) (a) 2., (b) 2. and (8) (b) 3. by adding the requirement that as of January 1, 2003, to receive an initial or renewed EMS license or first responder certification, the applicant must have received training in response to acts of terrorism. Section 146.50 (6) (b) 2. of the statutes specifically directs the Department, in conjunction with the technical college system board, to promulgate rules specifying training, education, or examination requirements for training in response to acts of terrorism. The training must be completed by all persons desiring to receive an initial or renewed license or certification after January 1, 2003. To enforce and administer this statutory requirement, the Department must revise the administrative rules associated with the licensing of Emergency Medical Technicians (EMTs) – Basic and EMTs–Basic IV (found in ch. HFS 110), EMTs– Intermediate (found in ch. HFS 111), EMTs – Paramedic (found in ch. HFS 112) and First Responders (found in ch. HFS 113.)

The required rule changes will remove any question of whether the department had the authority to require persons to receive training for acts of terrorism. Such training is needed to promote the public's health and safety and due to the statutory effective date of January 1, 2003, the department is promulgating these rule changes through an emergency order. The department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: December 31, 2002
Effective Date: December 31, 2002
Expiration Date: May 30, 2003
Hearing Date: February 17, 2003
Extension Through: July 28, 2003

2. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead–based paint hazards.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the

immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead-based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under ch. HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead-free and lead-safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206-1239), the EPA published regulations that established standards for lead-based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment and the EPA standards for lead-based paint hazards would affect the lead-safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead-based paint hazards before revising the rule to reflect the new EPA standards. If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 by February 3, 2003 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

If the Department does not make these changes to ch. HFS 163, Wisconsin could lose some or all of its Federal lead grant funding and EPA's authorization for the Department's lead program. Since the federal regulation provides the first measurable definition of a lead-based paint hazard, the Department needs to adopt this definition in order to protect the state's citizens.

The most significant modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 through this order will mean that persons removing lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare

soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the rule changes should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is making through this order, the most significant are the following:

1. Prior to this order, s. HFS 163.14 (5) (c) 8. required that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal regulations, the Department is reducing the permissible threshold to 400 micrograms per square foot.

2. Prior to this order, s. HFS 163.15 (2) specified that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations, the Department is reducing the permissible threshold to that specified by the EPA.

3. The Department is adding standards, as s. HFS 163.15 (3), for determining when a lead-based paint hazard exists.

4. The Department is modifying s. HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

5. The Department is revising its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

6. Finally, the Department is revising s. HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

Publication Date: January 3, 2003

Effective Date: January 3, 2003

Expiration Date: June 2, 2003

Hearing Date: April 2, 2003

Extension Through: July 31, 2003

3. Rules adopted revising **ch. HFS 124**, relating to critical access hospitals.

Finding of emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The federal Rural Hospital Flexibility Program promotes the continued viability of rural hospitals by allowing qualifying hospitals to receive cost-based reimbursement for their services if the hospital qualifies for and is approved to convert to what is known as a Critical Access Hospital (CAH). In Wisconsin, subchapter VI of ch. HFS 124 governs the Department's designation and regulation of CAHs.

Designation as a CAH and receipt of cost-based reimbursement promotes the hospital's continued viability. To date, 25 hospitals in Wisconsin have transitioned to CAH status, thereby ensuring continued acute care access for many rural residents.

The Department recently learned that the tenuous financial condition of St. Mary's Hospital in Superior jeopardizes its continued operation and places it in imminent danger of closing unless the hospital can be designated as a CAH and receive cost-based reimbursement. The closure of St. Mary's would reduce Douglas County residents' accessibility to acute care. Moreover, the loss of the facility would have a significant detrimental effect on the county because St. Mary's annual payroll is between \$7-8 million and it employs the equivalent of about 160 persons full-time.

Federal regulations permit a hospital in an urban area such as Superior to be reclassified as a critical access hospital if the hospital is located in an area designated as rural under state law or regulation. The Department has determined that the current provisions in ch. HFS 124 preclude St. Mary's from being reclassified as a rural hospital and designated as a necessary provider of health services to area residents. However, St. Mary's Hospital meets "necessary provider" status in the Wisconsin Rural Health Plan based on economic, demographic and health care delivery in its service area. Therefore, through this rulemaking order, the Department is modifying provisions in subchapter VI of ch. HFS 124 to permit St. Mary's Hospital to be classified as a rural hospital and begin the approval process for designation as a Critical Access Hospital.

Publication Date: March 21, 2003
Effective Date: March 21, 2003
Expiration Date: August 18, 2003
Hearing Date: June 20, 2003

4. Rules adopted revising **ch. HFS 119**, relating to operation of the health insurance risk-sharing plan.

Exemption from finding of emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency.

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co-equal twenty percent amounts.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty-nine percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 10.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 18.5%. Rate increases for individual policyholders within Plan 1 range from 5.4% to 20.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin.

Plan 1 rate increases reflect general and industry-wide premium increases and take into account the increase in costs associated with Plan 1 claims.

A second type of medical coverage provided by HIRSP is for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Eleven percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 15.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 23.8%. Rate increases for individual policyholders within Plan 2 range from 9.9% to 26.5%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 rate increases reflect general and industry-wide cost increases and take into account the increase in costs associated with Plan 2 claims. Plan 2 premiums are also set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department through this order amends ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also increasing total HIRSP insurer assessments and reducing provider payment rates, in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2002. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2003. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$35,444,109. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$39,170,353. On April 9, 2003, the HIRSP Board of Governors approved the calendar year 2002 reconciliation process. On May 19, 2003 the Board approved the HIRSP budget for the plan year July 1, 2003 through June 30, 2004.

The department's authority to amend these rules is found in s. 149.143 (2) (a) 2., 3., 4., and (3), Stats., and s. 227.11 (2) Stats. The rule interprets ss. 149.142, 149.143, 149.146, and 149.165, Stats.

Publication Date: June 23, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003
Hearing Date: July 15, 2003
[See Notice this Register]

Higher Educational Aids Board

Rules adopted amending **s. HEA 5.05 (2)**, relating to the eligibility of those on active duty military service.

Finding of emergency

The Wisconsin Higher Educational Aids Board 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 the facts constituting the emergency is:

The 1989 Wisconsin Act 31 created s. 39.435 which provides for Talent Incentive Program Grants to Wisconsin residents who meet criteria established by the statute and administrative code. The Wisconsin Higher Educational Aids Board (HEAB) administers this program under s. 39.435 and under ch. HEA 5. According to the administrative rules, a student must be continuously enrolled from semester to semester and year to year to continue to receive this grant after their initial year. Under current rules, exceptions to this requirement may only be made for medical reasons.

Recently, students who have returned from active duty military service and resumed enrollment at a college or university have begun to request exceptions to the continuous enrollment requirement. This situation is not addressed in the current administrative rules, because the break in these students' enrollment was not due to medical reasons.

Unless the Board changes its rules, participating students who have been called up to active duty military service will permanently lose their eligibility in this program. Because this grant targets the most financially-needy and educationally-disadvantaged students, the loss of eligibility will cause a hardship to those students who rely most heavily on financial assistance.

The emergency rule procedure is being used to ensure that students who have returned from active duty military service and resumed enrollment during the current academic year, 2002–2003, will not permanently lose their eligibility in this program.

Publication Date: April 4, 2003
Effective Date: April 4, 2003
Expiration Date: September 1, 2003
Hearing Date: April 25, 2003

Commissioner of Insurance

Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2003 and relating to establishing a rate of compensation for fund peer review council members and consultants.

Finding of emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Actuarial and accounting data necessary to establish PCF fees is first available in January of each year. It is not possible to complete the permanent fee rule process in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 2003.

The commissioner expects that the permanent rule corresponding to this emergency rule, clearinghouse No. 03–039, will be filed with the secretary of state in time to take effect October 1, 2003. Because the fund fee provisions of this rule first apply on July 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 14, 2003.

Publication Date: June 11, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003

Natural Resources (3) (Fish, Game, etc., Chs. NR 1–)

1. Rules adopted revising **chs. NR 10 and 45**, relating to the control and management of chronic wasting disease.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule-making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses.

Publication Date: July 3, 2002
Effective Date: July 3, 2002
Expiration Date: November 30, 2002
Hearing Date: August 12, 2002
Extension Through: April 30, 2003 (part)
September 1, 2003 (part)

2. Rules adopted revising **chs. NR 16 and 19** and creating **ch. NR 14**, relating to captive wildlife.

Finding of emergency

2001 Wis. Act 56 was not enacted until April of 2002. It required standards for captive animals held under licenses issued under ch. 169, Stats., to be in place by January 1, 2003, the effective date of the change from licensing under ch. 29, Stats., to ch. 169, Stats. As the use of the permanent rule process would not allow these standards to be in place by January 1, 2003, the Department had no choice but to use the emergency rule procedures. Failure to have standards in place would result in the lack of humane care standards for wild animals held in captivity and the lack of pen standards necessary to prevent the interactions between captive and wild animals.

Publication Date: December 20, 2002
Effective Date: January 1, 2003
Expiration Date: May 31, 2003
Hearing Date: January 16, 2003
Extension Through: July 29, 2003

3. Rules adopted revising **ss. NR 10.07 (2), 12.06 and 19.60**, relating to the control and management of chronic wasting disease.

Finding of emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule – making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD poses a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. This rule is needed to reduce the deer herd in the CWD eradication zone further than accomplished

through the hunting seasons to help prevent the spread of CWD.

Initial Applicability. This emergency rule repeals and recreates portions of the original CWD emergency rule order (WM-32-02 (E)) which was adopted by the Natural Resources Board in June 2002. The effective period of this emergency rule will coincide with the effective period of the original CWD emergency rule order which has been extended by the Legislative Joint Committee on the Review of

Administrative Rules until April 1, 2003, pursuant to 2001 Wisconsin Act 108.

Publication Date: January 11, 2003
Effective Date: January 11, 2003
Expiration Date: April 1, 2003
Hearing Date: February 11, 2003
Extension Through: April 30, 2003 (part)
September 1, 2003 (part)

Scope statements

Health and Family Services

Subject

The purpose of this rule to clarify the timeframes for appeals of rehabilitation review decisions under ch. HFS 12, administrative rules relating to caregiver background checks, and to clarify where these appeals must be filed, depending upon what agency makes the initial rehabilitation review decision.

Policy analysis

Under Wisconsin law, persons desiring to operate an establishment that cares for dependent persons or to be employed in such an entity must undergo uniform background information screening. The purpose of the background screening is to prevent persons with a history of abuse or neglect of clients of caregiving entities or of misappropriation of clients' property from having the opportunity to do so again. If the background checks indicate conviction of a related crime or indicates a governmental agency has made a finding of abuse, neglect or misappropriation against the person, that person is prohibited from the position they aspire to hold.

Under certain conditions, persons prohibited from holding a license or position due to an adverse conviction or finding in their background may seek to remove the employment or licensure bar by requesting what is known as a "rehabilitation review." Depending on which agency conducts the rehabilitation review, a panel of persons subsequently decides whether or not to approve, defer or deny the person's request for rehabilitation approval. If the rehabilitation approval is denied, that person may appeal the negative decision within 10 days. If that appeal is unsuccessful (i.e., the original denial is upheld), the person may request a further appeal under ch. 227 of the Wisconsin statutes.

Recently, the Department of Administration's Division of Hearings and Appeals has notified the Department that the current wording of s. HFS 12.12 (5) (a), which specifies a 10-day limit for filing an appeal, applies only to the initial appeal opportunity, and does not apply to the timeframe for filing the ch. 227 appeal, leaving no time limit for filing ch. 227 appeals. The Division also maintains that, under ch. 68 of the Wisconsin statutes, second level appeals of rehabilitation approval denials made by counties should be made to the county, not to the Division of Hearings and Appeals.

To clarify the Department's intent that the 10-day limit applies to both levels of appeal, and to correct the information regarding appeals of county denials of initial appeals, the Department intends to amend ch. HFS 12.12 (5).

Statutory authority

Sections 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), 50.065 (1) (ag) 1. a., (d), (f), (2) (d), (4), (5), (6) (b) and (c), and 227.11 (2), Stats.

Staff time required

5 hours.

Insurance

Subject

Regarding Section Ins 8.495, Wis. Adm. Code, relating to Small Employer Uniform Quote Form.

Objective of the proposed rule. The proposed rule is intended to develop a uniform quote form to be utilized by small employer insurers when providing preliminary quotes for small employer group health insurance.

Policy analysis

Currently each small employer insurer utilizes a different form that the small employer, or the license intermediary assisting the small employer, must complete in order to receive a preliminary premium quote from the small employer insurers. By developing a uniform quote form, the small employer would be required to complete just one form that would be accepted by all small employer insurers for use in providing a preliminary premium quote. This will increase the small employer's ability to receive multiple preliminary quotes with one form on a timely basis.

Statutory authority

Sections 601.41 (3), 635.18 (8), Stats.

Staff time required

100 hours.

Insurance

Subject

Regarding Section Ins 25, Wis. Adm. Code, relating to Safeguarding Nonpublic Information.

Objective of the proposed rule. To promulgate standards governing safeguarding of nonpublic personal information by licensees in accordance with the National Association of Insurance Commissioners (NAIC) Model Act and the Gramm-Leach-Bliley Act.

Policy analysis

The current rule does not specifically include requirements for regulated entities to have procedures for safeguarding nonpublic personal information in accordance with the NAIC Model Act. The new rule will codify the safeguarding elements of the federal law and facilitate compliance with federal safeguard regulations delineated within the Gramm-Leach-Bliley Act and the NAIC Model Act so that Wisconsin consumers' nonpublic personal information is properly safeguarded.

Statutory authority

The rule will be promulgated under the authority granted in ss. 601.41 (3), 628.34 (12), and 633.17, Stats.

Staff time required

100 hours.

Natural Resources

Subject

Ch. NR 243, pertaining to Department regulations for animal feeding operations, including Wisconsin Pollutant Discharge Elimination System (WPDES) permit

requirements for Concentrated Animal Feeding Operations (CAFOs).

Policy analysis

Policy issues to be resolved through the code revision process include determining appropriate changes to the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program for animal feeding operations in the state. In accordance with recently revised federal regulations (40 CFR, Parts 122, 123 and 412), the Department has until April 14, 2004, to incorporate regulations that are at least as stringent as the revised federal regulations into state administrative code. Additional changes are proposed to address manure runoff problems staff have observed with land application activities at WPDES permitted operations, clarify existing policies, codify standard permit conditions and provide efficiencies in the regulatory process.

Statutory authority

Sections 283.001, 283.01, 283.11, 283.13, 283.31, 283.35, 283.37, Stats.

Staff time required

Approximately 530 hours will be needed by the Department. This includes staff hours from all involved programs (e.g., Watershed Management, Legal Services, Integrated Science Services).

Transportation

Subject

Objective of the Rule. This rule making proposes to amend ch. Trans 152, relating to the Wisconsin Interstate Fuel Tax and International Registration Programs, by clarifying Department policies addressing application requirements, location of business, fees, collections and overdue billing issues. It supplements the changes included in a previous Scope Statement published October 1, 2000 regarding the implementation of the provisions of 1999 Wis. Act. 145 that transfers appeals of certain determinations of the Department

of Transportation from the Division of Hearings and Appeals to the Tax Appeals Commission.

Policy analysis

The current rule established policies concerning application requirements that apply only to the International Fuel Tax Agreement (IFTA). The rule also is not clear that the location of businesses applying for both IFTA and IRP must be located in Wisconsin. The penalties referenced for non-payment of fees under IFTA do not apply to overdue IRP accounts. In addition, the IFTA application and decal fees have remained unchanged since Wisconsin joined in July 1989. New language will be drafted to address the following issues:

1. Application requirements. Existing language regarding application requirements for the International Fuel Tax Agreement will be modified to cover the International Registration Plan as well. While proof of identification and residency are required under ch. Trans 152 for applicants to IFTA, they do not cover the IRP.

2. Location of business. Provisions of the rule covering physical location of the business will be clarified by requiring that the business must be located within the state of Wisconsin.

3. Fees. The IFTA application and license fees and the IRP cab card and license plate administrative fees will be increased. These fees have remained unchanged since Wisconsin joined the IFTA in 1989 and the IRP in 1978.

4. Collections and overdue billing. Language will be added to ch. Trans 152 defining the policy the Department will use, including penalties and fees, when customers do not submit IFTA and/or IRP payments to the Department by the due date.

Statutory authority

Sections 341.405 and 341.45, Stats.

Staff time required

40 hours.

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Health and Family Services

Rule Submittal Date

On June 7, 2003, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse amending ch. HFS 119, relating to the operation of the health insurance risk-sharing plan (HIRSP).

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact

Randy McElhose
Division of Health Care Financing
P.O. Box 309, Room B274
Madison, WI 53701-0309
(608) 267-7127 or, if you are hearing impaired, (608) 266-1511 (TTY).

For questions concerning the Department's administrative rule promulgation process contact:

Rosie Greer
(608) 266-1279

Health and Family Services

Rule Submittal Date

On June 10, 2003, the Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting chs. HFS 45 and 46, relating to family and group child care centers.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact

Anne Carmody
(608) 267-9761

Insurance

Rule Submittal Date

On June 16, 2003, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin

Legislative Council Rules Clearinghouse affecting ch. Ins 8, relating to small employer uniform employee application.

Agency Procedure for Promulgation

A public hearing will be held on July 11, 2003.

Contact

A copy of the proposed rule may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting Inger Williams, Service Section, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact Julie E. Walsh at (608) 264-8101 or e-mail at Julie.Walsh@oci.state.wi.us in the OCI Legal Unit.

Natural Resources

Rule Submittal Date

On June 11, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. NR 10, relating to the 2003 migratory game bird season.

Agency Procedure for Promulgation

Public hearings will be held on August 5 and 6, 2003.

Contact

Kurt Thiede
Bureau of Wildlife Management
(608) 267-2452

Natural Resources

Rule Submittal Date

On June 11, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting chs. NR 104, 105, 106 and 210, relating to the regulation of discharges of ammonia to surface waters of the state and relating to other minor corrections to errors in chs. NR 105 and 106.

Agency Procedure for Promulgation

Public hearings will be held on July 15, 16 and 22, 2003.

Contact

Rick Reichardt
Bureau of Watershed Management
(608) 267-7894

Natural Resources**Rule Submittal Date**

On June 11, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. NR 118, relating to the Lower St. Croix Scenic Riverway.

Agency Procedure for Promulgation

A public hearing will be held on July 31, 2003.

Contact

Al Shea
Bureau of Watershed Management
(608) 267-2759

Natural Resources**Rule Submittal Date**

On June 11, 2003, the Department of Natural Resources submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. NR 428, relating to the control of emissions of nitrogen oxides.

Agency Procedure for Promulgation

A public hearing will be held on August 6, 2003.

Contact

Tom Karman
Bureau of Air Management
(608) 266-7718

Workforce Development**Rule Submittal Date**

On June 12, 2003, the Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse affecting ch. DWD 274, relating to hours of work and overtime.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 17, 2003. The organizational unit responsible for the promulgation of the proposed rule is the DWD Equal Rights Division.

Contact

Elaine Pridgen
Telephone: (608) 267-9403
Email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its emergency rule relating to prairie dogs. The department will hold one hearing at the time and place shown below. The department invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until **July 24, 2003**, for additional written comments.

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by **July 3, 2003**, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

One hearing is scheduled:

Tuesday, July 15, 2003, at 1:00 p.m.

Prairie Oaks State Office Building, Room 411
2811 Agriculture Drive
Madison, WI 53708

Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory Authority: s. 93.07 (1), Stats.

Statute Interpreted: s. 93.07 (10), Stats.

There has been an outbreak of an orthopox virus in Wisconsin residents who have had recent contact with prairie dogs. There have been reported instances of some of the prairie dogs exhibiting signs of illness and of other mammals that have been in contact with prairie dogs also exhibiting signs of illness. This emergency rule is being promulgated to reduce the threat of this disease to Wisconsin residents.

This rule prohibits the following:

- Importing into Wisconsin any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003.
- Selling of any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003.
- Allowing any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003, to have contact with any member of the public.
- Releasing any prairie dog or any mammal known to have had contact with prairie dogs since April 1, 2003, to the wild.

Fiscal Estimate

Costs and staffing needed to enforce this emergency rule can be temporarily absorbed. The Division has canceled and rescheduled routine program activities to accommodate the manpower demands of conducting interviews, attempting to locate all exposed mammals, and examining and potentially euthanizing mammals that have come into contact with prairie dogs. Staff will continue to be reallocated from

existing duties as dictated by the Department's emergency response plan.

Four veterinarians are involved in containing this disease on a daily basis at an average daily cost of \$432.00. Average salary of the veterinarians involved is \$260 per day (32.50 per hour x 8 hrs.), associated fringe cost is \$107.00 (13.38 *8), and supplies cost of \$65.00 (meals, travel, one overnight per week and supplies). Costs are anticipated to continue for 30 days for a cost of \$12,960 for the emergency response.

Many routine programs have suffered significant and potentially critical delays already due to CWD and exotic newcastle disease outbreaks.

Notice of Hearing

Commerce (Elevators, Ch. Comm 18)

[CR 03-047]

(reprinted from 5/31/03 Register)

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and (15), 101.12, 101.13, 101.132, and 101.17, Stats., the Department of Commerce will hold public hearings on proposed rules relating to elevators, escalators, and lift devices.

The public hearing will be held as follows:

Wednesday, July 9, 2003 at 10:00 a.m.

Conference Room #125

Department of Revenue Building

2135 Rimrock Road

Madison, WI

Analysis of Proposed Rules

Statutory Authority: ss. 101.02 (1) and (15), 101.12, 101.13, 101.132, and 101.17, Stats.

Statutes Interpreted: ss. 101.02 (1) and (15), 101.12, 101.13, 101.132, and 101.17, Stats.

Overview

Under the statutes cited, the Department protects public health, safety, and welfare by promulgating fire prevention and construction requirements for public buildings and places of employment, including commercial buildings and structures and multifamily dwellings. The Department is also responsible for creating design and construction requirements for mechanical devices, such as elevators, escalators and platform lifts, to ensure the safety of employees and frequenters in public buildings and places of employment who use these devices.

Currently, the Department adopts by reference the 1996 edition of the ASME A17.1- Safety Code for Elevators and Escalators, which included requirements for platform lifts and stairway chairlifts. In 1999, the ASME A18.1-Safety Standard for Platform Lifts and Stairway Chairlifts was developed as a separate document from the ASME A17.1 standard. The ASME A17.1-2000 edition and the ASME A18.1a-2001 edition are proposed to be adopted by reference in chapter Comm 18. Both of the national standards have been substantially revised and renumbered, which will necessitate

chapter Comm 18 being completely rewritten and renumbered for consistency with the adopted standards.

Major Changes

The following are the major items contained in the revised chapter Comm 18, which incorporates by reference the ASME A17.1 and ASME A18.1a national standards:

1. Renumber chapter Comm 18 to correspond with the adopted standards numbering system. For example Comm 18.1708 relates to ASME A17.1 chapter 8, and Comm 18.1802 relates to ASME A18.1a chapter 2.

2. Add an application requirement that specifies which parts of the code apply to both new and existing installations. This requirement is consistent with ASME A17.1 section 1.1.3 and is being included as a Wisconsin based requirement in the administration and enforcement section of the code for clarity and consistency. [Comm 18.1003 (1) (b) 3.]

3. Include the same definition of "alteration" as used in the ASME A17.1 in Comm 18 for consistency. [Comm 18.1004 (1)]

4. Require owners to provide maintenance logs to inspectors upon request. [Comm 18.1008 (3)]

5. Add a statement to the requirements for incorporation by reference of ASME A17.1 and ASME A18.1a that indicates any internal cross-references within the adopted codes to another requirement that has been modified by chapter Comm 18, the modification will apply unless specifically stated otherwise. This will eliminate the need to repeat a modification that applies to more than one type of elevator, or platform lift. [Comm 18. Comm 18.1005 (1) and (2)]

6. Require that information layout plans also provide information as specified in the ASME A17.1 and ASME A18.1a standard. [Comm 18.1013]

7. Reformat the plan review requirements for alterations to elevators and other mechanical lifting devices to a tabular format. The tables are organized to indicate when plans and applications are required or when only applications are required. Changes include requirements for platform lift alterations. [Comm 18.1013 (2) and Tables Comm 18.1013-1 to 18.1013-7]

8. Clarify that an application submittal is required when the repair of speed governors or valves includes breaking the seal. [Comm 18.1013 (2) (b) and Table Comm 18.1013-4]

9. Require the refuge space on top of hydraulic elevators to be identified the same as specified for electric elevators. [Comm 18.1703 (1)]

10. Modify the requirements in ASME A17.1 section 8.6.5.8 that requires elevators with hydraulic cylinders installed below ground to be replaced or provided with safeties conforming to ASME A17.1 section 3.17.1. Currently, there are no known safeties that would comply with the requirements so the replacement of existing single bottom hydraulic cylinders would be required. The Department has modified the requirements in ASME A17.1 section 8.6.5.8 to apply to hydraulic elevators installed prior to January 1, 1975 and that have below ground cylinders, and to require these elevators to have an annual pressure test as specified in ASME A17.1 sections 8.11.3.2.1 and 8.11.3.2.2. If the pressure test, or the record of oil usage specified in ASME A17.1 section 8.6.5.7 indicates there is an unexplained loss of oil, the hydraulic cylinder will need to be replaced. [Comm 18.1708 (1) and ASME A17.1 sections 8.11.3.2.1 and 8.11.3.2.2]

11. Include the ASME A18.1a section 1.1.1 requirement that prohibits a full passenger enclosure for platform lifts. [Comm 18.1802 (1) (e) and (2) (b) 1.]

12. Prohibit vertical platform lifts where runway enclosures are not provided. Vertical platform lifts without runway enclosures would not comply with the protruding object requirements in IBC chapter 10 for elements located on an accessible route. [Comm 18.1802 (3)]

13. Require differences in elevation between the platform lift and the floor to be overcome with ramps complying with the building code. [Comm 18.1802 (4)]

14. Increase the maximum travel distance of a platform lift from 12 feet to 14 feet. [Comm 18.1802 (7) (d)]

15. Include accessibility control requirements for platform lifts, which were previously found in chapter Comm 18. [Comm 18.1802 (8) (a)]

16. Require that a means be provided to permit authorized personnel from a position outside of the vertical platform runway enclosure to raise or lower the platform manually in the event of a power failure, unless standby power is provided. [Comm 18.1802 (8) (d)]

17. Permit inclined platform lifts that have restraining arms and that also fold up against a wall to be used as part of an accessible route in existing construction. These types of lifts would only be permitted under certain conditions in new construction as specified in s. Comm 62.1109 (7), and must not infringe into the minimum means of egress width required for the building occupants as specified in IBC chapter 10. These units will permit a minimum load capacity of 450 pounds, as opposed to the 750 pound minimum currently in the code. In the past, people with disabilities who use larger motorized chairs felt an increase in capacity was necessary. However, national codes and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) permit these units with the minimum capacity of 450 pounds. The unit is restricted to travel between 2 consecutive floors and have a maximum of 3 stops, and a sign is required to specify the maximum weight capacity of the lift. [Comm 18.1803]

18. Add a requirement specifying that stairway chairlifts may not be used as an accessible route in public buildings and places of employment, since these units do not provide accessibility for people who use mobility aids, such as wheelchairs. Stairway chairlifts serve only a small number of people with disabilities and may not be considered where an accessible route is required. [Comm 18.1804 (1)]

19. Eliminate the Wisconsin-based requirement that vertical platform lifts may penetrate a floor, since the ASME A18.1a standard now permits vertical platform lifts to penetrate a floor. [ASME A18.1a section 2.1]

Council Members and Representation

The proposed rules were developed with the assistance of the Elevator Advisory Council. The members of that citizen advisory council are as follows:

Name	Representing
Don Annen	WI State Fire Chiefs Association, Inc.
Warren Bauer	American Inst. of Architects-WI Society
David Koch	National Assn. of Elevator Contractors
Bruce Lammi	WI Society of Professional Engineers
Steve Lex	WI State AFL-CIO
Jeff Lund	Waupaca Elevator Company
William Page	Accessibility Equip. Manufacturers Assn.
David Rakowski	Otis Elevator Company
John Zalewski	City of Milwaukee
Andrew Zielke	National Elevator Industry, Inc.

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in

writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **July 25, 2003**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Diane Meredith, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email dmeredith@commerce.state.wi.us.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audiotape format will, to the fullest extent possible, be made available upon request by a person with a disability.

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division web site at:

www.commerce.state.wi.us/SB/SB-HomePage.html. Paper copies may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, Email rward@commerce.state.wi.us, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

All small businesses that have elevators, escalators, or lift devices will be affected by these rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

Owners of buildings with elevators, escalators, or lift devices will be required to keep a log of the maintenance performed on their equipment, and to make this log available to inspectors.

Owners of hydraulic elevators installed prior to January 1, 1975 and that have below ground cylinders will be required to perform an annual pressure test or a static test to determine if there is an unexplained loss of oil. The average cost to perform these tests is \$500 per elevator. If the tests show an unexplained loss of oil, the hydraulic cylinders will need to be replaced.

3. Types of professional skills necessary for compliance with the rules.

None known.

Fiscal Estimate

Note: The estimated cost to perform annual pressure test is \$500 per elevator. There are approximately 1750 hydraulic elevators that were installed in Wisconsin and that have below ground cylinders, and of this total, approximately 100 are

installed in state owned facilities. It is estimated that, annually, the cost for the Department of Administration to have these tests performed on hydraulic elevators located in state-owned facilities will be \$50,000. Local government units will also be impacted, however it is impossible to determine the number of affected hydraulic elevators that are installed in local government buildings throughout the state and the extent of the fiscal impact.

Notice of Hearing Controlled Substances Board [CR 03-056]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Controlled Substances Board in ss. 961.11 (1) and 961.18, Stats., and interpreting ss. 961.11 and 961.18 (5), Stats., the Controlled Substances Board will hold a public hearing at the time and place indicated below to consider an order to create s. CSB 2.29, relating to rescheduling buprenorphine from a schedule V controlled substance to a schedule III controlled substance, under the Uniform Controlled Substances Act.

Hearing Date, Time and Location

Date: **August 6, 2003**
Time: 9:15 A.M.
Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by August 6, 2003 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: Sections 961.11 and 961.18, Stats.

Statute interpreted: Section 961.18 (5), Stats.

By final rule of the Drug Enforcement Administration (DEA), adopted effective October 7, 2002, buprenorphine was reclassified from a schedule V controlled substance to a schedule III controlled substance under the federal Controlled Substances Act (CSA). Buprenorphine is currently only classified as a schedule V controlled substance under the Wisconsin Controlled Substances Act in Ch. 961, Stats. The objective of the rule is to bring state classification of buprenorphine into conformity with federal law.

Drugs that are classified as "controlled substances" under federal and state laws are subject to higher civil and criminal penalties for their illicit possession, distribution and use. Health care providers are also subject to greater record keeping requirements respecting their obtaining, prescribing and dispensing of such drugs. This is due to the fact that certain drugs have a greater likelihood of abuse, addiction and adverse consequences to patient health if utilized inappropriately, than do other drugs. In December 2001, the federal Department of Health and Human Services forwarded a recommendation to reschedule buprenorphine to schedule

III of the Controlled Substances Act. (CSA). The recommendation was based on a reevaluation of buprenorphine's abuse potential and dependence profile in light of numerous scientific studies and years of human experience with the drug. The DEA completed an independent eight factor analysis in accordance with 21 U.S.C. 811 (c). The DEA made findings in accordance with 21 U.S.C. 812 (b) that buprenorphine has potential for abuse less than the drugs or other substances in schedules I and II, has currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence. These findings form basis for the DEA action in rescheduling buprenorphine.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearing

Controlled Substances Board

[CR 03-057]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Controlled Substances Board in ss. 961.11 (1) and 961.18, Stats., and interpreting ss. 961.11 and 961.18, Stats., the Controlled Substances Board will hold a public hearing at the time and place indicated below to consider an order to create s. CSB 2.30, relating to the scheduling of a schedule III controlled substance under ch. 961, Stats., the Uniform Controlled Substances Act.

Hearing Date, Time and Location

Date: **August 6, 2003**
 Time: 9:15 A.M.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by

August 6, 2003 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: Sections 961.11 (1) and 961.18, Stats.

Statutes interpreted: Sections 961.11 and 961.18, Stats.

By final rule of the Drug Enforcement Administration (DEA), adopted effective March 3, 2000, gamma-hydroxybutric acid (GHB) was classified as a schedule I and schedule III controlled substance under the federal Controlled Substances Act (CSA) pursuant to Public Law 106-172. GHB is currently only classified as a schedule I controlled substance under the Wisconsin Controlled Substances Act in Ch. 961, Stats. The objective of the rule is to bring state classification of GHB into conformity with federal law.

Drugs that are classified as "controlled substances" under federal and state laws are subject to higher civil and criminal penalties for their illicit possession, distribution and use. Health care providers are also subject to greater record keeping requirements respecting their obtaining, prescribing and dispensing of such drugs. This is due to the fact that certain drugs have a greater likelihood of abuse, addiction and adverse consequences to patient health if utilized inappropriately, than do other drugs. The DEA administers the CSA. In doing so, it is empowered to schedule a drug as a controlled substance. Schedule III controlled substances are listed in 21 CFR 1308.13. Section 1308.13(c)(5) lists GHB as included in that classification for any drug product containing GHB for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act. Public Law 106-172 authorized the DEA to classify GHB as a schedule I and schedule III controlled substance. This forms basis for the DEA action. The board has been requested to initiate rulemaking to create a GHB classification which mirrors federal law to enable citizens of this state to benefit from FDA approved prescription drug products containing GHB.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearing

Financial Institutions-Securities

NOTICE IS HEREBY GIVEN that pursuant to ss. 551.63 (1) and (2), Stats., the Division of Securities of the Department of Financial Institutions will hold a public

hearing at 345 West Washington Avenue, 4th Floor Conference Room, at 10:00 a.m. on **Monday, August 11, 2003** to consider the adoption, amendment and repeal of rules relating to conforming Wisconsin's Securities Law rules concerning broker-dealer books and record-keeping requirements to federally-mandated standards under the Securities Exchange Act of 1934.

Written comments in lieu of public hearing testimony may be submitted which must be received no later than the hearing date and should be addressed to the Administrator of the Division of Securities, 345 West Washington Avenue, PO Box 1768, Madison Wisconsin, 53701.

Statutory Authority: Sections 551.33 (1) and 551.63 (1) and (2), Stats.

Statute Interpreted: Section 551.33 (1), Stats.

Analysis Prepared by the Division of Securities of the Department of Financial Institutions

The rulemaking procedures under Ch. 227 of the Wisconsin Statutes are being implemented for the purpose of adopting permanent rules to be in effect upon expiration of emergency rules issued by the Division on May 2, 2003 to conform Wisconsin's Securities Law rules concerning broker-dealer books and record-keeping requirements to federally mandated standards established in rules adopted by the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 that became effective on May 2, 2003.

Congress in its passage of the National Securities Markets Improvement Act ("NSMIA") in 1996 prohibited state securities regulators from establishing or enforcing under their state securities laws or rules, record-keeping requirements for securities broker-dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission.

Following passage of NSMIA, the SEC commenced a rule-making process that spanned a several-year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker-dealer books and records rules for effectiveness commencing May 2, 2003. The SEC's revised books and records rules cover a comprehensive series of areas, including: (1) customer account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm's home office and at "local" offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker-dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to adopt permanent rules (to be in place upon expiration of the emergency rules adopted May 2, 2003) to revise and amend Wisconsin's broker-dealer books and records rules to conform to the federal rules that became effective May 2, 2003, and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. A subcommittee of the North American Securities Administrators Association

("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC's books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rules treatment contained in the proposed permanent rules.

A summary of the proposed permanent rules follows:

(1) Under Section 1, the entirety of the existing Wisconsin general books and records requirement for licensed broker-dealers as set forth in rules DFI-Sec 4.03(1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a-3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross-referenced in federal SEC rules 17a-3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a-4. New subsections (3) and (4) replace the current Wisconsin rules in DFI-Sec 4.03 (3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker-dealer offices triggering the definition of "branch office" under current rule DFI-Sec 1.02(7)(a), are the same records prescribed under the new federal provisions in new federal Rule 17a-3, and must be held for the retention periods specified in new federal Rule 17a-4.

(2) Section 2 repeals current Wisconsin rule DFI-Sec 4.03 (6) [which permitted broker-dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI-Sec 4.03 (1) and (3)], because under NSMIA, states no longer have the authority to permit alternative forms of broker-dealer records different from the records prescribed by federal law.

(3) Section 3 is a renumbering of current rule DFI-Sec 4.03 (7) to reflect the repeal of DFI-Sec 4.03 (6) in Section 2.

(4) Under Section 4, the existing Wisconsin Rule of Conduct provision in DFI-Sec 4.05 (5) [requiring broker-dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross-reference to the new federal provision on that subject in SEC rule 17a-3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

Each Section that adopts, amends or repeals a rule is followed by a separate Analysis which discusses the nature of the revision as well as the reason for it.

Copy of Proposed Rule

A copy of the entirety of the proposed rule revisions to be considered may be obtained upon request to the Division of Securities, Department of Financial Institutions, 345 West Washington Avenue, 4th Floor, P.O. Box 1768, Madison, Wisconsin 53701.

Additionally, the full text of the proposed rule revisions is available on-line at the DFI Website:
www.wdfi.org/securities&franchising.

Fiscal Estimate

A summary of the fiscal effects of the proposed rule revisions is as follows: (1) No one-time revenue fluctuations; (2) No annual fiscal effects; (3) No long-range fiscal implications; (4) No fiscal effect on local units of government.

Initial Regulatory Flexibility Analysis:

1. Types of small businesses that could be affected by certain of the rule revisions are:

Broker-dealer licensees under the Wisconsin Uniform Securities Law with fewer than 25 full-time employees who meet the other criteria of s. 227.114 (1) (a), Stats. The proposed revisions to the securities broker-dealer books and record-keeping requirements and Rule of Conduct provisions are applicable equally to all broker-dealers because the requirements involved are for the protection and benefit of Wisconsin customers of those firms. All Wisconsin customers of securities broker-dealers are entitled to the public investor protection benefits of the licensing books and record-keeping requirements and Rule of Conduct provisions, irrespective of the size of the firm providing the securities services. Under the rule revision procedure of the Division of Securities, a copy of the proposed rule revisions is mailed to each broker-dealer licensed in Wisconsin, as well as to each investment adviser licensed or notice-filed in Wisconsin, notifying them of the proposed revisions and soliciting written comments or attendance at the public hearing regarding the proposed rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

See the summaries in numbered Items 1 to 4 above.

Contact Person

A copy of the full text of the proposed rule revisions and fiscal estimate may be obtained from:

Randall E. Schumann (608) 266-3414
Legal Counsel for the Division of Securities
Department of Financial Institutions
345 West Washington Avenue, 4th Floor
P. O. Box 1768
Madison, WI 53701

Additionally, the full text of the proposed rule revisions is available on-line at the DFI Website:

www.wdfi.org/securities&franchising.

Notice of Hearing**Financial Institutions-Securities**

NOTICE IS HEREBY GIVEN that pursuant to ss. 551.63 (1) and (2), Stats., the Division of Securities of the Department of Financial Institutions will hold a public hearing at 345 West Washington Avenue, 4th Floor Conference Room, at 10:30 a.m. on **Monday, August 11, 2003** to consider the adoption, amendment and repeal of rules in connection with its annual review of the administrative rules of the Division of Securities relating to the operation of Ch. 551, Stats., the Wisconsin Uniform Securities Law.

Written comments in lieu of public hearing testimony may be submitted which must be received no later than the hearing date and should be addressed to the Administrator of the Division of Securities, 345 West Washington Avenue, PO Box 1768, Madison Wisconsin, 53701.

Statutory Authority: Sections 551.63 (1) and (2), and 551.23 (8) (f), Stats.

Statutes Interpreted: Sections 551.02 (1g), 551.23 (8) (f) and (g), and 551.61 (1) to (3), Stats.

Analysis Prepared by the Division of Securities of the Department of Financial Institutions

The rulemaking procedures under Ch. 227 of the Wisconsin Statutes are being implemented for the purpose of

effectuating the Division's annual review of the Rules of the Division of Securities. The Division's annual rule revision process for 2002 is conducted for the following purposes: (1) making necessary repeals of administrative rules that had been adopted under, and were applicable to, the former "individual accredited investor" securities registration exemption in 551.23 (8) (g), Stats., which was repealed and re-created effective October 1, 2002; and (2) amending several of the existing Administrative Procedure-contested case rules in Ch. DFI-Sec 8, Rules of the Division of Securities, dealing with effectuating service and providing notice of administrative orders on named parties, as well as appearances at administrative proceedings by representatives of named parties.

A summary of the rule revisions follows:

1. Making necessary repeals of administrative rules [in DFI-Sec 2.02 (4) (a) and (b)] that had been adopted under, and were applicable to, the former "individual accredited investor" securities registration exemption in s. 551.23 (8) (g), Stats., which was repealed and re-created in 2001 Wisconsin Act 44 (that became effective October 1, 2002) to now conform totally to the federal definition of "accredited investor" under Rule 501(a) of Regulation D of the Securities Act of 1933

2. Existing rules in s. DFI-Sec 8.03 relating to appearances at administrative proceedings by representatives of named parties need to be amended to reflect a recent Wisconsin court determination that precludes persons not licensed as attorneys in Wisconsin from representing named parties in contested case administrative proceedings before Wisconsin state agencies.

3. Existing rules in s. DFI-Sec 8.07 relating to effectuating service of summarily-issued Division administrative orders on named parties needs to be amended to provide that if a named party is a corporation, service via certified mail can be accomplished either by sending to the corporation directly at its last known address, or by sending to the corporation's registered agent at its last known address, or by doing both.

4. Existing rules in s. DFI-Sec 8.06 relating to effecting service by the Division of administrative orders on named parties needs to be amended to provide that if the named party is represented by legal counsel, service can be accomplished by serving legal counsel representing the named party.

Each Section that adopts, amends or repeals a rule is followed by a separate Analysis which discusses the nature of the revision as well as the reason for it.

Copy of Proposed Rule

A copy of the entirety of the proposed rule revisions to be considered may be obtained upon request to the Division of Securities, Department of Financial Institutions, 345 West Washington Avenue, 4th Floor, P.O. Box 1768, Madison, Wisconsin 53701.

Additionally, the full text of the proposed rule revisions is available on-line at the DFI Website: www.wdfi.org/securities&franchising.

Fiscal Estimate

A summary of the fiscal effects of the proposed rule revisions is as follows: (1) No one-time revenue fluctuations; (2) No annual fiscal effects; (3) No long-range fiscal implications; (4) No fiscal effect on local units of government.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that could be affected by certain of the rule revisions are:

None of the rule proposals have particularized applicability to small businesses.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

No reporting, bookkeeping, or other procedures were contained in this rulemaking package.

Contact Person

A copy of the full text of the proposed rule revisions and fiscal estimate may be obtained from:

Randall E. Schumann (608) 266-3414
 Legal Counsel for the Division of Securities
 Department of Financial Institutions
 345 West Washington Avenue, 4th Floor
 P. O. Box 1768
 Madison, WI 53701

Additionally, the full text of the proposed rule revisions is available on-line at the DFI Website:

www.wdfi.org/securities&franchising.

Notice of Hearing Health and Family Services

[CR 03-033]

NOTICE IS HEREBY GIVEN that, pursuant to s. 227.11 (2) (a), Stats., the Department of Health and Family Services will hold a public hearing to consider proposed permanent rules to repeal, renumber, renumber and amend, amend, repeal and recreate and create provisions, relating to a variety of Wis. Adm. Code chapters administered by the Department.

Hearing Information

The public hearing will be held:

<u>Date & Time</u>	<u>Location</u>
July 21, 2003	State Office Building
Monday	1 W. Wilson St.
1:00 PM to 3:00 PM	Madison, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available on site.

Analysis Prepared by the Department of Health and Family Services

This proposed rulemaking order contains a variety of minor revisions to the Department's administrative rules, which were previously published in the Wisconsin Administrative Register, No. 569, published on May 14, 2003. These revisions have little substantive effect on those regulated by the rules. The Department is issuing these changes in a single order to conserve limited agency resources while making necessary updates and improvements in the Department's body of administrative code.

Contact Person

The initial proposed rules upon which the Department is soliciting comments and which will be the subject of this hearing are posted at the Department's administrative rules website at:

http://www.dhfs.state.wi.us/News/Rules/Proposed_Final_Rules/Proposed_Rule_Index.htm

To find out more about the hearing, or to comment on the proposed rule, please write or phone:

Larry Hartzke
 Office of Legal Counsel
 P.O. Box 7850
 Madison, WI 53707-7850
 608-267-2943
hartzlr@dhfs.state.wi.us

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rule received at the above address no later than Wednesday, **July 23, 2003**, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The Department's proposed changes will not have a fiscal effect.

Initial Regulatory Flexibility Analysis

The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats.

Notice of Hearing Health and Family Services (Health, Chs. HFS 110—)

[CR 03-048]

NOTICE IS HEREBY GIVEN that, pursuant to s. 149.143 (2) and (3), Stats., the Department of Health and Family Services will hold a public hearing to consider the amendment of ss. HFS 119.07 (6) (b) to (d) and 119.15 (2) and (3), Wis. Admin. Code, relating to operation of the Health Insurance Risk-Sharing Plan (HIRSP) and the emergency administrative rules taking effect on the same subject on July 1, 2003.

Hearing Information

The date, time and location of the public hearing is:

July 15, 2003	Conference Room 372
Tuesday	State Office Building
Beginning at 1:00 p.m.	1 West Wilson Street Madison, WI

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents. According to state law, HIRSP policyholder premium rates must fund sixty percent of plan costs. The remaining funding for HIRSP is to be provided by insurer assessments and adjustments to provider payment rates, in co-equal twenty percent amounts.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1.

Eighty-nine percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 1 type. Plan 1 has Option A (\$1,000 deductible) or Option B (\$2,500 deductible). The rates for Plan 1 contained in this rulemaking order increase an average of 10.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 18.5%. Rate increases for individual policyholders within Plan 1 range from 5.4% to 20.9%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. Plan 1 rate increases reflect general and industry-wide premium increases and take into account the increase in costs associated with Plan 1 claims.

A second type of medical coverage provided by HIRSP is for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a \$500 deductible. Eleven percent of the 16,445 HIRSP policies in effect in March 2003, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 15.6% for policyholders not receiving a premium reduction. The average rate increase for policyholders receiving a premium reduction is 23.8%. Rate increases for individual policyholders within Plan 2 range from 9.9% to 26.5%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. Plan 2 rate increases reflect general and industry-wide cost increases and take into account the increase in costs associated with Plan 2 claims. Plan 2 premiums are also set in accordance with the authority and requirements set out in s. 149.14 (5m), Stats.

The Department amends ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (2) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles.

The Department is also increasing total HIRSP insurer assessments and reducing provider payment rates, in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 2002. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2003. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$35,444,109. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is \$39,170,353. On April 9, 2003, the HIRSP Board of Governors approved the calendar year 2002 reconciliation process. On May 19, 2003 the Board approved the HIRSP budget for the plan year July 1, 2003 through June 30, 2004.

Identical emergency rules will be published to take effect on July 1, 2003.

Contact Person

To find out more about the hearing or to request a copy of the proposed rules, write or phone:

Randy McElhose
Division of Health Care Financing
P.O. Box 309, Room B274
Madison, WI 53701-0309

(608) 267-7127 or, if you are hearing impaired, (608) 266-1511 (TTY)

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non-English, large-print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **July 23, 2003** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

These rules update HIRSP policyholder premium rates effective July 1, 2003. They also update HIRSP insurer assessments and provider payment rates for the 12-month period beginning July 1, 2003. These updates are being performed to reflect changing HIRSP costs, and in accordance with a statute-specified methodology, in order to offset upcoming program costs. Annual fiscal updates to the HIRSP rules generally take effect in July each year. The fiscal updates contained in these rules were developed by an independent actuarial firm and reviewed and approved by the HIRSP Board of Governors. By law, the Board is a diverse body composed of consumers, insurers, health care providers, small business and other affected parties.

It is estimated that the proposed changes will increase HIRSP program revenues by \$59,413,694 in State Fiscal Year 2004, compared to State Fiscal Year 2003. This amount is comprised of an increase of \$9,440,804 in insurer assessments, an increased adjustment (levy) of \$14,420,175 to provider payment rates, and an increase of \$35,552,715 in policyholder premiums. These rule changes will not, by themselves, affect the expenditures or revenues of local government. There is no local government involvement in the administration of HIRSP.

These adjustments to the policyholder premiums, provider payment rates and insurer assessments are proposed to occur July 1, 2003 as the result of a routine, annual update of HIRSP rules. A similar, budget-based update of HIRSP rules has occurred each and every state fiscal year since 1998. Policyholder premiums will be adjusted as new HIRSP policies are initiated or renewed.

Initial Regulatory Flexibility Analysis

The rule changes will affect HIRSP policyholders, the Department of Health and Family Services and the Department's fiscal agent. The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. Although the program statutes and rules provide for the assessment of insurers to help finance HIRSP, no assessed insurer is a small business as defined in s. 227.114 (1) (a), Stats. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer's assessment to help finance HIRSP is to be determined and, similarly, how the health care provider payment rate is to be calculated.

Notice of Hearing

Insurance

[CR 03-055]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth in under s. 227.18, Stats., the Office of the Commissioner of Insurance will hold a public hearing to

consider the adoption of a rule affecting s. Ins 8.49, Wis. Adm. Code, relating to small employer uniform employee application.

Hearing Information

Date: **July 11, 2003**
 Time: 9:30 a.m., or as soon thereafter as the matter may be reached
 Place: Room 227, OCI
 125 South Webster Street
 Madison, WI

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Julie E. Walsh, OCI, PO Box 7873, Madison WI 53707.

Initial Regulatory Flexibility Analysis

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The intended effect of the rule will be to reduce use of employee time for completion of application materials that should result in a cost savings to the small employers. There should be no fiscal increase incurred by small employers.

Fiscal Estimate

There will be no state or local government fiscal effect.

Contact Person

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at <http://www.state.wi.us/agencies/oci/ocirules.htm> or by contacting:

Inger Williams, Services Section
 Office of the Commissioner of Insurance
 at (608) 264-8110 or at

121 East Wilson Street
 PO Box 7873
 Madison WI 53707-7873.

Analysis prepared by the Office of the Commissioner of Insurance

Statutory authority: Sections 601.41 (3), 601.41 (8), 635.10, Stats.

Statutes interpreted: Sections 635.10, Stats.

In accordance with ss. 601.41 (8) and 635.10, Stats., the Office is statutorily required to develop a rule and the uniform employee application for group health insurance that is to be used by small employer insurers for small employer applicants. In compliance with s. 601.41(8), Stats., the Office, with consultation of the life and disability advisory council, convened a taskforce with representatives of small employers, licensed intermediaries and small employer insurers to obtain information relating to a proposed uniform employee application form. The taskforce made recommendations to the Office for its consideration in the development of the small employer uniform employee application.

The intent of the legislation was two-fold; to reduce the number of forms employees were required to complete when a small employer applied for group health insurance and permits small employers to seek multiple premiums from different small employer insurers with one form. Having a uniform employee application that could be used to obtain multiple premiums also has the benefit of decreasing the

amount of time spent by the small employer in obtaining the premium information since the form may be photocopied and submitted simultaneously to several insurers.

To address the concerns of the small employers, licensed intermediaries and small employer insurers, the Office, in addition to drafting the uniform employee application, also drafted the rule governing the use and management of the application process. The proposed regulations establishes the following: photocopies of the form shall be accepted as though it were an original; duration for use of the information contained within the application form; and, requires small employer insurers to share the photocopied forms, in accordance with the applicant's authorization, with other named insurers within 5 business days as requested in writing by the small employer. The intent is to facilitate a timely exchange of the applications so that the small employer is able to receive the premium amount necessary to make an informed decision regarding the purchase of group health insurance.

Finally, although the uniform application will be available for use beginning August 1, 2003, in accordance with the statute, the rule permits a 60 day grace period to enable small employer insurers to transition from their individual application forms to the uniform application.

Notice of Hearing

Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board

[CR 03-058]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats., and interpreting s. 457.12, Stats., the Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. MPSW 13.01 (1), (2) (intro.), and (a) to (c); and to create s. MSPW 13.01 (3) and (4), relating to the National Counselor Mental Health Certification Examining Board.

Hearing Date, Time and Location

Date: **Wednesday July 30, 2003**
 Time: 10:00 a.m.
 Location: 1400 East Washington Avenue
 Room 179A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **July 31, 2003**, to be included in the record of rule-making proceedings. Analysis prepared by the Department of Regulation and Licensing.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: Sections 15.08 (5) (b), 227.11 (2) and 457.03 (1), Stats.

Statute interpreted: Section 457.12, Stats.

This proposed rule-making order requires that applicants for licensure as a Professional Counselor pass the National Counselor Mental Health Certification Examination (NCMHCE). Under new law effective November 1, 2002, licensed professional counselors may practice psychotherapy independently. In order to ensure that they are qualified to practice psychotherapy independently, the Professional Counselor Section wishes to require all new applicants for licensure to pass the national clinical examination, the NCMHCE. Without this change, there will be less certainty that professional counselors are qualified to practice psychotherapy, and requiring passage of the NCMHCE will ensure greater protection of the public.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495

Notice of Hearing

Natural Resources (Fish, Game, etc., Chs. NR 1—)

[CR 03-051]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 29.197 and 227.11 (2) (a), Stats., interpreting ss. 29.014, 29.041 and 29.197, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2003 migratory game bird season. Under international treaty and federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulations process. Actual season lengths, dates and harvest allocations will change based on the federal framework regulations. The Department anticipates the regulations to include:

Ducks – The state is divided into two zones, each with 45-day seasons. The season begins at noon September 27 in the north. In the south, the season begins at noon on October 4 and continues through October 12, there would be a 4-day split, and then reopen on October 17. The daily bag limit is 6 ducks including no more than 4 mallards, of which only one may be a hen, one black duck, one pintail, 2 wood ducks, 2 redheads and 3 scaup. The canvasback season is again closed.

Canada geese – The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Season lengths are Collins Zone – 67 days; Horicon Zone – 93 days; Exterior Zone – 91 days; and Mississippi River Subzone – 70 days.

The Canada goose bag limit is established for the youth waterfowl hunt and 2 days will be offered.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

August 5, 2003
Tuesday
at 6:00 p.m. Auditorium, Admin. Center
400 4th St. North
La Crosse

August 5, 2003
Tuesday
at 6:00 p.m. Comfort Suites
Hwy. J and I-94
Pewaukee

August 6, 2003
Wednesday
at 6:00 p.m. Conference Room #1
DNR Service Center
107 Sutliff Ave.
Rhineland

August 6, 2003
Wednesday
at 6:00 p.m. Room 310
Green Bay City Hall
100 N. Jefferson St.
Green Bay

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Kurt Thiede at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than August 6, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WM-20-03] and fiscal estimate may be obtained from Mr. Thiede.

Fiscal Estimate

The proposed changes will not result in any significant changes in spending or revenue. There are no government costs anticipated due to the provisions of this rule.

Notice of Hearing

Natural Resources (Environmental Protection-General, Chs. NR 100—)

[CR 03-054]

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.27 and 227.11 (2) (a), Stats., interpreting s. 30.27, Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 118, Wis. Adm. Code, relating to the Lower St. Croix Riverway. Key areas of revision are definitional changes and additions to add clarity; creation of five unique set back zones and standards for development in each; clarification of the treatment of non-conforming structures; and modification of the administrative procedures for local and state government. These changes conform

closely to the recent Cooperative Management Plan between the States of Minnesota and Wisconsin and the National Park Service.

The net effect of these changes is to improve the clarity and consistency of the code, increase the flexibility of owners of existing non-conforming structures to repair, maintain and, in some cases, expand those structures; increase the environmental and visual "buffering" of new and existing development within the riverway; and clarify administrative procedures.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

July 31, 2003	Lower Level Community Room
Thursday	St. Croix Co. Government Center
at 5:00 p.m.	1101 Carmichael Road
	Hudson

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Al Shea at (608) 267-2759 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Al Shea, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than August 15, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the proposed rule [WT-28-03] and its fiscal estimate may be obtained from Mr. Shea.

Fiscal Estimate

The rule will cause all towns, cities and villages within the Riverway District one-time costs to revise their zoning ordinances to reflect the new minimum standards in the revised rule for incorporated areas. Counties within which the District occurs will also incur one-time costs to revise their zoning ordinances to reflect the new minimum standards on the revised rule for unincorporated areas. However, after this initial increased workload, it is envisioned that the administrative burden of enforcing these specialized zoning provisions will be easier than that required to administer the existing ordinances, thereby decreasing workload. Exact increased one-time costs or decreased annualized costs to local governments are extremely difficult to estimate.

Notice of Hearing
Natural Resources
(Environmental Protection-General
Chs. NR 100—)
(Environmental Protection-WPDES
Chs. NR 200—)
[CR 03-050]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2), 281.15, 283.001, 281.13, 283.15, 283.31, 283.37 and 283.55, Stats., interpreting ss. 281.15, 283.13 and 283.15, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 104, 105, 106 and 210, Wis. Adm. Code, relating to the regulation of discharges of ammonia to surface waters of the state and other minor corrections to chs. NR 105 and 106.

Ammonia nitrogen, which is present in domestic and some industrial wastewater, has been shown to be toxic to aquatic life. The Department is currently using 1976 U.S. EPA criteria and a general provision in s. NR 105.04 to regulate the discharge of ammonia to surface waters. This proposed rule incorporates the EPA 1999 update of ambient water quality criteria for ammonia and calculation and implementation procedures to existing chs. NR 105 and 106. The EPA criteria were adapted to reflect Wisconsin aquatic life special and water body classifications. The Department is proposing criteria that are specific to each of the four major aquatic life classifications (cold water fish, warm water sport fish, limited forage fish and limited aquatic life) to assure attainment of the designated waterbody use.

Based on additional toxicological data, the 1999 EPA criteria generally provide less restrictive criteria than those previously used to calculate effluent limitations. It appears that most existing bio-mechanical wastewater treatment plants in the state will be capable of achieving ammonia discharge limits developed under the proposed rule. A significant number of lagoon and stabilization pond systems (approximately 160) will be subject to ammonia limits for the first time and many likely will not be able to meet the limits. The proposed revision to ch. NR 106 contains a variance procedure that provides additional time to address the treatment needs of facilities which use lagoons and ponds to treat domestic wastewater.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

July 15, 2003	Room 611A, GEF #2
Tuesday	101 South Webster St.
at 9:00 a.m.	Madison

July 15, 2003
Tuesday
at 2:30 p.m.

Room O102
Moraine Park Tech School
235 N. National Ave.
Fond du Lac

July 16, 2003
Wednesday
at 11:00 a.m.

Conference Room #2
Portage Co. Courthouse Annex
1462 Strongs Avenue
Stevens Point

July 22, 2003
Tuesday
at 1:00 p.m.

Room 110A
Barron Co. Courthouse
330 E. LaSalle Avenue
Barron

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Rick Reichardt at (608) 267-7894 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule and fiscal estimate may be submitted to Mr. Rick Reichardt, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707 no later than **July 31, 2003**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WT 27-03] and fiscal estimate may be obtained from Mr. Reichardt.

Fiscal Estimate

It is estimated that approximately 160 facilities using lagoons and stabilization ponds for wastewater treatment will be affected by the proposal, as they may receive ammonia limits for the first time. Using a worst case assumption of replacing all lagoons and ponds with an alternative treatment system, it is estimated that total annual treatment costs for the affected users would increase in the range of \$7.5-9 million.

Notice of Hearing

Natural Resources (Environmental Protection-Air Pollution Control, Chs. NR 400-)

[CR 03-049]

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) and 285.11 (1) and (6), Stats., interpreting s. 285.11 (6), Stats., the Department of Natural Resources will hold a public hearing on revisions to ss. NR 428.02, 428.04 and 428.06, Wis. Adm. Code, relating to the control of emissions of nitrogen oxides. The proposed rule establishes a new categorical limit for nitrogen oxides (NO_x) emissions from a unit which is fired by biologically derived gaseous fuel. This rule revision is necessary to clarify that this category of emission units is subject to a specific emission limit and not to the emission limit for natural gas fired units. The proposed rule also clarifies the applicability of s. NR 428.06 (2) (a) to only utility boilers.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. Small businesses may be able to utilize more efficient and less costly options for providing energy at lower emission levels than was previously available.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this

action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

August 6, 2003 Room 141
Wednesday DNR Southeast Region Hdqrs.
at 1:00 p.m. 2300 N. Dr. Martin Luther King Jr. Dr.
Milwaukee

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tom Karman at (608) 264-8856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written comments on the proposed rule may be submitted to Mr. Tom Karman, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, no later than August 15, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of AM-25-03 and its fiscal estimate may be obtained from Proposed Rules, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707, phone: (608) 266-7718 or fax: (608) 267-0560.

Fiscal Estimate

The rule revisions are administrative changes that have no additional fiscal impact.

Notice of Hearing

Workforce Development (Labor Standards, Chs. DWD 270-279)

[CR 03-053]

NOTICE IS HEREBY GIVEN that pursuant to ss. 103.02 and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider changes to ch. DWD 274, relating to hours of work and overtime.

Hearing Information

July 17, 2003 GEF 1 Building, Room B103
Thursday 201 E. Washington Avenue
at 1:30 p.m. Madison, WI

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearings, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.02 and 227.11, Stats.

Statutes interpreted: Sections 103.01 and 103.02, Stats.

Relevant federal law: 29 USC 213(b)(12), 29 USC 203(f), and 29 CFR Part 780.

Chapter DWD 274 requires each private employer to pay each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week, unless the employer is not subject to the chapter or is exempt from the overtime section. Chapter DWD 274 also requires each private employer to keep permanent records showing the name, address, hours of employment, and wages of each employee and to pay employees for on-duty meal periods.

Currently, employees employed in farming, as defined in s. 102.04 (3), Stats., are not subject to ch. DWD 274. Employees of independent contractors who erect silos and other farm buildings or equipment, build terraces, dig wells or build dams for ponds; employees engaged in inspecting and culling flocks of poultry; and pilots and flagpersons engaged in the aerial dusting and spraying of crops are subject to the chapter but are exempt from the overtime pay requirement.

The proposed rule broadens the exemption from the overtime pay requirement for agricultural employees by adopting the federal definition of agriculture as found in the Fair Labor Standards Act. The federal definition of agriculture is more comprehensive and logical than the current chapter DWD 274, and there are extensive federal regulations and case law to assist in interpreting the federal definition.

The federal definition of agriculture has two distinct branches. The primary meaning of agriculture includes cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, and the raising of livestock, bees, furbearing animals, or poultry. The secondary meaning of agriculture includes any practices performed by a farmer or on a farm as an incident to or in conjunction with the farming operations of that farm, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

The current chapter DWD 274 includes items in the federal primary meaning of agriculture and some, but not all, of the items in the secondary meaning. Some activities considered secondary agriculture under the federal meaning are in the current s. DWD 274.04 (9) as piecemeal exemptions to the overtime requirement. The department believes that it is fairer and more logical to adopt a broader general definition of agriculture rather than exempt certain activities on a piecemeal basis and not others.

Under the current rule, some agricultural activities are not subject to the chapter and some are just exempt from the overtime pay requirement. Under the proposed rule, the new broader definition of agriculture will be an exemption to the overtime pay requirement. Agricultural employers will be required to keep permanent records showing the name, address, hours of employment, and wages of each employee and to pay employees for on-duty meal periods.

The farming definition used in the current rule at s. 102.06(3), Stats., includes the exchange of labor, services, or the exchange of use of equipment with other farmers in pursuing listed activities and the operation for not to exceed 30 days during any calendar year of farm machinery in performing farming services for other farmers for a consideration other than exchange of labor. Under the proposed rule, activities within the primary meaning of agriculture are farming regardless of where they are performed and without any time limits. Activities within the secondary meaning of agriculture must relate to the farming operations of that particular farm to be exempt so exchange of labor or services of these activities would not qualify.

The rule also clarifies the applicability of the chapter to nonprofit mercantile organizations, such as a nonprofit organization with employees performing home health care. The department has historically interpreted its authority under s. 103.02, Stats., as applying to "places of employment" as defined in s. 103.01 (3), Stats. Under this interpretation, nonprofit mercantile organizations are not subject to ch. DWD 274. The department currently believes that its authority under s. 103.02, Stats., applies to both "places of employment" and "any employment" as defined in s. 103.01 (2) and (3), Stats.

The proposed rule adds nonprofit mercantile organizations as an explicit exemption to the overtime pay requirement rather than a subtle interpretation of the applicability of the chapter provision. The only effect of the change will be that nonprofit mercantile organizations will be required to keep permanent records showing the name, address, hours of employment, and wages of each employee and to pay employees for on-duty meal periods.

The proposed rule also deletes an obsolete reference in the definition of regular and overtime.

Initial Regulatory Flexibility Analysis

The proposed rule changes affect small businesses engaged in agriculture.

Fiscal Estimate

The proposed rule changes do not have a fiscal effect on state or local government.

Contact Information

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written Comments

Written comments on the proposed rules received at the above address no later than **July 21, 2003**, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

**Barbering and Cosmetology Examining Board
(CR 02-058)**

Chs. BC 1 to 4 and 10, relating to cutting, disinfection, massaging, delegated medical procedures, body piercing, tattooing, tanning booths, managers, relocation of establishments, sterilization and forfeitures.

**Financial Institutions—Banking
(CR 03-043)**

Ch. DFI-Bkg 73, relating to adjustment service companies conducting business by mail.

**Insurance
(CR 03-039)**

Ch. Ins 17, relating to annual patients compensation fund fees beginning July 1, 2003 and establishing a rate of compensation for fund peer review council members and consultants.

**Natural Resources
(CR 02-143)**

Ch. NR 25, relating to commercial fishing in Lake Michigan – netting of whitefish.

**Natural Resources
(CR 02-146)**

Chs. NR 400 to 484, relating to clarification of compliance language for air management regulations.

**Natural Resources
(CR 02-147)**

Ch. NR 809, relating to safe drinking water requirements for public water systems.

**Natural Resources
(CR 03-013)**

Chs. NR 190 and 192, relating to lake management planning grants.

**Natural Resources
(CR 03-014)**

Chs. NR 19, 20, 22 and 23, relating to fishing on the inland and outlying waters of Wisconsin.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.state.wi.us or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Accounting Examining Board (CR 02-119)

An order creating ch. Accy 9, relating to peer reviews.
Effective 8-1-03.

Health and Family Services (CR 03-001)

An order affecting ch. HFS 78, relating to the telecommunications assistance program for deaf, deafblind and severely hard of hearing persons' purchase of telecommunications equipment.
Effective 8-1-03.

Health and Family Services (CR 03-019)

An order affecting ch. HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and

registration of certificates of lead-free status and lead-safe status.
Effective 8-1-03.

Regulation and Licensing (CR 02-125)

An order affecting chs. RL 140 to 142, relating to changes made as a result of 2001 Wis. Act 80, specifically music, art and dance therapists who practice psychotherapy.
Effective 8-1-03.

Veterans Affairs (CR 03-024)

An order affecting ch. VA 2, relating to the expenditure limitation for dentures under the health care aid grant program.
Effective 8-1-03.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **June 30, 2003**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Natural Resources (CR 02-134)

An order affecting chs. NR 140 and 811, relating to groundwater quality standards and the development of an aquifer storage recovery well or the operation of an ASR system by a municipal water utility. Effective 7-1-03.

Summary of Final Regulatory Flexibility Analysis

Small businesses should not be affected by the proposed amendments to chs. NR 140 and 811. The rules pertain to municipal water utilities.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. On April 2, 2003, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested as a result of this hearing.

Natural Resources (CR 02-142)

An order affecting ch. NR 20, relating to fishing for walleye and sauger in Escanaba Lake, Vilas County. Effective 7-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed rules affect individual anglers and do not regulate small businesses.

Summary of Comments by Legislative Review Committees

The rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On March 5, 2003, the Assembly Committee on Natural Resources held a public hearing and asked the Department to consider modifications. The Department's decision not to modify the rule was accepted by the Committee.

Public Service Commission (CR 01-077)

An order creating ch. PSC 130, relating to municipal

regulation of municipal rights-of-way (ROW). Effective 7-1-03.

Summary of Final Regulatory Flexibility Analysis

The rules would apply to complaints regarding municipal rights-of-way ordinances. Current law authorizes the Commission to investigate such complaints and to determine if an ordinance is reasonable. The commission anticipates complaints would primarily come from utilities, which would include some small businesses, as defined in s. 227.114 (1), Stats. (There are approximately 76 small telecommunications utilities in Wisconsin.) The proposed rule does not create any new obligations or responsibilities for complainants, including small businesses. Therefore, the proposed rule does not have an effect on small businesses.

Summary of Comments by Legislative Review Committees

No comments received.

Public Service Commission (CR 02-115)

An order affecting ch. PSC 114, relating to electric safety-revision of Volume 1 of the Wisconsin State Electrical Code. Effective 7-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed rules will have no effect on small business.

Summary of Comments by Legislative Review Committees

No comments received.

Transportation (CR 02-153)

An order affecting ch. Trans 114, relating to uniform traffic citation. Effective 7-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will have no adverse impact on small businesses.

Summary of Comments by Legislative Review Committees

No comments received.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **June 2003**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Natural Resources:

Ch. NR 20

S. NR 20.20 (64) (h)

Ch. NR 140

S. NR 140.05 (1u), (1w), (1y) and (20s)

S. NR 140.22 (1) (intro.), (1m), (2) (a), (b), (d), (3) (a)
and Table 4**Ch. NR 811**

S. NR 811.02 (5)

S. NR 811.87 (5)

Public Service Commission:

Ch. PSC 114 (Entire chapter)**Ch. PSC 130** (Entire chapter)

Transportation:

Ch. Trans 114

SS. Trans 114.02 to 114.08

Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

Natural Resources:

Ch. NR 811

S. NR 811.16 (10) (a)

S. NR 811.41 (2) (c)

S. NR 811.58 (12) (e)

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
HFS 46.02 (1) (d)	ch. DWD 11	ch. DWD 12

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 15. Relating to a proclamation that the flag of the United States and the flag of the state of Wisconsin be flown at half-staff on Memorial Day.

Executive Order 16. Relating to a proclamation that the flag of the United States and the flag of the state of Wisconsin be flown at half-staff as a mark of respect for Sgt. Kirk Straseskie of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

Executive Order 17. Relating to a proclamation that the flag of the United States and the flag of the state of Wisconsin be flown at half-staff as a mark of respect for Major Mathew E. Schram of the United States Army who lost his life during Operation Iraqi Freedom.

Executive Order 18. Relating to a proclamation declaring a state of emergency.

Public notices

Health and Family Services

(Medical Assistance Reimbursement for In-Home Autism Services)

The State of Wisconsin reimburses providers of covered services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. 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. Under current state plan language, non-institutional MA providers are paid the lesser of: (a) their usual and customary charges; or (b) maximum fees established by the Department for each procedure. The Department from time to time modifies the maximum fee schedules to implement MA rate changes authorized by the Legislature.

The Department is proposing to reduce maximum fees for providers of intensive in-home autism services effective July 1, 2003 or after, consistent with the Governor's transition proposal for these services that was adopted by the Joint Committee on Finance in the SFY '03-'05 biennial budget deliberations. For the 4-month period from July 1 through October 31, 2003, the estimated decrease in expenditures from this rate change for autism service providers is \$4,698,500 all funds, (\$1,953,600 GPR and \$2,744,900 FED).

Proposed Change

The proposed change is to decrease reimbursement rates to providers of intensive in-home autism services.

Copies of the Proposed Change

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

Regular Mail

Marge Hannon Pifer

Bureau of Fee-for-Service Health Care Benefits

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701-0309

Phone

Marge Hannon Pifer

(608) 266-1940

FAX

(608) 266-1096

Attention: Marge Hannon Pifer

E-Mail

pifermh@dhfs.state.wi.us

Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266-1096. The e-mail address is pifermh@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin.

Health and Family Services

(Medical Assistance Reimbursement of Hospitals)

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and sections 49.43 to 49.47, Wisconsin Statutes. The

Wisconsin Department of Health and Family Services administers this program that is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, that provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make changes to the provisions contained in the inpatient plan effective July 1, 2003 to implement provisions of 2003 Senate Bill 44, the 2003–2005 state budget bill, and maintain compliance with federal payment limits, and for administrative efficiencies.

Outpatient Hospital Services

No proposed changes in the state plan for reimbursement of outpatient hospital services.

Inpatient Hospital Services

Proposed changes in the state plan for reimbursement for inpatient services may include:

1. For the payment system based on diagnosis–related groups (DRGs):
 - a. Elimination of the adjustment to payment rates for the estimated indirect cost hospitals may incur for the operation of a medical education program, also known as the indirect medical education adjustment.
 - b. Modification of the methodology of calculating the cost of a hospital stay that is used in constructing DRG weighting factors for administrative simplification.
 - c. Replacing separate DRG weight schedules for each of the following three groups of hospitals with one combined schedule of DRG weights for psychiatric stays in (1) institutions for mental disease (IMDs), but not including the Milwaukee County Mental Health Center, (2) general hospitals with a Medicare exempt psychiatric unit, and (3) general hospitals not having an exempt psychiatric unit for administrative simplification.
 - d. Continuation of unique DRG weights for psychiatric stays at Milwaukee County Mental Health Center.
2. Construction of a common DRG weighting factor for groups of DRGs in which the individual DRGs have low Medicaid utilization and have similar average cost in order to reduce large annual fluctuations in weights and to provide more predictable payment for low volume DRGs.
3. Modification of the disproportionate share adjustment parameters to recognize a more current proportion of services provided by hospitals to Medicaid recipients.
4. For the general assistance disproportionate share supplement, modification of the criteria for a hospital to qualify for the supplement and modification of the methodology for distributing the available funds to qualifying hospitals in order to maintain compliance with federal payment limits and to implement provisions of the 2003–2005 state budget act.

Implementation of the above changes to the State Plan for inpatient services is expected to reduce the annual expenditures of the Wisconsin Medical Assistance Program by \$19,104,000 (\$7,900,000 GPR and \$11,204,000 FED) for state fiscal year 2003–2004.

Copies of Proposed Changes and Proposed Payment Rates

Copies of the proposed changes will be sent to every county social services or human service department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Section

Division of Health Care Financing
P.O. Box 309
Madison, WI 53701–0309
Fax: (608) 266–1096

Written Comments

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. at:

Division of Health Care Financing

Room 350, State Office Building
One West Wilson Street
Madison, WI

Health and Family Services (Medicaid Drug Coverage and Reimbursement)

The state of Wisconsin covers legend and non-legend drugs and drug products and reimburses pharmacies for services provided to low-income 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 and Family Services administers this program, which is called Medical Assistance or Medicaid.

Federal statutes and regulations require a state plan that indicates Medicaid covered services and limits to coverage.

A state plan is in effect that indicates coverage of drugs and drug products for medically needy and categorically needy Medicaid recipients and reimbursement policy for pharmacy services. Pursuant to final action by the Governor and State Legislature, the Department is proposing to make changes in the provisions contained in the state plan that apply to coverage of drugs and drug products and reimbursement policies.

Supplemental Rebates and Prior Authorization

The Federal government has clarified that states may enter into supplemental rebate agreements with pharmaceutical manufacturers and that states may impose prior authorization requirements related to supplemental rebate agreements for covered outpatient drugs (State Medicaid Director Letter SMDL #02-014, dated September 18, 2002).

The State will extend prior authorization to additional drugs as allowed under state law.

In addition, the State will enter into negotiations for supplemental rebates from manufacturers for drugs and drug products covered under Medicaid and SeniorCare, and may enter negotiations for supplemental rebates for other State health programs.

Change in Payment Methods

Pharmacies are currently reimbursed at a rate of Average Wholesale Price (AWP) minus 11.25%. Pending final action on the 2003-2005 budget bill, the Department will reimburse pharmacies at a rate identified in the enacted budget bill. The Department is proposing modifications to the state Medicaid plan effective July 1, 2003 to reflect provisions of the budget bill, and is implementing the change on the earliest possible date not before July 1, 2003.

Expected savings are indeterminate. Interested parties may contact the Department for estimated savings upon final action on the 2003-2005 budget bill.

Increase in Co-Payment Amounts

Copayments made by Medical Assistance and BadgerCare recipients will increase from \$1.00 to \$3.00 for each brand name prescription drug. The monthly maximum amount of copayments for legend drugs a recipient is required to pay to each pharmacy from which the recipient receives drugs will increase from \$5 to \$12 per month.

This change is projected to decrease expenditures \$6,573,700 all funds in state fiscal year 2004, (\$2,714,900 GPR and \$3,858,800 FED) and \$9,858,100 all funds in state fiscal year 2005, (\$4,072,400 GPR and \$5,785,700 FED).

Copies of Proposed Changes and Proposed Payment Rates

When available, a copy of the proposed state plan changes may be obtained free of charge by calling or writing as follows:

Mail:

James J. Vavra, Director
Bureau of Fee-for-Service Health Care Benefits
Division of Health Care Financing
P.O. Box 309
Madison, WI 53701-0309

Copies of the legislative enactment directing the change and conforming state plan change will be made available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by fax, e-mail, or regular mail to the Division of Health Care Financing. The fax number is (608) 266-1096. The e-mail address is matana@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Health and Family Services

(Medical Assistance Reimbursement for Oxygen and Dialysis Services)

The State of Wisconsin reimburses providers for services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. 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.

The Wisconsin Department of Health and Family Services is proposing to modify the reimbursement methodology for oxygen services. This change will end the current practice of reimbursing separately for oxygen equipment rental, oxygen accessories, and oxygen content, and will instead reimburse for all services under a daily rate, making the rate methodology comparable to Medicare. The Department's proposal involves no change in services and the benefits remain the same.

Effective for dates of service on and after July 1, 2003, Wisconsin Medicaid will adopt a modified Medicare reimbursement system for oxygen which is tailored to the needs of Medicaid recipients and requirements of Wisconsin's laws. In addition, for oxygen services and for dialysis for end-stage renal disease at free-standing clinics, Wisconsin Medicaid will reduce reimbursement rates to reflect Medicare reimbursement rates, if adopted in the FY 2003-2004 biennial budget.

The Department is changing its methods and standards in this manner because of the adoption of HIPAA compliant procedure codes and modifiers.

Proposed Change

The proposed change is to adopt a modified Medicare reimbursement system for oxygen services, effective for dates of service on and after July 1, 2003. There will be no fiscal effect resulting from this change.

The FY 03-04 Biennial Budget Bill proposes to adjust Medicaid reimbursement amounts for oxygen and ESRD services not to exceed Medicare's reimbursement. If enacted the fiscal effect of the budget bill proposal will be savings of \$2,514,100 GPR and \$3,531,500 FED for a total of \$6,045,600 all funds (AF) in FY 04 and \$2,518,800 GPR and \$3,537,400 FED for a total of \$6,056,200 AF in FY 05.

Copies of the Proposed Change

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

Regular Mail

Marge Hannon Pifer

Bureau of Fee-for-Service Health Care Benefits

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701-0309

Phone

Marge Hannon Pifer

(608) 266-1940

FAX

(608) 266-1096

Attention: Marge Hannon Pifer

E-Mail: pifermh@dhfs.state.wi.us

A copy of the proposed change are available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Department. The FAX number is (608) 266-1096. The e-mail address is pifermh@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Health and Family Services

(BadgerCare Premiums: Payments, Services, and Eligibility)

The State of Wisconsin reimburses providers for services provided to BadgerCare recipients under the authority of Title XXI of the Social Security Act and s. 49.665, Wisconsin Statutes. BadgerCare is administered by the Department of Health and Family Services and it provides health care services to individuals who are not eligible for medical assistance (MA) in low-income families with dependent children and who meet certain nonfinancial eligibility criteria.

Individuals can meet the financial eligibility criteria for BadgerCare if their countable family income does not exceed 185% of the federal poverty level (FPL) and can remain enrolled if their countable family income increases up to 200% of the FPL. In 2003, 185% of the FPL is equal to \$28,231 annually for a family of three.

Families with individuals enrolled in BadgerCare that have countable income that exceeds 150% of the FPL are required to pay a monthly premium as a condition of participation. The current premium schedule, which is promulgated by rule, requires families to pay premiums that equal no more than 3% of a family's monthly income, regardless of the number of individuals in the family that are enrolled in BadgerCare. The statutes specify a procedure under which the Joint Committee on Finance can increase the premiums to up to 3.5% of the family's income. In 2003, 150% of the FPL is equal to \$22,890 annually for a family of three.

As of the end of May 2003, there were approximately 9,600 adults and 7,900 children enrolled in BadgerCare that were in families with income that exceeded 150% of the FPL and were therefore subject to premium requirements. The average premium paid per family is currently approximately \$60 per month.

BadgerCare benefits are paid with: (a) general purpose revenue, or GPR; (b) federal funds, including federal MA matching funds and funds the state receives under the state children's health insurance program (SCHIP); (c) program revenue, which is revenue from premiums; and (d) segregated funding from the MA trust fund. Program revenue (PR) from the premiums paid by BadgerCare enrollees are used to offset both GPR and federal funding proportionately (29% GPR/71% FED).

Pursuant to final action by the Governor and State Legislature, the Wisconsin Department of Health and Family Services is proposing to reduce BadgerCare benefits funding by \$1,395,300 (-\$406,200 GPR, and -\$989,100 federal match, or FED) in 2003-04 and by \$2,764,400 (-\$804,700 GPR and -\$1,959,700 FED) in 2004-05. At the same time, the Department's proposal will increase funding by \$1,395,200 PR in 2003-04 and \$2,764,400 PR in 2004-05 to reflect the net effect of increasing BadgerCare premiums to 5% of the family's income, beginning January 1, 2004. The additional premium revenue would replace current state and federal funding budgeted for benefits. The proposal involves no change in the services provided; the benefits remain the same.

In estimating the fiscal effect of the premium increase, no adjustment was made for the possibility that the higher premiums would affect enrollment in the program. The assumption was made that families that currently participate in BadgerCare and are required to pay a premium have already demonstrated a willingness to pay for BadgerCare and, therefore, their participation would not be affected by an increase in the premium. However, some research suggests that there is a correlation between the amount of premiums families are required to pay and their participation in a health care program for low-income families.

Further, families enrolled in BadgerCare have less of an ability to pay for health care coverage than families that do not meet the BadgerCare income eligibility criterion. In 2002, an average of 853 individuals per month lost BadgerCare coverage due to the family's failure to pay the monthly premium. These individuals cannot reenroll in BadgerCare for at least six consecutive calendar months unless the reason for failure to pay the premium are due to circumstances outside of the family's control, such as a problem with an employer's wage withholding or a bank transfer, or the family experienced a significant change in household composition, such as a parent or parent's spouse no longer resides in the home. The proposal to increase premiums would likely increase the number of families that are disenrolled because they did not pay the required premium. Based on these considerations, it may be reasonable to assume that the proposal to increase premiums will have an effect on enrollment. For example, it could be assumed that the Governor's proposal would reduce the average number of individuals enrolled in BadgerCare by approximately 950 in 2003-04 and approximately 1,200 in 2004-05. This adjustment would increase the projected savings of the proposal to increase premiums.

Beginning January 1, 2004, the legislation to increase BadgerCare premiums will also prohibit DHFS from establishing a premium schedule that would require a family or child participating in BadgerCare with income above 150% of the FPL to contribute more than 5% of the child or family's income towards the cost of care under BadgerCare. It will delete the current statutory provisions that authorize the Department to establish a premium schedule that would require families to contribute no more than 3% of the family's income towards the cost of care under BadgerCare, or 3.5% of the child's or family's income if approved by the Joint Committee on Finance under a 14-day passive approval process.

The current waivers under which BadgerCare operates permit the state to assess families enrolled in BadgerCare with income over 150% of the FPL premiums that equal up to 5% of the family's income. Consequently, the

Department would not need to renegotiate the terms of the waivers to implement the Governor's proposal. This provision would increase the average premium paid by families from \$60 per month to \$100 per month.

Proposed Change

The proposed change is to: Decrease BadgerCare benefits funding by \$512,400 GPR and \$1,281,900 FED in 2003–04 and \$813,300 GPR and \$2,040,200 FED in 2004–05 and increase program revenue by \$134,800 in 2003–04 and \$647,500 in 2004–05.

Copies of the Available Proposed Change

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

Regular Mail

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701–0309

Attention: State Plan Coordinator

Phone

Al Matano

(608) 267–6848

FAX

(608) 266–1096

Attention: State Plan Coordinator

E-Mail: matana@dhfs.state.wi.us

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed changes may be sent by FAX, e-mail, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266–1096. The e-mail address is matana@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

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 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

Health and Family Services

(SeniorCare Benefit and Cost-Sharing Requirements) (DHFS -- Health Care Financing -- Payments, Services, and Eligibility)

SeniorCare is a prescription drug assistance program for Wisconsin residents who are 65 years of age or older and who meet the program's eligibility criteria. It was created with the enactment of 2001 Act 16, Wisconsin's 2001–2003 budget legislation. Act 16 created section 49.688 of the statutes, the SeniorCare enabling legislation.

Pursuant to final action by the Governor and State Legislature, the Department is proposing to make changes relating to SeniorCare as authorized in the 2003–2005 biennial budget. Several changes have been proposed to the SeniorCare program to reduce SeniorCare Program costs. No change has been proposed to prescription drugs covered under the program. To date, the changes proposed include an increase in the amount of the enrollment fee to participate in the SeniorCare program, an increase in the required deductibles for individuals participating in the program, an increase in the copayments for brand name drugs under SeniorCare.

Interested parties may contact the Department for estimated savings of each of these items upon enactment of the 2003–2005 budget bill.

Copies of Proposed Changes

When available, a copy of the proposed SeniorCare program changes may be obtained free of charge by calling or writing as follows:

Regular Mail

Division of Health Care Financing

P.O. Box 309

Madison, WI 53701-0309
Attention: State Plan Coordinator

Phone
Al Matano
(608) 267-6848

FAX
(608) 266-1096
Attention: State Plan Coordinator

E-Mail
matana@dhfs.state.wi.us

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 Financing. The FAX number is (608) 266-1096. The e-mail address is matana@dhfs.state.wi.us. 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 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin.

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