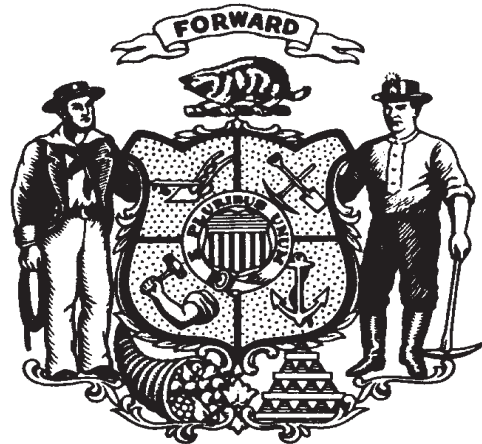


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Emergency rules now in effect

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 (2)

1. 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

2. Rules adopted revising **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 rodent from Africa.

Finding of emergency

1. As a result of the outbreak of an orthopox virus later identified as monkey pox in Wisconsin, the department adopted an emergency rule in early June, 2003.

2. Since the June, 2003 emergency rule was adopted, there has been additional information learned about the origins of the infected animals and the actual form of orthopox virus responsible for the symptoms. As a result of this new information, the department has been able to refine its identification of animals that should be subject to the prohibitions previously imposed.

3. After the department adopted the emergency rule (albeit before the rule was published) the CDC and FDA adopted their joint order that indicates the animals of concern are prairie dogs and African rodents.

4. The CDC and FDA joint order confirms the threat to humans from exposure to prairie dogs and African rodents.

5. This amended emergency rule provides consistency between the CDC and FDA joint order and Wisconsin's emergency rule.

6. The Wisconsin Department of Agriculture, Trade and Consumer Protection seeks to provide the greatest protection for Wisconsin citizens while creating the least acceptable disruption to their lives and businesses. Therefore, the Wisconsin Department of Agriculture, Trade and Consumer Protection adopts an amended emergency rule to protect the health, safety and welfare of the public.

Publication Date: July 24, 2003
Effective Date: July 24, 2003
Expiration Date: November 9, 2003
Hearing Date: September 3, 2003

Chiropractic Examining Board

Rules adopted revising **ch. Chir 2**, relating to passing and retaking the practical examination.

Finding of emergency

The Chiropractic Examining Board finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments described into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

On December 19, 2002, the Chiropractic Examining Board adopted the national practical examination conducted by the

National Board of Chiropractic Examiners as the board's practical examination for determining clinical competence in Wisconsin. The board has determined that the national practical examination is a better measure of competence than was the state examination previously administered by the board and that the public health, safety and welfare warrant that the national practical examination be instituted immediately. The rule changes herein conform the terminology used in the board's rule with the textual description of the national practical examination and resolve doubts about the examination grades issued to applicants who complete the national practical examination.

The national practical examination describes the examination parts in different terms than are used in s. Chir 3.02, although the national practical examination covers the practice areas described in the existing rule. The rule amendments to s. Chir 2.03 (2) (intro.) resolve this difference.

This order deletes the reference in the board's current rule to passing "each part" of the examination. The national practical examination has one part and an applicant receives one grade for the part. In utilizing the national examination, the board approves the grading and grading procedures of the National Board of Chiropractic Examiners. Grade review procedures in s. Chir 2.09 are superfluous and the rule is repealed. The rule requiring reexamination is modified to avoid confusion over examination parts. The board is proceeding with promulgating these rule changes through a proposed permanent rule-making order.

Publication Date: June 28, 2003
Effective Date: June 28, 2003
Expiration Date: November 25, 2003
Hearing Date: October 16, 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
Extension Through: October 17, 2003

Employment Relations Commission

Rules adopted amending **ss. ERC 1.06 (1) to (3), 10.21 (1) to (5) and 20.21 (1) to (4)**, relating to increased filing fees.

Finding of emergency

The Employment Relations Commission 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:

1. The Employment Relations Commission has a statutory responsibility in the private, municipal and state sectors for timely and peaceful resolution of collective bargaining disputes and for serving as an expeditious and impartial labor relations tribunal.

2. Effective July 26, 2003, 2003 Wisconsin Act 33 reduced the Employment Relations Commission's annual budget by \$400,000 in General Program Revenue (GPR) and eliminated 4.0 GPR supported positions. These reductions lowered the Employment Relations Commission's annual base GPR funding level and the number of GPR supported positions by more than 16%.

Act 33 also abolished the Personnel Commission and transferred certain of the Personnel Commission's dispute resolution responsibilities to the Employment Relations Commission.

3. 2003 Wisconsin Act 33 increased the Employment Relations Commission's Program Revenue (PR) funding and positions by \$237,800 and 2.0 PR positions respectively. The revenue to support these increases will be provided by increasing existing filing fees for certain dispute resolution services.

4. Unless the emergency rule making procedures of s. 227.24, Stats., are utilized by the Employment Relations Commission to provide the increased filing fee revenue needed to support the 2.0 PR positions, the Commission's ability to provide timely and expeditious dispute resolution services will be significantly harmed.

The emergency rules increase existing filing fees for Commission dispute resolution services in amounts necessary to fund 2.0 Program Revenue positions as authorized by 2003 Wisconsin Act 33.

Sections 111.09, 111.71, 111.94, 227.11 and 227.24., Stats., authorize promulgation of these emergency rules.

Publication Date: August 25, 2003
Effective Date: September 15, 2003
Expiration Date: January 22, 2004

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

Health and Family Services (Management, Technology, Chs. HFS 1—)

Rules adopted revising **ch. HFS 15**, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR).

Exemption from finding of emergency

The legislature by section 9124 (3) (b) of 2003 Wisconsin Act 33 provides an exemption from a finding of emergency for the adoption of the rule.

Analysis prepared by the Department of Health and Family Services

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin Statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF–MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF–MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the

statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

– eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc; and

– eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF-MRs, from \$100 per bed to \$435 per bed in fiscal year 2003-04 and \$445 per bed in fiscal year 2004-05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003-04, \$13.8 million in fiscal year 2004-05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home's licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, by this order, the Department is modifying chapter HFS 15 accordingly.

The Department is also proceeding with promulgating these rule changes on a permanent basis through a proposed permanent rulemaking order.

Publication Date: July 28, 2003
Effective Date: July 28, 2003
Expiration Date: December 25, 2003
Hearing Date: October 15, 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 (2) (Health, Chs. HFS 110—)

1. 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 24, 2003
Effective Date: July 1, 2003
Expiration Date: November 28, 2003
Hearing Date: July 15, 2003

- Rules were adopted revising ch. HFS 144, relating to immunization of students.

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 Department has a rulemaking order (CR03-033) containing a variety of relatively minor changes to over a dozen chapters of administrative rules administered by the Department. The Department had anticipated that CR03-033 would be in effect on or before September 1, 2003. One of the proposed changes in CR03-033 is a provision that changes school immunization standards. Clearinghouse Rule 03-033 has been delayed for reasons unrelated to the provisions in this order. Consequently, the identical provisions in CR03-033 will not be in effect on September 1, 2003. For reasons stated subsequently in this analysis, unless these changes to the minimum immunization requirements in chapter HFS 144, Immunization of Students, are in effect September 1, 2003, needless confusion and unintended effects will result.

In 2002, the Department's Wisconsin Immunization Program requested minor language changes to chapter HFS 144 as part of a planned "omnibus" rulemaking order containing a variety of proposed relatively minor changes. The HFS 144 proposed rule changes affect time sensitive vaccine requirements and were made so the Department's immunization requirements adhere to new vaccine recommendations made by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (ACIP.) For example, the current requirement for Measles-Mumps-Rubella vaccine (MMR) is two doses with the first dose received on or after the first birthday. New ACIP recommendations allow a 4-day grace period so children receiving doses four days before their first birthday would be compliant. The current requirements in chapter HFS 144 do not accept as valid a dose of MMR that was given even one day prior to the first birthday. Similar time sensitive changes impact the vaccine requirement for a dose of DTaP vaccine after the fourth birthday and a dose of Hib vaccine after the first birthday.

These changes need to be in place before the start of the new 2003-04 school year. Although the changes are minor in nature, they have a significant effect on the law's enforcement at the day care and school level. Again, using MMR as an example, without the change, the school will count the child that received the MMR one day before the first birthday as non-compliant. Non-compliance can, pursuant to s. 252.04 (5), Stats., result in exclusion from school or, pursuant to s. 252.04 (6), Stats., the name of the non-complaint student being turned over to the local district attorney's office for possible court action against the parents. Therefore, the child will either need to be re-immunized or the parent will need to sign a waiver, pursuant to s. 252.04 (3), Stats. The re-immunization requirement puts the school at odds with the health care provider that is currently acting in accordance with the revised ACIP recommendations. The signing of a waiver is not a desirable option as the school reporting process to the Department counts that child as waiving all vaccine requirements and will yield misleading information as to the Immunization Law compliance level of Wisconsin day care and student populations. The Department's Immunization Program sends Immunization Law packets to the schools in mid-August. These packets include the information the schools need for enforcement of the law when school starts in September. It is imperative that the Department have the rule changes in place before the start of the school year and include

the information in the school packets. Therefore, the Department is issuing this emergency order to allow school districts and health professionals to act in a timely manner.

Publication Date: August 15, 2003
Effective Date: August 15, 2003
Expiration Date: January 12, 2004
Hearing Date: September 12, 2003

Insurance (2)

1. 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

2. Rules adopted creating **s. Ins 8.49**, relating to Small Employer Uniform Employee Application.

Finding of emergency

The Commissioner of Insurance finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The commissioner intends to file the permanent rule corresponding to this emergency rule, clearinghouse No. 03-055, with the secretary of state within the next 150 days.

Because the uniform application form is required to be available by August 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Wis. Stat., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule.

Publication Date: August 1, 2003
Effective Date: August 1, 2003
Expiration Date: December 29, 2003

Natural Resources (2) (Fish, Game, etc., Chs. NR 1-)

1. Rules were adopted revising **ch. NR 10**, relating to the 2003 migratory game bird season.

Finding of emergency

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

Publication Date: August 29, 2003
Effective Date: August 29, 2003
Expiration Date: January 26, 2004
Hearing Date: October 14, 2003
 [See Notice This Register]

2. Rules were adopted revising **ch. NR 10**, relating to Chronic Wasting Disease (CWD) in Wisconsin.

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, bovine tuberculosis and other forms of transmissible diseases pose 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. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Publication Date: September 11, 2003
Effective Date: September 11, 2003
Expiration Date: February 8, 2004
Hearing Date: October 13, 2003
 [See Notice This Register]

Workforce Development (Civil Rights, Chs. DWD 210—)

Rules adopted repealing **chs. PC 1, 2, 4, 5 and 7** and revising **chs. DWD 218 and 225** and creating **ch. DWD 224**, relating to the transfer of personnel commission responsibilities to the equal rights division.

Finding of emergency

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

2003 Wisconsin Act 33 transfers the responsibility for processing certain employment-related complaints against state respondents from the Personnel Commission (PC) to the Equal Rights Division (ERD) effective upon publication of 2003 Wisconsin Act 33. The ERD needs rules governing the procedures for processing these complaints effective immediately to ensure that service is not seriously delayed by this administrative change. The PC expects to transfer approximately 200 pending cases to ERD immediately.

2003 Wisconsin Act 33 transfers responsibility from the PC to ERD for 9 different types of employment-related complaints against state respondents. The ERD has had

responsibility for processing complaints against nonstate respondents for 8 of the 9 types of complaints. This order makes minor amendments to existing rules to include state respondents and creates a new rule chapter on whistleblower protection for state employees, which is the one issue that ERD has not previously handled because the law does not apply to nonstate respondents. The newly-created whistleblower rules are similar to the existing fair employment rules.

A nonstatutory provision of 2003 Wisconsin Act 33 transfers existing PC rules to ERD. This order repeals those rules. Adopting the PC rules would result in different procedures for cases against state respondents and nonstate respondents for no logical reason. The dual system would be difficult to administer and confusing to complainants, many of whom are pro se. Even if ERD adopted the PC rules, an emergency rule would be necessary to remove confusing irrelevant and obsolete information.

This order repeals the PC rules and revises ERD rules by emergency rule to ensure that a clear, logical, and fair process is in place for handling the newly-transferred responsibilities for protecting Wisconsin's workforce from discrimination and retaliation.

Publication Date: August 5, 2003

Effective Date: August 5, 2003

Expiration Date: January 2, 2004

Scope statements

Commerce

Subject

Chapter Comm 40, relating to Gas Systems.

Objective of the Rule. The objective of the rule is to update the Administrative Code ch. Comm 40 to current national standards.

Policy analysis

Chapter Comm 40 establishes minimum technical standards for the safe design, construction, location, installation, operation, inspection, repair and maintenance of equipment for gas systems. The chapter incorporates by reference several national standards relating to liquefied petroleum gas, liquefied natural gas and compressed natural gas. This rule project will update the chapter and it will evaluate adopting by reference the current editions of the adopted standards. The rule project will also consider the adoption of new national standards relating to gaseous and liquefied hydrogen.

The alternative of not revising the chapter would result in the Administrative Code not being up-to-date with current national standards.

Statutory authority

The statutory authority is contained in sections 101.02 (1), 101.16 and 101.17, Stats.

Staff time required

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

Chapters Comm 95, 27 and 2, and PSC 186, relating to Mobile Home Parks, Manufactured Homes and Fees.

Objective of the Rule. The objective of the rule is to do a general update of ch. Comm 95 – Mobile Home Parks. The update will study combining chs. Comm 27 – Manufactured Homes, and PSC 186 – Water or Sewer Service in Mobile Home Parks, with ch. Comm 95. The update will also review the park permit fees in ch. Comm 95 and move those fees to ch. Comm 2 – Fee Schedule. This code update may result in one or more rule packages to be presented for public hearings.

Policy analysis

Chapter Comm 27 contains safety and health provisions for the construction, inspection and warranty of manufactured homes. Chapter Comm 95 contains provisions regulating and licensing mobile home parks. Chapter Comm 95 was transferred from the Department of Administration to the Department of Commerce in 2001. The last major revisions to chapter Comm 95 were effective in 1996. Chapter PSC 186

contains provisions regulating persons who supply water or sewer service to mobile home park occupants. The authority to administer ch. PSC 186 was transferred from the Public Service Commission to the Department of Commerce in 2001. Chapter Comm 2 establishes fees charged by the Department for the services the Department provides.

In studying the possibility of combining the 3 code chs. into one chapter, this rule change initiative will review the recommendations made by the Governor's Blue Ribbon Task Force on Manufactured Housing related to Commerce programs. Installation standards and a complaint resolution system required under federal regulations will be considered along with the use of consistent terminology.

Statutory authority

Sections 101.92, 101.935 and 101.937, Wisconsin Statutes.

Staff time required

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Commerce

Subject

Chapters Comm 5 and 96–98, relating to Manufactured Home Dealers and Salespersons.

Objective of the Rule. The objective of the rule is to do a general update of chs. Comm 96 – Manufactured Home Dealer Financial Eligibility, Comm 97 – Manufactured Home Dealer Trade Practices, Facilities and Records, and Comm 98 – Licensing Periods and Fees for Manufactured Home Dealers and Salespersons. The update will study combining these 3 chapters into one chapter and moving some of the chapters' provisions to ch. Comm 5 – Licenses, Certifications and Registrations. This code update may result in one or more rule packages to be presented for public hearings.

Policy analysis

Chapters Comm 96–98 contain provisions relating to the issuance of and the responsibilities connected with licenses issued by the Department to manufactured home dealers and salespersons. These chapters were transferred from the Department of Administration to the Department of Commerce in 2001. The last revisions to these chapters were effective in 1998.

In studying the possibility of combining the 3 chapters and moving some provisions to ch. Comm 5, this rule change initiative will review the recommendations made by the Governor's Blue Ribbon Task Force on Manufactured Housing related to Commerce programs. Any related federal regulations will also be considered along with the use of consistent terminology.

Statutory authority

Sections 101.02 (1), 101.92, 101.951 and 101.952, Stats.

Staff time required

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Insurance**Subject**

Section Ins 18.10 (2) (d), Wis. Adm. Code, relating to the annual adjustment to the minimum necessary cost or payment to access independent review.

Objective of the Rule. The Office is proposing modifications to s. 18.10 (2) (d), Wis. Adm. Code, to incorporate a mechanism to annually adjust the threshold amount of the cost or expected cost, or payment or expected payment of a denied treatment or procedure, including experimental treatments or procedures, that would permit an insured to access the independent review process. The current threshold is \$250. The proposed modification would include an annual adjustment in that threshold amount to be modified in accordance with the change in the consumer price index (CPI) for all urban consumers, U.S. city average as determined by the U.S. department of labor.

Policy analysis

The current rule references the initial \$250 amount included within s. 632.835 (1) (a) 4. and (1) (b) 4., Stats., but does not include a provision for modifying the dollar amount in keeping with the CPI as required by s. 632.835 (5) (c), Stats.

Statutory authority

Sections 601.41 (3) and 632.835 (5) (c), Stats.

Staff time required

100 hours.

Pharmacy Examining Board**Subject**

Modify Wis. Admin Code s. Phar 2.03 (4) to not allow an applicant to be admitted to the practical examination, NAPLEX examination or multi-state pharmacy jurisprudence examination prior to completing an internship in the practice of pharmacy, and either obtaining certification by the foreign pharmacy graduate examination committee where necessary or graduate from a school or college of pharmacy approved by the board.

Objective of the rule. The objective of the amendment is to make admission requirements for all required professional examinations consistent with national standards and to simplify and streamline the application process.

Policy analysis

Current Wis. Admin. Code s. Phar 2.03 (4) allows an applicant to be admitted to the practical examination, NAPLEX examination or multi-state pharmacy jurisprudence examination if the applicant is within 360 credit hours of completing an internship in the practice of pharmacy (for applicants certified by the foreign pharmacy graduate

examination committee) or 60 days before graduation from a school or college of pharmacy approved by the board. In certain instances with other state Pharmacy Examining Boards this rule may penalize applicants who wish to later transfer scores.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2), 450.03 (2) and 450.04 (3).

Staff time required

It is estimated that 20 hours will be needed to amend the rules.

The proposed rules will have no effect on the budget, staff or uniform policies or procedures of the Department of Regulation and Licensing.

Public Instruction**Subject**

Chapter PI 25, relating to children at risk of not graduating from High School.

Objective of the Rule. To align the children at risk rules under ch. PI 25 with the children at risk statutes under s. 118.153, as a result of 2003 Wisconsin Act 33.

Policy analysis

The children at risk rules under ch. PI 25 are being modified to correspond to changes made to the children at risk statutes under s. 118.153, as a result of 2003 Wisconsin Act 33. The proposed rule will modify the definition of "children at risk" to eliminate the phrase "failed the high school graduation examination administered under s. 118.30 (1m) (d), Stats." Also, the note at the end of the chapter will be modified to refer to the Division for Academic Excellence rather than the Division for Learning Support: Content and Learning.

Policy alternatives

Maintain current law. However, if the rules are not modified they will conflict with current statutory requirements.

Statutory authority

Sections 118.153 (7) and 227.11 (2) (a), Stats.

Staff time required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than 6 months to complete.

Public Instruction**Subject**

Chapter PI 36, relating to Open Enrollment Waiting Lists.

Objective of the Rule. 2003 Wisconsin Act 55 allows nonresident school districts to establish waiting lists of students who were denied open enrollment because of lack of space. The Act requires the department to promulgate administrative rules. The proposed rules will specify requirements for school boards relating to waiting lists, timelines, and notification requirements.

Policy analysis

The department is required to promulgate rules.

Statutory authority

Sections 118.51 (5) (d) and 227.11 (2) (a), Stats.

Staff time required

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminable. The time needed to create the rule language itself will be minimal. However, the time involved with guiding the rule through the required rule promulgation process is fairly significant. The rule process takes more than six months to complete.

Public Service Commission**Subject**

Modification of Rules concerning Emergency Telephone Number Service for Wireless Subscribers.

Objective of the Rule. The objective of this rulemaking is to implement a three-year grant program created by 2003 Wisconsin Act 48 to reimburse local governments and commercial mobile radio service providers for certain costs they will incur to establish an enhanced wireless 911 service. The Act funds the grant program by imposing a temporary surcharge on the subscribers of commercial mobile radio service in Wisconsin.

Section 146.70 (3m) (d) 4., Stats., directs the Commission to promulgate rules setting forth the requirements and procedures for making grants from the Wireless 911 Fund. The rules shall establish the criteria the Commission will use to estimate the costs that will be incurred to implement enhanced wireless 911 service, the time period during which the funds may be disbursed, the record-keeping requirements grantees must comply with, and the conditions under which a wireless provider or local government may revise a previously approved application.

Section 146.70 (3m) (e), Stats., directs the Commission to promulgate rules for making supplemental grants from the Wireless 911 Fund to counties that have submitted joint applications. The rules shall establish an incentive to encourage counties to submit joint applications.

Section 146.70 (3m) (f), Stats., directs the Commission to promulgate rules requiring each wireless provider to impose the same monthly surcharge for each telephone number of a customer that has a billable address in Wisconsin, except that the rules shall adjust the amount of the surcharged that is imposed on customers who prepay for service to ensure that such customers pay an amount that is comparable to the monthly amount paid by other customers.

Policy analysis

Facilities that receive and process emergency calls placed to 911 are referred to as public safety answering points (PSAPs). There are 138 PSAPs in Wisconsin that receive 911 calls from traditional landline or wireline telephones. Seventy-one of these PSAPs are operated by counties, 64 by municipalities, two by the University of Wisconsin, and one by the federal government at Ft. McCoy. Section 146.70, Stats., currently authorizes a surcharge on wireline telephone access lines to compensate participating telecommunications utilities for the telephone network expenses incurred to provide the wireline 911 service. The countywide emergency telephone number system authorized under s. 146.70, Stats., for wireline access lines is currently in operation in 66 counties in Wisconsin, and in the process of development in 4 other counties.

The 911 emergency number systems that are currently deployed in Wisconsin will terminate calls directed to 911 from wireless telephones. This is required by s. 146.70 (2) (h), Stats.,. Currently, all calls to 911 originated from wireless telephones are routed to county PSAPs or call centers. However, the existing systems do not disclose the wireless calling party's telephone number or location. The lack of automatic location disclosure severely degrades the usefulness of wireless 911 service, particularly in rural and off-road locations that lack landmarks or other reference points known to the caller and dispatcher answering the call.

Additional equipment and computer software are required to provide this automatic disclosure of the calling party name and actual location at the time of the call. No PSAPs in Wisconsin currently have this capability for wireless calls, although some have made substantial investments to acquire this service feature in the future. The principal goal of the legislation creating the Wireless 911 Fund was to provide funds for the purchase of the additional equipment and network upgrades necessary for this automatic disclosure of location information and calling party identification.

This rule also responds in part to the conditions established by the Federal Communications Commission for deployment of wireless enhanced 911 services. See 47 C.F.R. s. 20.18 (j). Under that rule, a wireless telecommunications carrier must provide the wireless 911 service only when all of the following conditions have been met: (1) the administrator of a Public Safety Answering Point (PSAP) has requested the service; (2) the PSAP is capable of receiving and utilizing the information associated with the service; and (3) the PSAP has a mechanism in place to recover the cost of the service.

Statutory authority

Sections 146.70, 196.02 (3) and 227.11 (2), Stats.

Staff time required

It is estimated that the rulemaking proceeding will take approximately 240 staff hours.

Other resources necessary to develop rule

Agency staff will contact local governments and telecommunications carriers in this state to solicit their participation in this rulemaking proceeding.

Regulation and Licensing

Revision and clarification of administrative rules relating to the regulation of licensed and certified real estate appraisers.

Under federal law, the Department is required to follow the guidelines set forth in the Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers adopted by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and the Real Property Appraiser Qualification Criteria established by the Appraiser Qualifications Board of the Appraisal Foundation. The proposed revisions will primarily incorporate changes relating to these guidelines.

Objective of the Rule. Clarify and update administrative rules. Recommended changes relate to:

[1] revisions to the application, examination, experience, qualifying education, continuing education and renewal requirements for licensed and certified real estate appraisers;

[2] revisions relating to unprofessional conduct, and

[3] clarity, grammar, punctuation, and use of plain language.

Policy analysis

Existing policies are contained in Chapters RL 80–87 and Appendix I, Wis. Admin. Code. The proposal would do the following:

- [1] definitions;
- [2] application, examination, experience, qualifying education, continuing education and renewal requirements;
- [3] rules of unprofessional conduct;

[4] chapters RL 80–87, Code to make minor, technical and grammatical changes.

Statutory authority

Sections 227.11 (2); 458.03 (1); 458.06; 458.08; 458.085, Stats.

Staff time required

80 hours.

Submittal of rules to legislative council clearinghouse

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

Chiropractic Examining Board

Rule Submittal Date

On September 5, 2003, the Chiropractic Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule relates to minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules, especially related to the board's adoption of Part IV of the national exam in lieu of a state-administered exam to demonstrate clinical competence.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 16, 2003, at 9:00 a.m. at 1400 East Washington Avenue, Madison, WI 53702.

Contact

Joel Garb, Paralegal, Office of administrative Rules, (608) 266-0495.

Dentistry Examining Board

Rule Submittal Date

On September 2, 2003, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule relates to the practice of dental hygiene.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 5, 2003 at 9:30 a.m. in room 179A at 1400 East Washington Avenue, Madison, Wisconsin 53702.

Contact

Joel Garb, Paralegal, Office of administrative Rules, (608) 266-0495.

Health and Family Services

Rule Submittal Date

On September 10, 2003, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

To create ch. HFS 2, relating to Department recoupment of program benefit overpayments from program recipients.

Analysis Prepared by the Department of Health and Family Services

The Department proposes to create a new chapter of administrative rules, HFS 2, that addresses the Department's ability to recoup overpayments the Department made to recipients of Department program benefits.

Under section 16.51 (4) of the Wisconsin Statutes, the Wisconsin Department of Administration is responsible for the collection of all monies due the state. In the State Accounting Manual, the Department of Administration has, in turn, assigned to each State agency the responsibility to establish and document internal procedures to assure that all accounts are recorded, billed and collected or written-off in an efficient and timely manner. This includes the return of benefits that were overpaid to recipients.

To date, the Department of Health and Family Services has relied on its written overpayment policy to authorize the procedure the Department uses to recoup benefit payments. In 1999, in *Mack vs. DHFS*, 231 Wis. 2d 844, 605 N.W. 2d 651 (Ct. App. 1999), the Wisconsin Court of Appeals found that although the Department has the right to recover erroneous payment of public funds, the Department could not employ its recoupment process without promulgating the process as an administrative rule. Therefore, the Department proposes to promulgate its procedure for recouping overpayments as ch. HFS 2.

The Department's authority to repeal and recreate these rules is found in s. 227.11 (2) (a), Stats. The rules interpret s. 16.51 (4), Stats.

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

Don Warnke
Bureau of Fiscal Services
266-5869

Shelly Malofsky
Office of Legal Counsel
266-0386

Insurance

Rule Submittal Date

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a

proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on September 12, 2003.

Analysis

These changes will affect Section Ins 25.50 (1), Wis. Adm. Code, relating to An Exception to Disclosure of Financial Information.

Agency Procedure for Promulgation

The date for the public hearing is October 22, 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, Services 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.

Psychology Examining Board

Rule Submittal Date

On September 2, 2003, the Psychology Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), Stats.

The proposed rule relates to prohibited relationships.

Agency Procedure for Promulgation

A public hearing is required and will be held on November 12, 2003 at 9:30 a.m. in room 179A at 1400 East Washington Avenue, Madison, Wisconsin 53702.

Contact

Joel Garb, Paralegal, Office of administrative Rules, (608) 261-2385.

Public Service Commission

Rule Submittal Date

NOTICE IS GIVEN, pursuant to s. 227.14 (4m),

Stats., that on September 12, 2003, the Public Service Commission of Wisconsin submitted a proposed rule to the Joint Legislative Council Staff (Rules Clearinghouse) for review.

Analysis

The proposed rule, Commission docket 1-AC-212, amends ch. PSC 111, Wis. Admin. Code, relating to strategic energy assessment time periods.

Agency Procedure for Promulgation

A public hearing will be held on October 24, 2003, at 10:30 AM at the Public Service Commission building at 610 North Whitney Way, Madison, Wisconsin.

Contact

The Electric Division of the Commission is the organizational unit responsible for the promulgation of the rule. The contact person is Randel A. Pilo, Electric Division, at (608) 266-3165.

Regulation and Licensing

Rule Submittal Date

On September 11, 2003, the Department of Regulation and Licensing submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b) and 227.11 (2), 458.24, Stats.

The proposed rule relates to the repeal of ch. RL 87, Appendix I, which contains the 2003 edition of the USPAP and recreate it to incorporate by reference the 2004 edition of USPAP.

Agency Procedure for Promulgation

A 30-Day Notice pursuant to ss. 227.11 (2) and 458.24, Stats., and interpreting ss. 458.24 and 458.26 (3) (b), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., was submitted to the Revisor on September 2, 2003.

Contact

Joel Garb, Paralegal, Office of administrative Rules, (608) 261-2385.

Rule-making notices

Notice of Hearing Chiropractic Examining Board [CR 03-082]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Chiropractic Examining Board in ss. 115.08 (5) (b), 227.11 (2), 446.02, and s. 446.04, Stats., and interpreting ch. 446, Stats. the Chiropractic Examining Board will hold a public hearing at the time and place indicated below to consider the minor changes to conform the rules to current practices and to correct oversights and problematic language in the current rules, especially related to the board's adoption of Part IV of the national exam in lieu of a state-administered exam to demonstrate clinical competence.

Hearing Date, Time and Location

Date: **October 16, 2003**
 Time: 9:00 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 November 30, 2003, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 446.02, and s. 446.04, Stats.

Statutes interpreted: Chapter 446, Stats.

This proposed rule-making order makes numerous minor changes to the existing rules regulating the practice of chiropractic, mainly to conform the rules to current practices but also to correct oversights and problematic language in the current rules,

SECTION 1 moves text from two other locations in the rules, Chir 2.02 (7) and Chir 3.03 (2) (k) to a more logical location.

SECTION 2 changes the advance time required for consideration of applications based on the change to accept Part IV of the national examination and changes the address for requesting applications.

SECTION 3 updates the name of the U.S. Office of Education, allows for future changes in the name, and creates a mechanism for the board to be able to consider applicants with foreign degrees.

SECTION 4 removes a never-used option for direct board approval of a college or university and transfers that responsibility to the U.S. Office of Education or its successor, and creates a mechanism for the board to be able to consider applicants with foreign degrees.

SECTION 5 updates the name of the U.S. Office of Education, allows for future changes in the name, and creates a mechanism for the board to be able to consider applicants with foreign degrees.

SECTION 6 deletes language that is moved to a more logical location by SECTION 1.

SECTION 7 removes language that has been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 8 removes language that has been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 9 removes two sections that have been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 10 removes language that has been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 11 removes three sections that have been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 12 removes language that has been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 13 removes language that has been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 14 removes language that has been rendered obsolete by the acceptance of Part IV of the national examination.

SECTION 15 removes language related to a credentialing distinction that is not observed.

SECTION 16 removes a section related to a credentialing distinction that is not observed.

SECTION 17 removes obsolete language related to a credentialing distinction that is not observed; change "evidence" to "verification" to avoid licensees sending in CE certificates; clarifies that the certificates need to be kept and sent in only on request; allows the CPR requirement to be waived; clarifies that a person may return to practice once requirements are met; removes obsolete language related to a credentialing distinction that is not observed; and clarifies that CE must be up-to-date for reinstatement.

SECTION 18 clarifies the meaning of "jurisdiction"; create a means by which a foreign degree may be recognized; changes language to conform to language in another section, Chir 2.02 (3); removes obsolete language related to a state practical exam; changes language to conform to language in Chir 3.03(1)(e); permits a chiropractic college to be accredited by an agency other than the CCE; acknowledges another source of practical exam scores; and deletes language which is moved to a more logical location, Chir 2.01(3).

SECTION 19 changes the address for requesting applications and makes the temporary permit less restrictive.

SECTION 20 removes obsolete language related to a credentialing distinction that is not observed.

SECTION 21 clarifies a current and common use of titles.

SECTION 22 changes a mandate to audit insurance to a discretionary decision.

SECTION 23 grants the board the discretion to waive the CPR requirement.

SECTION 24 removes a reference to an approval process that is not active.

SECTION 25 clarifies a current practice question .

SECTION 26 changes the address for requesting lists of courses of instruction.

SECTION 27 grants the board the discretion to waive or postpone the CE requirement.

SECTION 28 grants the board the discretion to approve a provider of continuing education not listed in the rule and clarifies that CE credit will not be granted for instruction in techniques or practices that the board has determined are unsafe or ineffective.

SECTION 29 adds a requirement that an instructor of continuing education be qualified.

SECTION 30 changes the address for requesting applications.

SECTION 31 adds the United States Office of Education or its successor as an accrediting organization.

SECTION 32 changes the address for requesting applications.

SECTION 33 adds specific instances to the general rule against fraud to make it easier to enforce.

SECTION 34 clarifies the source of forms.

SECTION 35 clarifies the source of forms.

SECTION 36 clarifies the source of forms.

SECTION 37 expands and clarifies the scope of disciplinary actions and malpractice claims that the board may consider in approving a preceptor.

SECTION 38 renumbers the section and allows the board to consider a replacement preceptor.

SECTION 39 changes a reference to "preliminary patient history" to a more logical place and conform the language of the definition of "adjunctive services to the statute, sec. 446.02 (7) (b).

SECTION 40 moves a description of "preliminary patient history" to a more logical spot by combining a note with the preceding line.

SECTION 41 deletes the note combined above.

SECTION 42 moves language from section Chir 10.06 to a more logical spot.

SECTION 43 removes language related to an annual review of programs that is not performed.

SECTION 44 moves language to a more logical spot.

SECTION 45 moves language to a more logical spot.

SECTION 46 creates a note in the chapter on patient records to remind chiropractors of the responsibility to observe federal rules and regulations regarding the privacy of such records.

TEXT OF RULE

SECTION 1. Section Chir 2.01 (3) is created to read:

(3) An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.

SECTION 2. Section Chir 2.02 (intro.) and Note are amended to read:

Chir 2.02 Applications. An applicant for the practical examination demonstrating clinical competence for license licensure as a chiropractor shall make application on a form prescribed by the board at least 30 days prior to the date of the

next scheduled examination board meeting and shall also submit:

Note: Applications are available upon request to the board office, 1400 East Washington Avenue, Madison, Wisconsin 53702, from the Department of Regulation and Licensing, Chiropractic Examining Board, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 3. Section Chir 2.02 (3) and Note are amended to read:

(3) An official certified transcript sent directly to the board from a college or university or post-secondary technical college accredited by an accrediting body listed as nationally recognized by the secretary of the federal department of education an agency approved by the United States Office of Education or its successor, or from a foreign school determined to be equivalent to an accredited college or post-secondary technical college by an approved accrediting agency, or a post-secondary technical college showing completion by the applicant of a minimum of 60 credits in post-secondary academic education as specified in s. 446.02 (2), Stats.

Note: Accrediting bodies nationally recognized by the secretary of the federal department of education United States Office of Education include the New England Association of Schools and Colleges, the Middle States Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, and the Western Association of Schools and Colleges.

SECTION 4. Section Chir 2.02 (4) is amended to read:

(4) An official certified transcript sent directly to the board from a chiropractic college accredited by the commission on accreditation of the council on chiropractic education, ~~or approved by the board. (CCE)~~ or by an agency approved by the United States Office of Education or its successor, or from a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE or another approved accrediting agency.

SECTION 4. Section Chir 2.02 (6) (a) and (b) are amended to read:

(6) Applications for an initial license to practice chiropractic in this state received on or after July 1, 1998, shall include all of the following:

(a) An official certified transcript sent directly to the board from a college or university accredited by an accrediting body listed as nationally recognized by the secretary of the federal department of education, or from a foreign school determined to be equivalent to an accredited college or university by an approved accrediting agency, stating that the applicant has graduated from that college or university with a bachelor's degree.

(b) An official certified transcript sent directly to the board from a college of chiropractic accredited by the council on chiropractic education (CCE) or by an agency approved by the United States Office of Education or its successor, or from a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE or another approved accrediting agency, stating that the applicant has graduated from the college with the degree of doctor of chiropractic.

SECTION 6. Section Chir 2.02 (7) is repealed.

SECTION 7: Section Chir 2.03 (2) (intro.) is amended to read:

(2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. An applicant shall pass each part of a practical examination demonstrating clinical competence which includes the following parts:

SECTION 8: Section Chir 2.04 is amended to read:

Chir 2.04 Unauthorized assistance or cheating on examinations. The board may withhold the grade, deny release of grades or deny issuance of a credential of an applicant who gives or receives unauthorized assistance during the state law or practical examination demonstrating clinical competence, violates rules of conduct of an examination, or otherwise cheats or acts dishonestly respecting an examination. The board may consider this applicant for retesting at a future time.

SECTION 9: Sections Chir 2.05 and Chir 2.06 are repealed.

SECTION 10: Section Chir 2.07 (3) is amended to read:

(3) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. To pass the practical examination demonstrating clinical competence, an applicant shall receive a grade determined by the board to represent minimum competence to practice on each part of the examination.

SECTION 11: Sections Chir 2.08, Chir 2.09 and Chir 2.10 are repealed.

SECTION 12: Section Chir 2.11 (2) is amended to read:

(2) PRACTICAL EXAMINATION DEMONSTRATING CLINICAL COMPETENCE. An applicant who fails the practical examination demonstrating clinical competence due to the failure of one part of the examination may retake the failed part only. An applicant who fails the practical examination demonstrating clinical competence due to the failure of 2 or more parts of the practical examination shall be required to retake the entire practical examination demonstrating clinical competence.

SECTION 13: The Note following Chir 2.11 (2) is repealed.

SECTION 14: Section Chir 2.11 (3) is amended to read:

(3) LIMITATION ON REEXAMINATION. If an applicant does not pass all parts of the examinations under subs. (1) and (2) within 2 years of the first attempt, the applicant shall retake and pass the entire practical examination demonstrating clinical competence and state law examination in order to be licensed.

SECTION 15: The Title of Chapter Chir 3 is amended to read:

Chapter Chir 3 LICENSE REGISTRATION AND RENEWAL

SECTION 16: Section Chir 3.01 is repealed.

SECTION 17: Section Chir 3.02 is amended to read:

Chir 3.02 Biennial registration License renewal. (1) REQUIREMENTS FOR RENEWAL. To renew and obtain a new certificate of registration license a licensee shall, by December 31 of the even-numbered year following initial licensure and every 2 years thereafter, file with the department:

(a) An application for renewal on a form prescribed by the department.

(b) The fee required under s. 440.08 (2) (a), Stats.

(c) Evidence Verification that the licensee has, during the biennial period immediately preceding application, completed the continuing education requirement specified in s. 446.02 (1) (b), Stats., except that the requirement may be waived if the licensee was not practicing in Wisconsin during that period. Licensees shall retain original documents showing attendance at programs for at least 4 years from the time that credit is claimed for the continuing education

program. Licensees shall deliver their original documents or copies to the board upon request.

(d) Evidence that the licensee is certified in cardiopulmonary resuscitation or has been granted a waiver of the requirement by the board.

(2) REQUIREMENTS FOR LATE RENEWAL. A licensee who fails to meet the requirements in sub. (1) by the renewal date shall cease and desist from practice as a chiropractor until all requirements for renewal are met. Within 5 years following the renewal date, a licensee may renew and obtain a new certificate of registration license by filing with the department the materials specified in sub. (1) and a late renewal fee specified in s. 440.08 (3) (a), Stats.

(3) REQUIREMENTS FOR REINSTATEMENT. (a) Reinstatement following failure to renew. A licensee who fails to renew within 5 years of the renewal date may be reinstated by meeting requirements in sub. (2), completing continuing education requirements for the previous biennium, and may be required to take an examination prescribed by the board.

(b) Reinstatement following disciplinary action. An applicant for reinstatement of license following disciplinary action shall meet requirements in sub. (1) and may be required to successfully complete an examination as the board prescribes.

SECTION 18: Section Chir 3.03 is amended to read:

Chir 3.03 Licensure by endorsement. (1) QUALIFICATIONS. The board shall grant a license to a chiropractor who holds a valid license by the proper authorities of any other jurisdiction state or country provided the applicant:

(a) Does not have an arrest or conviction record subject to ss. 111.321, 111.322 and 111.335, Stats.

(b) Has graduated from a college of chiropractic accredited by the council on chiropractic education and approved by the board (CCE) or by an agency approved by the United States Office of Education or its successor, or from a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE or another approved accrediting agency.

(c) 1. Has If the applicant first applied for a license to practice chiropractic in any state or country before July 1, 1960, the applicant must have graduated from a reputable college of chiropractic. If the applicant first applied for any license to practice chiropractic in any jurisdiction before July 1, 1960.

2. Has If the applicant first applied for a license to practice chiropractic in any state or country between July 1, 1960 and June 30, 1998, the applicant must have completed at least the first 2 years of a baccalaureate degree program a minimum of 60 credits in post-secondary academic education at a college or university accredited by an accrediting body nationally recognized by the secretary of the United States department of education, the council on chiropractic education (CCE) or by an agency approved by the United States Office of Education or its successor, or from a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE or another approved accrediting agency.

if the applicant first applied for any license to practice chiropractic in any jurisdiction on or after July 1, 1960.

3. Has If the applicant first applied for a license to practice chiropractic in any state or country on or after July 1, 1998, the applicant must have graduated with a baccalaureate degree from a college or university accredited by an accrediting body nationally recognized by the secretary of the United States department of education, the council on chiropractic

education (CCE) or by an agency approved by the United States Office of Education or its successor, or from a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE or another approved accrediting agency

if the applicant first applied for any license to practice chiropractic in any jurisdiction on or after July 1, 1998.

Note: Accrediting bodies nationally recognized by the secretary of the federal Department of Education include the New England Association of Schools and Colleges, the Middle States Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, and the Western Association of Schools and Colleges.

(d) Has been engaged in clinical chiropractic case management at least 24 hours per week in one or more jurisdictions in which the applicant has a current license for at least 3 of the 5 years immediately preceding application in Wisconsin.

(e) Has successfully completed a practical examination demonstrating clinical competence which, in the board's judgment, is substantially equivalent to the practical examination demonstrating clinical competence administered accepted by the board.

(f) Has successfully completed the special purpose examination in chiropractic, if the applicant has not taken the initial licensure examinations of the national board of chiropractic examiners.

(g) Has successfully completed a state law examination on the provisions of the Wisconsin statutes and administrative rules relating to chiropractic.

(h) Has not had a license or other credential limited, suspended or revoked by a licensing or regulatory authority in Wisconsin or other jurisdiction state or country.

(2) APPLICATION PROCEDURE. Each applicant shall file a completed application on forms provided by the department. The application shall include all of the following:

(a) The signature of the applicant.

(b) The fee required under s. 440.05(1), Stats.

(d) A certified transcript from a chiropractic college accredited by the commission on accreditation of the council on chiropractic education, ~~or approved by the board, (CCE)~~ or by an agency approved by the United States Office of Education or its successor, or from a foreign school determined to be equivalent to an accredited college of chiropractic by the CCE or another approved accrediting agency, sent directly to the board by the college.

(e) A certified transcript verifying that the applicant has a bachelor's degree from a college or university accredited by an accrediting body nationally recognized by the ~~secretary of the federal department of education~~ United States Department of Education, or from a foreign school determined to be equivalent to an accredited college or university by an approved accrediting agency, if the applicant first applies for any license to practice chiropractic in any jurisdiction on or after July 1, 1998. The transcript shall be sent directly to the board by the college or university.

(f) Verification of successful completion of a practical examination demonstrating clinical competence which, in the board's judgment, is substantially equivalent to the practical examination demonstrating clinical competence accepted by the board. The verification shall be forwarded directly to the board from the state that administered the examination or from the national board.

(g) Proof of successful completion of the special purpose examination in chiropractic or the initial licensure examination of the national board of chiropractic examiners. The proof of completion shall be forwarded directly to the board from the institution that administered the examination.

(h) Proof of successful completion of the state law examination.

(i) Verification of licensure status in all states in which the applicant is or has been licensed to practice chiropractic.

(j) Information requested by the board relating to any convictions or pending charges for criminal offenses.

~~(k) An otherwise qualified applicant with a disability shall be provided with reasonable accommodations.~~

Note: Applications are available upon request to the board office located at 1400 East -Washington Avenue, P.O. Box 8935, Madison, WI 53708.

SECTION 19: The Note following section Chir 3.035 (1) and section Chir 3.035 (2) are amended to read:

Note: Applications are available upon request to ~~from~~ the Department of Regulation and Licensing, Chiropractic Examining Board, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

~~(2) A temporary permit to practice chiropractic issued by the board is valid for 10 calendar days during the 12 month period immediately following its effective date, but no single period of practice under the temporary permit may exceed 3 calendar days. The board may issue a temporary permit to practice chiropractic to an individual who is licensed to practice chiropractic in another state or country. The applicant, or holder of for a temporary permit shall inform the board, in writing, of the locations at which and the dates on which the applicant or holder of the temporary permit will be practicing requests to practice under the temporary permit, prior to engaging in practice under the temporary permit, and shall request the issuance of a temporary permit. The board may issue a temporary permit for a reasonable time period based on the activity.~~

SECTION 20: Section Chir 3.04 is amended to read:

Chir 3.04 Display of license. The license ~~and certificate of biennial registration~~ shall be displayed in a prominent place by every person licensed and currently registered by the board.

SECTION 21: Section Chir 3.06 is amended to read

Chir 3.06 Professional title. A licensee shall use the suffix "D.C." or "Chiropractor" immediately following his or her surname for proper identification. The title "Doctor" or "Dr." may be used if "Chiropractor" is used following the name.

SECTION 22: Section Chir 3.07 is amended to read:

Chir 3.07 Professional liability insurance. Every chiropractor practicing in the state of Wisconsin shall have professional liability insurance coverage in effect at all times in the amount of at least \$100,000 for each occurrence and \$300,000 for all occurrences in one year. The board ~~shall~~ may conduct random audits of chiropractors licensed and practicing in this state, and institute disciplinary proceedings against any chiropractor who fails to submit proof that he or she has insurance coverage meeting the minimum limits required by this section.

SECTION 23: Section Chir 3.09 is amended to read:

Chir 3.09 Cardiopulmonary resuscitation certification. Every chiropractor shall obtain certification in cardiopulmonary resuscitation at least every 2 years. The board may grant a waiver of this requirement in cases of hardship or retirement from practice.

SECTION 24: The Note following section Chir 4.04 (3) is amended to read:

Note: The board annually reviews for approval programs offered or approved by the council on chiropractic education, American chiropractic registry of radiographic technicians, the university of Wisconsin, the Wisconsin vocational, technical and adult education system, hospital training and other programs. A list of board-approved programs is available upon request from the board office.

SECTION 25: Section Chir 4.05 (1) (b) 3. is amended to read:

3. Acupuncture by needle insertion or invasive laser application.

SECTION 26: The Note following section Chir 4.05 (2) (d) 3. is amended to read:

Note: A list of courses of instruction in therapeutic ultrasound and galvanic therapy approved by the board is available upon request from the board office at 1400 East Washington Avenue, Department of Regulation and Licensing, Chiropractic Examining Board, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 27: Section Chir 5.01 (1) (e) is created to read:

(e) The board may grant a waiver, partial waiver or postponement of the continuing education requirements in cases of hardship.

SECTION 28: Section Chir 5.02 (1) (a) and (b) are amended to read:

(a) The program is sponsored by the Wisconsin chiropractic association, the American chiropractic association, the international chiropractors association, a college of chiropractic approved by the board, or a college of medicine or osteopathy accredited by an agency recognized by the United States department of education, or another chiropractic organization approved by the board.

(b) The program subject matter relates to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b). The board will not approve credit for continuing education regarding a technique or practice which the board has determined to be unsafe or ineffective.

SECTION 29: Section Chir 5.01 (1) (h) is created to read:

(h) The instructor is qualified to present the course.

SECTION 30: The Note following section Chir 5.01 (4) (a) 1. is amended to read:

Note: Application forms are available on request to the board office located in 1400 East Washington Avenue, from the Department of Regulation and Licensing, Chiropractic Examining Board, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 31: Section Chir 5.01 (4) (a) 6. is amended to read:

6. Describe the names and qualifications of all instructors, and if applicable, whether an instructor of the program who is an undergraduate or postgraduate faculty member of a sponsoring college was appointed in accordance with accreditation standards of the council on chiropractic education (CCE) or by an agency approved by the United States Office of Education or its successor.

SECTION 32: The Note following section Chir 5.01 (6) is amended to read:

Note: Continuing education approval request forms are available upon request to the board office at 1400 East Washington Avenue, from the Department of Regulation and Licensing, Chiropractic Examining Board, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 33: Section Chir 6.02 (14) is amended to read:

(14) Obtaining or attempting to obtain any compensation for chiropractic services by fraud, including billing for services not rendered or submitting a claim for a fraudulent diagnosis.

SECTION 34: Section Chir 9.03 (3) (intro.), (4) and (5) are amended to read:

(3) Certifies to the board, on forms supplied by the board department:

(4) Certifies to the board, on forms supplied by the board department, that all chiropractors who participate as preceptors are faculty of the chiropractic college.

(5) Certifies to the board, on forms supplied by the board department, that the chiropractor preceptor and the chiropractic student have agreed on the goals of the preceptor program to be completed by the chiropractic student.

gram.

SECTION 35: Section 9.04 (3) (intro.), (4) and (5) are amended to read:

(3) Certifies to the board, on forms supplied by the board department:

(4) Certifies to the board, on forms supplied by the board department, that all chiropractors who participate as preceptors are faculty of the chiropractic college.

(5) Certifies to the board, on forms supplied by the board department, that the chiropractor preceptor and graduate chiropractor have agreed on the goals of the preceptor program to be completed by the graduate chiropractor.

SECTION 36: Section Chir 9.05 (1) is amended to read:

(1) Certifies to the board, on forms supplied by the board department, that:

SECTION 37: Section Chir 9.05 (1) (a) is amended to read:

(a) The chiropractor preceptor has been continuously licensed in Wisconsin for the previous 5 years, and that there are no pending disciplinary actions or malpractice claims against the chiropractor preceptor in any state or country. and that there have been no disciplinary actions taken against the chiropractor preceptor within the last 3 years. If any discipline has ever been imposed in any state or country on any professional license held by the preceptor, the preceptor shall provide details of the discipline for the board's review.

SECTION 38: Section Chir 9.06 is repealed and recreated to read:

(1) A preceptorship shall terminate upon the occurrence of the earliest applicable of the following events:

(a) A chiropractic student participating in a preceptorship program graduates from the college of chiropractic operating the program.

(b) A graduate chiropractor participating in a postgraduate preceptorship program is declared to have passed or failed a chiropractic licensing examination by any licensing authority or the national board.

(c) Six months have passed since the graduate chiropractor graduated from a college of chiropractic.

(d) A chiropractor preceptor is formally charged with a criminal offense, the circumstances of which substantially relate to the practice of chiropractic.

(e) A chiropractor preceptor is formally alleged to have violated the statutes or administrative rules pertaining to the practice of chiropractic.

(f) A chiropractor preceptor is formally complained against in a civil action for malpractice.

(2) If a preceptorship is terminated under (1) (d), (e) or (f) above, the board may approve a replacement preceptor

proposed by the chiropractic student or graduate chiropractor who satisfies the requirements in sec. Chir 9.05 (1) (a) and (c) through (f). The proposed chiropractor preceptor need not have been listed by the chiropractic college operating the preceptorship program.

SECTION 39: Section Chir 10.01 (1) is amended to read:

(1) "Adjunctive services" means services which are preparatory or complementary to chiropractic adjustments of the spine or skeletal articulations, or both. "Adjunctive services" include the taking of a preliminary patient history. "Adjunctive services" does not include making a chiropractic diagnosis, analyzing a diagnostic test, or performing a chiropractic adjustment.

SECTION 40: Section Chir 10.01 (2) is amended to read:

(2) "Preliminary patient history" means the process of gathering baseline data regarding a patient, including the nature of the chief complaint, family history, and medical history. The "preliminary patient history" is intended to provide a starting point for further inquiry by the chiropractor into the patient's condition.

SECTION 41: The Note following section Chir 10.01 (2) is repealed.

SECTION 42: Section Chir 10.02 (3) is created to read:

(3) The chiropractor retains ultimate responsibility for the manner and quality of the service.

SECTION 43: The Note following section Chir 10.03 is amended to read:

Note: The coursework specified in s. Chir 10.03 provides the training required by s. Chir 4.04. ~~The board annually reviews for approval programs offered or approved by the council on chiropractic education, American chiropractic registry of radiographic technicians, the university of Wisconsin, the Wisconsin technical college system, hospital training and other programs.~~ A list of board-approved programs is available upon request from the board office.

SECTION 44: Section Chir 10.04 is repealed.

SECTION 45: Section Chir 10.06 is repealed.

SECTION 46. A Note following section Chir 11.02 (8) is created to read:

Note: Chiropractors should be aware that federal requirements, especially in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), may have an impact on record-keeping requirements.

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

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.

Notice of Hearing

Health and Family Services

(Management and Technology and Strategic Finance, Chs. HFS 1—)

[CR 03-080]

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.14 (5) (b), 227.11 (2) (a) and 227.24 (4), Stats., the Department of Health and Family Services will hold a public hearing to

consider both the emergency rules and proposed permanent rules repealing s. HFS 15.02 (2), (6) and (8), amending ss. HFS 15.01, 15.04 and 15.07 (3), and repealing and recreating s. HFS 15.03, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Hearing Information

Date & Time

October 15, 2003
(Thursday) at 2:00 PM

Location

State Office Building
1 West Wilson Street
Room B155
Madison

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

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF-MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by Medicare under 42 USC 1395 to 1395ccc; and

- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF-MRs, from \$100 per bed to \$435 per bed in fiscal year 2003-04 and \$445 per bed in fiscal year 2004-05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003-04, \$13.8 million in fiscal year 2004-05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home's licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, the Department issued an emergency rule effective July 28, 2003 to modify chapter HFS 15 accordingly. Through its proposed permanent rule order, the Department seeks to make permanent those changes to ch. HFS 15 contained in the emergency order. This hearing is for both the emergency rule order and the identical proposed permanent rules.

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: www.adminrules.wisconsin.gov

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

Jim Cobb
Division of Health Care Financing
P.O. Box 309
Madison, WI 53701-0309
608-264-6730 or,
if you are hearing impaired (608) 266-1511 (TDD)
cobbjd@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 Monday, October 20, 2003, will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

2003 Act 33, the 03-05 Biennial Budget Bill, includes the following changes to the Nursing Facilities Bed Assessment:

- (a) Eliminates the exemption of state facilities from the assessment.
- (b) Changes the assessment from an assessment on occupied beds to an assessment on licensed beds.
- (c) Increases the assessment from \$32 to \$75 per bed per month for nursing homes and from \$100 to \$435 in FY 04 and \$445 in FY 05 per bed per month for Intermediate Care Facilities for the Mentally Retarded (ICFs-MR).

Act 33 allows the Department to submit through an emergency rule procedure changes to HFS 15 to conform with the changes in the Act.

The local and state fiscal effect of the changes to the bed assessment in Act 33 have been included in the funding allocated through the Biennial Budget Bill. Because the state and local fiscal effects are assumed in Act 33, this rule change has no state or local fiscal effect.

Initial Regulatory Flexibility Analysis

The rule changes will affect about 10 facilities that may be considered small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. However, the Department is not making any exception for those entities in the proposed rule because federal uniformity clauses do not allow exceptions for such assessments.

**Notice of Hearing
Insurance**

[CR 03-083]

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., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 25.50 (1) and (1) (a), Wis. Adm. Code, relating to an exception to disclosure of financial information.

Hearing Information

Date: **October 22, 2003**

Time: 10:00 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.

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 601.41 (3), Stats.

Statutes interpreted: ss. 628.34 (12), Stats.

Under ch. Ins 25, Wis. Adm. Code, a licensee of the Office of the Commissioner of Insurance, including a warranty plan, may not disclose nonpublic personal financial information to an unaffiliated third party unless the customer is given the opportunity to object to the disclosure (referred to as "opt out notice"). Nothing in this section is intended to permit telephone solicitation which would otherwise be prohibited under s. 100.52, Stats., or subch. 5 of ch. ATPC 127.

The current rule allows licensees to disclose nonpublic personal financial information to affiliates without an opt-out notice. This rule will also allow a warranty plan licensee or an affiliate to disclose nonpublic financial information without an opt-out notice to a non-affiliate selling products or services under the licensee's brand name. The warranty plan licensee or affiliate may disclose only if the recipient agrees to use the information solely for sale of the branded product or service, to keep the information confidential, and to adhere to the licensee or affiliate's quality standards for the branded products or services.

Fiscal Estimate

The proposed amendment makes a narrow notification exception for qualified warranty plans to share nonpublic financial information with a non-affiliate only for the sale of the branded product or service with requirements to keep the information confidential, and to adhere to the licensee or affiliate's quality standards for the branded products or services. Nothing in the section permits telephone solicitations otherwise prohibited. Ultimately there could be cost reductions for certain plans and less consumer confusion.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

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 125 South Webster Street, PO Box 7873, Madison WI 53707-7873.

**Notice of Hearing
Natural Resources**

(Fish, Game, etc., Chs. NR 1—)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 29.014, 29.063, 29.335 and 227.24, Stats., interpreting ss. 29.063 and 29.335, Stats., the Department of Natural

Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-37-03(E) pertaining to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis. This emergency order took effect on September 11, 2003. This emergency rule bans deer baiting and feeding in counties of highest risk for chronic wasting disease, bovine tuberculosis and other infectious diseases for the 2003 deer hunting seasons and beyond. The rule also clarifies that baiting with 10 gallons or less of bait is allowed in counties not affected by this rule nor is feeding prohibited.

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

October 13, 2003	Room 027, GEF #2
Monday	101 South Webster Street
at 1:00 p.m.	Madison

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 emergency rule may be submitted to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than October 17, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule may be obtained from Mr. Thiede.

Fiscal Estimate

The proposed changes will not result in any significant changes in spending or revenue.

Notice of Hearing Natural Resources

(Fish, Game, etc., Chs. NR 1—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 29.197, 227.11 (2) (a) and 227.24, Stats., interpreting ss. 29.014, 29.014 and 29.197, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-21-03(E) relating to the 2003 migratory game bird season. This emergency order took effect on August 28, 2003. The emergency rule established the season for ducks and Canada geese. The rule also eliminated a separate listing for pintail and canvasback seasons. The date of the two-day youth waterfowl hunt was also modified.

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

October 14, 2003	Room 511, GEF #2
Tuesday	101 South Webster Street
at 1:00 p.m.	Madison

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 emergency rule may be submitted to Mr. Kurt Thiede, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than October 16, 2003. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule 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 bill.

Notice of Hearings Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 03-081]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.604 and 227.11, Stats., interpreting s. 29.604, Stats., the Department of Natural Resources will hold public hearings on amendments to s. NR 10.02 (1) and the repeal of s. NR 27.03 (3) (a), Wis. Adm. Code, relating to the classification of gray wolves. The proposed rule will remove the gray wolf from the threatened species list in s. NR 27.03 and add it to the protected wild animal list in s. NR 10.02.

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:

November 5, 2003	Auditorium, Ag Research Center
Wednesday	W6646 Hwy. 70
at 6:00 p.m.	Spooner

Schmeekle Reserve
UW-Stevens Point
2419 North Point Drive
Stevens Point

Room 027, GEF #2
101 South Webster St.
Madison

November 6, 2003	James Williams Jr. High School
Thursday	915 Acacia Lane
at 6:00 p.m.	Rhineland

LGI Room
Black River Falls Middle School
1202 Pierce Street
Black River Falls

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 Randy Jurewicz at (608) 267-7507 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 Wolf Biologist, P.O. Box 22, Park Falls, WI 54552 no later than November 21, 2003. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule may be obtained from Mr. Randy Jurewicz, Bureau of Endangered Resources, P.O. Box 7921, Madison, WI 53707.

Fiscal Estimate

It is not anticipated that the implementation of these rules will result in a fiscal impact above what could be absorbed within the agency's budget. The enforcement of these rules will be done as part of the regular duties of conservation wardens. However, there will be a workload impact, as enforcement of these regulations will likely result in the inability to enforce other resource laws, since the current budget will not allow the addition of seasonal wardens to assist in the enforcement of these new regulations.

Notice of Hearing Psychology Examining Board [CR 03-079]

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Psychology Examining Board in ss. 15.08 (5) (b), 227.11 (2), and 455.08, Stats., and interpreting ch. 455, Stats., the Psychology Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend and create ch. Psy 5, relating to the practice of sexual misconduct.

Hearing Date, Time and Location

Date: **November 12, 2003**
Time: 9:30 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 November 30, 2003, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), and 455.08, Stats. Statutes interpreted: Chapter 455, Stats.

This proposed rule-making re-defines dual relationships and prohibited dual relationships, modifies the existing language of a prohibition on exploitative relationships, clarifies the responsibility of license-holders to cooperate with board investigations, creates a requirement to maintain records, and establishes a violation of a board order as unprofessional conduct.

SECTION 1 creates definitions of "dual relationship" and "prohibited dual relationship".

SECTION 2 adds kissing to a list of quasi-sexual actions prohibited with clients, adds the words "romantic, harassing, or exploitative" to the definition of quasi-sexual actions, and explicitly places the burden of proving that a former client is not vulnerable by reason of emotional or cognitive disorder if a psychologist enters into sexual or quasi-sexual activity.

SECTION 3 simplifies and clarifies the prohibition on dual relationships, by implicit reference to the definitions created in section 1 above.

SECTION 4 clarifies a license-holder's responsibility to cooperate with a request for information from the board.

SECTION 5 creates a record-keeping requirement.

SECTION 6 expands the definition of unprofessional conduct to include violation of a psychology statute, a psychology rule or a board order.

Text of Rule

SECTION 1. Sections Psy 1.02 (5m) and (9) are created to read:

(5m) "Dual relationship" means a situation in which a psychologist provides professional services to a person with whom the psychologist has another relationship such as, but not limited to, relatives, close friends, employees or employers, students or other supervisees.

(9) "Prohibited dual relationship" means a dual relationship which might impair objectivity or effectiveness, or permit exploitation, or create an actual, apparent or potential conflict of interest.

SECTION 2: Section Psy 5 (14) is amended to read:

(14) Engaging in sexual contact, sexual conduct, kissing, or any other behavior which could reasonably be construed as seductive, romantic, harassing, or exploitative, with:

(a) A client.

(b) A former client within 2 years of termination of professional services.

(c) A former client beyond 2 years of termination of professional services, unless the licensee can demonstrate that there has been no exploitation of the former client, and that the former client is not vulnerable by reason of emotional or cognitive disorder to exploitive influence by the psychologist, in light of all relevant factors, including:

1. The length of time which had passed between the termination of professional services and the conduct.
2. The nature and duration of the professional services.
3. The circumstances of termination.
4. The client's personal history.
5. The client's mental status at the time the conduct took place.
6. The likelihood of adverse impact on the client or others.
7. Statements or actions made by the licensee during the course of professional services suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

SECTION 3: Section Psy 5 (17) is amended to read:

(17) Failure to avoid prohibited dual relationships. ~~or relationships that may impair one's objectivity or create a conflict of interest. Dual relationships include treating employees, supervisees, close friends or relatives.~~

SECTION 4: Section Psy 5 (24) is amended to read:

(24) ~~Refusal upon request to cooperate in a timely manner with the board's investigation of complaints lodged against the applicant or licensee of the board. Failure to respond honestly and in a timely manner to a request for information from the board or the Department of Regulation and Licensing. Persons taking longer than 30 days to provide~~

requested information will have the burden of demonstrating that they have acted in a "timely manner." Taking longer than 30 days to respond creates a rebuttable presumption that the response is not timely.

SECTION 5: Section Psy 5 (33) is created to read:

(33) Failing to maintain adequate records relating to services provided a client in the course of a professional relationship. Each patient record entry shall be dated, shall identify the treating therapist, and shall be sufficiently legible to allow interventions by others. Such records shall contain all of the following:

- (a) Pertinent patient history.
- (b) Pertinent objective findings related to examination and test results.
- (c) Assessment or diagnosis.
- (d) Plan of treatment for the patient.
- (e) A discharge summary upon termination of treatment.

SECTION 6: Section Psy 5 (34) is created to read:

(34) Violating any provision of ch. 455, Stats., or any rule or order of the board.

Fiscal Estimate

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

Final 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.

Notice of Hearing Public Service Commission [CR 03-086]

NOTICE IS GIVEN that a hearing will be held beginning on **Friday, October 24, 2003**, at 10:30 a.m. in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, and continuing at times to be set by the presiding Administrative Law Judge. This building is accessible to people in wheelchairs through the Whitney Way first floor (lobby) entrance. Parking for people with disabilities is available on the south side of the building. Any person with a disability who needs additional accommodations should contact the person listed below.

The Commission proposes an order to amend ss. PSC 111.03 (1) (a) and (b), PSC 111.11 (2) (a) 1. to 6., PSC 111.13 (2), PSC 111.21 (1) (c), PSC 111.21 (1) (d) (intro.), PSC 111.21 (1) (e) (intro.), PSC 111.21 (1) (f), PSC 111.23 (2) (intro.), PSC 111.25 (2), PSC 111.31 (1), PSC 111.33, PSC 111.35, PSC 111.43 (1) (intro.), PSC 111.43 (3) (a) (intro.), and PSC 111.43 (4), Wis. Admin. Code, relating to rules concerning the time period covered by a strategic energy assessment.

Analysis Prepared by the Public Service Commission of Wisconsin

Statutory authority: ss. 196.02 (3), 196.491 (2) (ag) and 227.11 (2), Stats.

Statute interpreted: s.196.491(2), Stats.

Section 196.491 (2) (a), Stats., directs the Commission to prepare a strategic energy assessment (SEA) every two years. The statute also directs the Commission to promulgate rules that establish procedures for reporting information necessary

to prepare an SEA. Those rules have been promulgated as Ch PSC 111, Wis. Admin. Code.

Each SEA is intended to evaluate the adequacy and reliability of the state's current and future electrical supply. Although the statute directs the Commission to specifically identify utility electric generating facility and high-voltage transmission line construction plans within a three year period (s. 196.491 (2) 3. and 3m, Stats.), a three year planning horizon for SEA purposes does not adequately provide the Commission sufficient data to assess future electric reliability, given the lead times needed to plan a project, obtain necessary approvals, and actually construct generating or transmission facilities.

Current Chapter PSC 111 describes the types of data the Commission collects to prepare each SEA and the time periods the data should cover. Currently, the time period runs for 3 years, the two years covered in the SEA and one succeeding year. This rulemaking revises the time period to be covered by SEA data. The rule will extend the period covered by an SEA from three to seven years.

Text of Proposed Rule

Section 1. PSC 111.03 (1) (a) and (b) are amended to read:

PSC 111.03 (1) (a) The SEA is biennial, covering 2 calendar years. All data required in subch. II, III, IV or V to be filed for the ~~3-year~~ 7-year period encompassing the SEA shall cover this 2-year period, plus ~~one~~ 5 succeeding calendar year years.

PSC 111.03(1)(b) The first SEA shall cover the period commencing January 1, 2000, and ending on December 31, 2001. ~~The 3-year period encompassing the initial SEA shall cover January 1, 2000, through December 31, 2002.~~

Section 2. PSC 111.11(2)(a)1. to 6. are amended to read:

PSC 111.11(2)(a)1. Monthly peak demand data for the ~~3-year~~ 7-year period encompassing the SEA, including responsibility for power losses. Any loss responsibility associated with the delivery of purchased capacity shall be separately identified.

2. The reduction in the summer and winter peak demand, for any of the ~~3~~ years encompassing the SEA, due to direct load control programs that allow system operators to manage customer loads.

3. The reduction in the summer and winter peak demand, for any of the ~~3~~ years encompassing the SEA, due to the interruption of customer load by tariff or contract.

4. The effect on summer and winter peak demand, for any of the ~~3~~ years encompassing the SEA, due to each capacity sale including reserves that affects peak demand.

5. The effect on summer and winter peak demand, for any of the ~~3~~ years encompassing the SEA, due to each capacity purchase including reserves that affects peak demand. Any part of a purchase intended to compensate for transmission losses associated with delivery of the purchase shall be separately identified. For each out-of-state capacity purchase including reserves cited under this paragraph, the buyer shall demonstrate that the seller is treating its sale with the same priority as the electrical demand that the seller is legally obligated to serve.

6. The effect on summer and winter peak demand, for any of the ~~3~~ years encompassing the SEA, due to any arrangements other than those specified in subds. 1. to 5., that also affect peak demand in Wisconsin.

Section 3. PSC 111.13 (2) is amended to read:

PSC 111.13 (2) DATA SUBMISSION. Each electricity provider, except operators of wholesale merchant plants, shall calculate adjusted electric demand for the ~~3-year~~ 7-year period encompassing the SEA and submit the results to the

commission. Any transmission loss responsibility associated with delivery of a particular capacity purchase including reserves, as defined in s. PSC 111.11 (1) (a), shall be separately identified. All miscellaneous demand factors that decrease peak demand shall be deductions when calculating adjusted electric demand. All miscellaneous demand factors that increase peak demand shall be additions when calculating adjusted electric demand.

Section 4. PSC 111.21(1)(c) is amended to read:

PSC 111.21(1)(c) A complete identification and description of each unit's net rated capacity that the electricity provider intends to retire during the ~~3-year~~ 7-year period encompassing the SEA, including the month and year of expected retirement.

Section 5. PSC 111.21(1)(d)(intro.) is amended to read:

PSC 111.21(1)(d)(intro.) A complete identification and description of each generating addition the electricity provider proposes to commence constructing during the ~~3-year~~ 7-year period encompassing the SEA, including all of the following:

Section 6. PSC 111.21(1)(e)(intro.) is amended to read:

PSC 111.21(1)(e)(intro.) A complete identification and description of each expected capacity change at existing generating units during the ~~3-year~~ 7-year period encompassing the SEA, including all of the following:

Section 7. PSC 111.21(1)(f) is amended to read:

PSC 111.21(1)(f) A complete identification and description of each supply factor that is not covered by pars. (a) to (e), but also affects electric power supply during peak demand in Wisconsin for the ~~3-year~~ 7-year period encompassing the SEA.

Section 8. PSC 111.23(2)(intro.) is amended to read:

PSC 111.23(2)(intro.) CAPACITY PURCHASES OR SALES WITHOUT RESERVES. Each electricity provider, except operators of wholesale merchant plants, shall submit for the ~~3-year~~ 7-year period encompassing the SEA, summer and winter peak data listing all of the following data:

Section 9. PSC 111.25(2) is amended to read:

PSC 111.25(2) DATA SUBMISSION. Each electricity provider, except operators of wholesale merchant plants, shall calculate electric power supply for the ~~3-year~~ 7-year period encompassing the SEA and submit the results to the commission. Any part of a capacity purchase without reserves, as defined in s. PSC 111.23 (1) (a), that is intended to compensate for transmission losses associated with delivery of that purchase, shall be excluded from the calculation of electricity power supply. All miscellaneous supply factors that decrease supply resources shall be deducted from electric power supply. All miscellaneous supply factors that increase supply resources shall be added to electric power supply.

Section 10. PSC 111.31(1) is amended to read:

PSC 111.31(1) AVERAGE ENERGY PRODUCTION COST. The electricity provider's average energy production cost for each type of generating unit, including nuclear, coal-fired, gas simple-cycle, gas combined-cycle, diesel and renewable units. The electricity provider shall specify the expected range of energy production cost by unit type for each year in the ~~3-year~~ 7-year period encompassing the SEA.

Section 11. PSC 111.33 is amended to read:

PSC 111.33 Pollutant data. Each electricity provider shall submit, for the ~~3-year~~ 7-year period encompassing the SEA, the annual average level of emissions identified in s. PSC 111.21 (1) (a) 6., per kWh of output.

Section 12. PSC 111.35 is amended to read:

PSC 111.35 Energy conservation data. Any electricity provider, except self-providers and operators of wholesale merchant plants, that provides rate-based energy efficiency programs to Wisconsin customers directly or by contracting, shall provide all of the following energy conservation activity data and information for the ~~3-year~~ 7-year period encompassing the SEA:

Section 13. PSC 111.43(1)(intro.) is amended to read:

PSC 111.43(1)(intro.) NEW HIGH VOLTAGE TRANSMISSION LINES. A complete description of each high-voltage transmission line that the transmission provider intends to own in whole or in part, on which construction is planned to commence within ~~3~~ 7 years, including all of the following:

Section 14. PSC 111.43(3)(a)(intro.) is amended to read:

PSC 111.43(3)(a)(intro.) For each of the ~~3~~ 7 years encompassing the SEA, the most recent power flow base case undertaken by the reliability council in which the transmission provider is located, for each of the following conditions:

Section 15. PSC 111.43(4) is amended to read:

PSC 111.43(4) USE OF THE TRANSMISSION SYSTEM. If the transmission provider charges a tariffed amount for use of its transmission system, monthly data, for the ~~3-year~~ 7-year period encompassing the SEA, on total transfer capability, available transfer capability and confirmed reservations for the use of the transmission system. Total transfer capability and available transfer capability shall be calculated in accordance with the provider's obligations, under 18 CFR Part 37, to calculate these values. Reservation data under this subsection shall concern only those reservations that are firm and of monthly duration or longer. Data shall include any transmission margins applied in the calculation of available transfer capability and any other use of the transmission system relevant to the calculation of monthly available transfer capability, including use by the transmission provider to meet existing commitments.

Fiscal Estimate

This rule has no fiscal impact.

Initial Regulatory Flexibility Analysis

The rules being revised apply to an entity that has or expects to have generation in this state greater than 5 megawatts, that provides electric service to end users, or that provides electric transmission service in this state. It is unlikely that any such entity would be a small business as defined in s. 227.114(1), Stats. Therefore, the proposed rules are not expected to affect small businesses as defined in s. 227.114(1), Stats.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed below.

Questions regarding this matter may be directed to Assistant General Counsel John Lorence at (608) 266-8128, or by e-mail at john.lorence@psc.state.wi.us.

Submittal of proposed rules to the legislature

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

**Commerce
(CR 03-011)**

Ch. Comm 48, relating to petroleum products.

**Gaming Division
(CR 03-070)**

Chs. WGC 1 to 24 and Game 3, relating to greyhound racing and pari-mutuel wagering.

**Medical Examining Board
(CR 03-072)**

Ch. Med 1, relating to accepting examinations from the Medical Council of Canada.

**Physical Therapists Affiliated Credentialing Board
(CR 03-020)**

Chs. PT 1 to 9, relating to the licensing of physical therapists and physical therapist assistants, as well as continuing education requirements.

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.

Commerce (CR 03-012)

An order affecting ch. Comm 45, relating to mechanical refrigeration.
Effective 11-1-03.

Emergency Management (CR 02-106)

An order affecting chs. WEM 4 and 6, relating to the hazardous materials transportation program and response and reimbursement procedures for regional and local emergency response teams.
Effective 11-1-03.

Natural Resources (CR 02-061)

(corrected copy filed)
An order to create ch. NR 109, relating to aquatic plant management.
Effective 6-1-03

Veterans Affairs (CR 03-045)

An order affecting ch. VA 13, relating to the imposition of rental charges at regional transitional housing sites under the veterans assistance program.
Effective 11-1-03.

Rules published with this register and final regulatory flexibility analyses

The following administrative rule orders have been adopted and published in the September 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.

Barbering and Cosmetology Examining Board (CR 02-058)

An order affecting chs. BC 1 to 4, relating to cutting, disinfectants, disinfection, massaging, delegated medical procedures, body piercing, tattooing, tanning booths, managers, relocation of establishments, sterilization and forfeitures. Effective 10-1-03.

Summary of Final Regulatory Flexibility Analysis

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 02-155)

An order affecting chs. HFS 110 to 113, relating to the licensing of emergency medical technicians and the certification of first responders to incorporate responding to acts of terrorism as a training component required for initial or renewed licensure or certification. Effective 10-1-03.

Summary of Final Regulatory Flexibility Analysis

These rules apply to the Department of Health and Family Services, the Division of Hearings and Appeals in the Department of Administration, ambulance service providers and emergency medical technicians. Some affected ambulance service providers may be "small businesses" as defined in s. 227.114 (1) (a), Stats. These rules implement new requirements, but any additional training costs are covered by the Department and there should be no additional expenses for businesses.

Summary of Comments by Legislative Review Committees

On May 27, 2003, the Senate Committee on Health, Children, Families, Aging and Long Term Care voted to request modifications to the rulemaking order. The Committee's request was based on the following concerns expressed at the Committee's May 27th public hearing principally by the Wisconsin State Fire Chief's Association.

1. Alternative delivery systems are needed to allow EMS personnel to fulfill their training obligations. One alternative is four hours of virtual course completion.

2. The training should be included in current curriculum and refresher courses; not mandated as separate training.

3. Many personnel have had countless hours of terrorism/hazardous materials training, however, this training is not being recognized by the Department despite endorsement by the US Surgeon General.

Generally, Committee members hoped that fire departments would need to incur as few additional expenses as possible in implementing the rule, and that the Department recognize the training that some personnel have already received on terrorism and hazardous materials. Finally, the Committee asked that the training delivery method not be so restrictive, so training could be provided more quickly and more economically.

In response, the Department discussed the issues with representatives of the Fire Chiefs' Association and ultimately modified the order's wording to delete reference in chs. HFS 110 to 113 to the training amounting to four hours duration and, in ch. HFS 110, deleting the increase to 144 hours of mandatory attendance for EMT basic training course.

On August 8th, the Committee waived jurisdiction over the rule.

Health and Family Services (CR 03-042)

An order affecting ch. HFS 124, relating to critical access hospitals. Effective 10-1-03.

Summary of Final Regulatory Flexibility Analysis

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

Summary of Comments by Legislative Review Committees

No comments were received.

Natural Resources (CR 02-064)

An order affecting ch. NR 447, relating to citation authority for asbestos program violations. Effective 10-1-03.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will affect demolition and asbestos abatement contractors and their customers. As a result of the citation system, all businesses, including small businesses, which do asbestos demolition and renovation work will be faced with more prompt and effective enforcement of the existing rule.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On March 27, 2003, the Senate Committee on Environment and Natural Resources held a public hearing and requested modifications to the proposed rule to more precisely define the conditions under which the Department can issue citations for violations of a small set of the asbestos regulations. On April 2, 2003,

the Assembly Committee on Natural Resources held a public hearing, but did not request any modifications. At its May 28, 2003 meeting the Natural Resources Board adopted the modifications requested by the Senate Committee on Environment and Natural Resources.

On June 18, 2003, the Assembly Committee on Natural Resources held a public hearing on the proposed rule and requested an additional modification to address concern about the inspection that is to be completed before asbestos abatement for demolition or renovation work begins. A sentence was added that reads, "The department may not issue a citation under this paragraph on the grounds that an inspection was not thorough."

No additional comments were received from the committees.

Natural Resources (CR 02-143)

An order affecting ch. NR 25, relating to commercial fishing in Lake Michigan. Effective 10-1-03.

Summary of Final Regulatory Flexibility Analysis

No additional compliance or reporting requirements will be imposed as a result of these rule changes.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On July 9, 2003, the

Assembly Committee on Natural Resources held a public hearing. On July 10, 2003, the Senate Committee on Environment and Natural Resources held a public hearing. No requests for modifications were received as a result of these hearings.

Natural Resources (CR 03-013)

An order affecting chs. NR 190 and 192, relating to lake management planning grants. Effective 10-1-03.

Summary of Final Regulatory Flexibility Analysis

These rules affect potential sponsors of lake management activities which include lake organizations, local government, tribes, school districts and nonprofit conservation organizations. Most of the amendments are the result of changes in statute or are minor housekeeping changes. The effects are believed to be minor yet positive, by providing a broader range of eligible sponsors, making it easier for sponsors to raise the local match and improving the clarity of the rules.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On July 9, 2003, the Assembly Committee on Natural Resources held a public hearing. No request for modifications was received as a result of these hearings.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **September 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

Barbering and Cosmetology

Ch. BC 1

S. BC 1.01 (intro.), (3g), (3r), (6), (6h), (9), (10m), (11m), (14m), (17)

Ch. BC 2

S. BC 2.025
S. BC 2.03 (8) and (9)
S. BC 2.06 (5)
S. BC 2.07 (1g)

Ch. BC 3

S. BC 3.02 (1) (intro.), (2) (b)
S. BC 3.04 (1)
S. BC 3.06 (2)

Ch. BC 4

S. BC 4.01 (2) to (7)
S. BC 4.02
S. BC 4.03
S. BC 4.04 (1)
S. BC 4.07 (3) to (5)
S. BC 4.08 (1)
S. BC 4.09 (1), (3), (3m) and (4)
S. BC 4.10

Ch. BC 10 (Entire chapter)

Health and Family Services

Ch. HFS 110

S. HFS 110.05 (1) (d)
S. HFS 110.07 (3) (c) and (4) (a)

Ch. HFS 111

S. HFS 111.04 (1) (e)
S. HFS 111.06 (1) (c)

Ch. HFS 112

S. HFS 112.04 (1) (d), (5) (f)
S. HFS 112.06 (1) (c)

Ch. HFS 113

S. HFS 113.04 (6) (a), (9) (a) and (10) (b)

Ch. HFS 124

S. HFS 124.38 (4) and (5)
S. HFS 124.39 (1) (intro.), (a), (b) and (e), (2) (a) and (3)
S. HFS 124.40 (2) (b), (c) and (3)
S. HFS 124.41

Natural Resources

Ch. NR 25

S. NR 25.09 (2) (b)

Ch. NR 190

S. NR 190.002 (intro.)
S. NR 190.003 (2), (4) and (9)
S. NR 190.004 (1) to (3), (5), (8), (10) and (11)
S. NR 190.005 (1) (e) and (2) (b)
S. NR 190.006
S. NR 190.02
S. NR 190.03
S. NR 190.04 (1)
S. NR 190.05 (3)
S. NR 190.07 (1) and (4) (c) and (d)
S. NR 190.08 (5)
S. NR 190.13
S. NR 190.15 (2) to (5)
S. NR 190.16 (1)
S. NR 190.17 (1)
S. NR 190.19

Ch. NR 192 (Entire chapter)

Ch. NR 447

S. NR 447.19

Editorial corrections

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

Health and Family Services

Ch. HFS 110

S. HFS 110.03 (3)

Ch. HFS 111

S. HFS 111.03 (2)

Ch. HFS 113

S. HFS 113.03 (1)

S. HFS 113.04 (2) (a), (4) (a) and (8) (b)

S. HFS 113.05 (1) (intro.)

Ch. HFS 124

S. HFS 124.18 (1) (c)

S. HFS 124.19 (1) 9d)

S. HFS 124.30 (1)

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 20. Relating to a review of Wisconsin's Electric transmission system.

Executive Order 21. Proclaims a state of emergency relating to drought conditions.

Executive Order 22. Relating to the creation of the Governor's Task Force on Educational Excellence.

Executive Order 23. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff and a moment of silence due to the two year anniversary of the Terrorist Attacks on the United States.

Notice of suspension of an administrative rule

The Joint Committee for the Review of Administrative Rules met in Executive Session on August 19, 2003 and adopted the following motion:

NR 302 Relating to the Management of Wisconsin's Wild Rivers.

Pursuant to ss. 227.24 (2) (d) and 227.19 (4) (d) (5) and (6), Stats. The joint Committee for Review of Administrative Rules suspends s. NR 302.04 (5) (a) and (b).

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