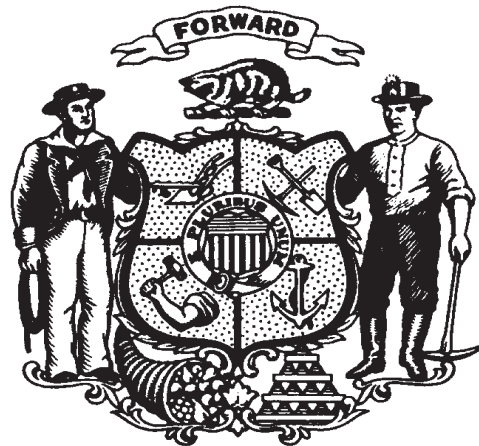


# Wisconsin Administrative Register

No. 576



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## Emergency rules now in effect

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

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

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

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

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

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

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### 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  
**Extension Through:** January 23, 2004

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### 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  
**Hearing Date:** November 20, 2003

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## 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

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## 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 (Health, Chs. HFS 110—)

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

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 (Fish, Game, etc., Chs. NR 1–)

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

**Revenue**

Rule adopted revising s. **Tax 18.07**, relating to the 2004 assessment of agricultural land.

**Finding of emergency**

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

Pursuant to s. 70.32 (2r) (c), Stats., the assessment of agricultural land is assessed according to the income that could be generated from its rental for agricultural use. Wisconsin Chapter Tax 18 specifies the formula that is used to estimate the net rental income per acre. The formula estimates the net income per acre of land in corn production based on a 5–year average corn price per bushel, cost of corn production per bushel and corn yield per acre. The net income is divided by a capitalization rate that is based on a 5–year average interest rate for a medium–sized, 1–year adjustable rate mortgage and net tax rate for the property tax levy two years prior to the assessment year.

For reasons of data availability, there is a three–year lag in determining the 5–year average. Thus, the 2003 use value is based on the 5–year average corn price, cost and yield for the 1996–2000 period, and the capitalization rate is based on the 5–year average interest rate for the 1998–2002 period. The 2004 use value is to be based on the 5–year average corn price, cost and yield for the 1997–2001 period, and the capitalization rate is to be based on the 1999–2003 period.

The data for the 1997–2001 period yields negative net income per acre due to declining corn prices and increasing costs of corn production. As a result, reliance on data for the 1997–2001 period will result in negative use values.

The department is issuing this emergency rule in order to ensure positive and stable assessments of agricultural land for 2004.

**Publication Date:** October 3, 2003  
**Effective Date:** October 3, 2003  
**Expiration Date:** March 1, 2004  
**Hearing Date:** December 16, 2003

**Workforce Development  
(Workforce Solutions, Chs. DWD 11—59)**

Rules adopted revising **ch. DWD 59**, relating to the child care local pass–through program.

**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 allocated federal child care funds in a manner that assumes an increase in the match rate paid by local governments and tribes receiving grants under the child care local pass–through program. Budget documents prepared by the Legislative Fiscal Bureau specify that the budget option chosen requires that local governments and tribes contribute matching funds at a rate of 52% in 2003–2004, and slightly higher in 2004–2005. Chapter DWD 59 currently requires a minimum match rate of the state's federal medical assistance percentage rate, which is approximately 42%. The match rate for the pass–through program must be increased immediately so Wisconsin does not lose valuable federal child care dollars. These dollars help preserve the welfare of the state by ensuring that low–income families have access to quality affordable child care.

2003 Wisconsin Act 33 also reduced funding to the child care local pass–through program by 86%. Chapter DWD 59 requires a 2–step grant process wherein current grantees receive up to 75% of the funds under a noncompetitive process for 2 years following the receipt of the initial grant, and can apply, along with any eligible jurisdiction in the state, for the remaining 25% as initial grantees. The dramatically reduced funding for the pass–through program renders the current Chapter DWD 59 requirement to fund continuing grants while reserving funds for a new statewide request for proposals unwieldy, wasteful, and obsolescent. If the current process remains in place, it would not only waste state and local staff resources on extremely low–value administrative processes, it would waste public funds at a time when they are in short supply. This could further undermine state and local efforts to ensure a reasonable supply of reliable and quality child care for families who depend on this service in order to work. This emergency rule allows all available dollars to be used for continuing grants if there is insufficient funding to provide continuing grants of at least 50% of the eligible grantees' initial grant levels from the previous 2 grant cycles.

These changes are ordered as an emergency rule so they are effective before the new grant cycle begins on October 1, 2003. Delaying the next grant cycle until the permanent rule is effective is not a viable option because local governments need to know whether they will receive continued funding or will be forced to dismantle ongoing programs and lay–off staff when the current grant cycle ends on September 30. Also, federal law requires that the federal funds be matched and spent within the federal fiscal year of October 1 to September 30.

**Publication Date:** October 7, 2003  
**Effective Date:** October 7, 2003  
**Expiration Date:** March 5, 2004  
**Hearing Date:** November 12, 2003

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## Workforce Development (Civil Rights, Chs. DWD 218–225)

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  
**Hearing Date:** October 27, 2003

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## Scope statements

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### Financial Institutions – Corporate and Consumer Services

#### Subject

Section DFI–CCS 1, relating to a fee paid for UCC searches and accessing images of filings.

#### Policy analysis

*Objective of the rule.* Section DFI–CCS 1.10 (3) (d) 3, relating to a fee paid for UCC searches and accessing images of filings.

#### Policy analysis

The objective of the rule is to create s. DFI–CCS 1.10 (3) (d) 3. The purpose of the rule is to set an annual subscription fee for direct access to the UCC information management system for searches and accessing images of filings. The rule will facilitate access by lenders to the system for the purpose of extending credit. In proposing this rule, the requirements of s. 409.526 (1) and (2), Stats., have been met.

#### Statutory authority

Sections 409.525 (4), 409.526 (1) and 227.11 (2), Stats.

#### Staff time required

80 hours.

### Health and Family Services

#### Subject

To amend ch. HFS 196 Appendix, relating to the Wisconsin Food Code.

#### Policy analysis

The Department, working with the Department of Agriculture, Trade, and Consumer Protection (DATCP), proposes to modify ch. HFS 196 Appendix, more commonly known as the Wisconsin Food Code, which provides standards for regulating restaurants. The Wisconsin Food Code is modeled after the 1999 Food and Drug Administration Model Food Code, which is updated every 2–4 years. The latest revisions to the FDA Model Food Code were released in 2001. The Department proposes to update the Wisconsin Food Code to the 2001 FDA Model Food Code, which reflects the most currently available science and trends in food safety. In addition, the Department proposes to clarify or correct areas of the Wisconsin Food Code that do not reflect current Department policy. Revisions to the Wisconsin Food Code will also reflect modifications from both the Wisconsin Conference on Food Protection and the National Conference on Food Protection (NCFP), as well as mutually agreed upon suggestions derived from two years of field application by both the Department and DATCP.

The Department will also define, establish, and clarify the differences in licensing of caterers, visiting chefs, personal chefs, contract cooks, and similar entities and exclude the requirement for a licensed caterer to obtain an additional permit when serving pre–ordered meals to the general public at a separate location.

The Department believes that periodic rule updates are necessary for Wisconsin's food industry to remain competitive on a nationwide basis. Failure to update the current rules may pose risks to Wisconsin's retail and restaurant industry by not providing a current and updated regulation. These changes will positively impact operators of food service operations, state and local health inspectors as well as the general public throughout the state by simplifying and clarifying the language of the Code. In addition these proposed changes will allow health inspectors to spend more time in complex or problematic food establishments which will ensure a safer public food supply.

#### Statutory authority

Sections 227.11 (2) (a) and 254.74 (1) Stats.

#### Staff time required

One FTE for 20 Hours.

### Natural Resources

#### Subject

Housekeeping changes to Chapters NR 20 pertaining to fishing regulations on inland waters and NR 26 pertaining to fish refuges.

#### Policy analysis

The Department is beginning the administrative process of housekeeping changes to administrative code relating to inland fishing regulations and fish refuges.

A variety of non–substantive and non–controversial changes have been proposed by FH and LE staff and approved through joint review. The proposals include: 1) modifying the definition of “trout stream” used in administrative code to clarify that it can apply to portions of waters; 2) Clarifying the application of fishing seasons and bag/size limits to underwater spear fishing (i.e. yellow perch season on Green Bay, Lake Michigan and tributaries); 3) Extending the open season for trout to the first Sunday in March on some Polk County trout lakes; 4) Eliminating a fish refuge on the Fox River after the removal of a dam; 5) Clarification of the daily bag limit for cisco and whitefish on Trout Lake in Vilas county; and approximately 5 changes related to typographic mistakes in the administrative code.

These proposed fishing regulation changes are non–substantive changes and would likely not affect most anglers in the state. In addition, they are non–controversial changes.

#### Statutory authority

ss. 29.014, 29.041, and 227.11, Stats.

#### Staff time required

Approximately 120 hours will be needed by the Department.

### Natural Resources

#### Subject

Proposed hunting and trapping regulation changes to be included in the 2004 Bureau of Wildlife Management Housekeeping Rule Order.

### Policy analysis

The department proposes the following housekeeping rule changes for your review. These changes are minor in nature, non–controversial and can most effectively be handled through the housekeeping procedure.

We are proposing changes that provide clarifications to current rules, updated definitions, increasing management efficiency and altering limitations on hunters. The following rule proposals are:

- Corrections to inaccurate code and statutory cross–references – NR 10 and 12
- Create and Amend several NR 10 Definitions – NR 10.01
- Clarification Amendments to 8 sections of NR 10 – NR 10
- Legalize .172 Caliber handguns for small game. – NR 10.09 (1) (c)
- Update Deer hunting rules that apply to Sandhill Wildlife Area. – NR 10.22 (3) (f–h)
- Moves definitions pertaining to various trap sets to the definition section of NR 10. – s. NR 10.001 (8m), (18m), (26m) and 10.13 (3) (c)
- Clarify the Loew Lake deer hunting seasons. – s. NR 10.01 (3) (e) 3. d., f., and (es) 3.
- Amend the requirements of registration stations to reflect current carcass tag and registration procedures. s. NR 10.106 (3)
- Clarifications to the small game hunting in state parks opportunities, specifically waterfowl hunting hours for Mirror Lake State Park and inserting a sunset date for migratory game bird hunting at each of the pilot parks. s. NR 10.275 (1) (b) 1. and (2) (b)

### Statutory Authority

s. 29.014, Stats.

### Staff time required

Approximately 174 hours will be needed by the department to develop the rule prior to and following the hearings.

## Natural Resources

### Subject

Proposed hunting and trapping regulation changes to be included on the 2004 Spring Questionnaire.

### Policy analysis

This memo and attached Pink Sheet are to inform you that the department is initiating the annual rule development cycle for the 2004 Spring Fish and Wildlife Hearings. The following rule proposals will come before the Board in January 2004 for approval to hold public hearings. These hearings will be held in conjunction with the Conservation Congress Spring Meetings held on April 13, 2004. The effective dates of these rules will vary depending upon urgency and program timelines. The anticipated rule proposals include:

- Update season dates for several state parks to match other seasons. – NR 10.01 (3) (e) 3. d.
- Muskrat & Mink Season dates to run concurrently. – NR 10.01 (4) (e)
- Extend deadline for purchase of Class A Bear license to August 1st – NR 10.102 (4)
- Require portable stands and blinds be identified like duck blinds – NR 45.09 (2)
- Allows the Early September Goose season to begin on September 1 and would not close for the Saturday, Sunday and Monday of the Labor Day weekend. – s. NR 10.01 (1) 1. L. and m.

- Fall Turkey Season to begin on Oct. 1.– s. NR 10.01 (2) (f) (2)
- Creates a deer firearm season for Governor Thompson state park. – s. NR 10.01 (3) (e) 3. g. and 10.27 (2)
- Simplifies and combines opening season sates north of Hwy. 64 allowing coyote, fox, raccoon, muskrat, mink, and fisher to open on the same date. – s. NR 10.01 (4) (a) 1., (dm) 1. – 6., and (e) 1.
- Shortens the season for beaver and expands otter trapping statewide. – s. NR 10.01 (4) (c) 1., 2., 3., and (d)
- Allow deer to be skinned prior to registration – 2003 Conservation Congress Advisory Question. – s. NR 10.106 (1)
- Allows the use of dogs to hunt turkey during the fall turkey season – 2003 Conservation Congress Advisory Question. – s. NR 10.25 (4) (c)
- Creates three additional turkey management zones to cover the remainder of the state. – s. NR 10.29 (2)
- Eliminates sharp–tailed grouse closed areas in Douglas County Wildlife Area and Moquah Barrens of the National Forest. – s. NR 11.08
- Creates a no entry Wildlife Area at Turtle Valley. – s. NR 15.024
- Increases the daily fees at Bong from \$3 to \$5 for pheasant hunting. – s. NR 45.12 (4) (f) 2. a.

### Statutory Authority

s. 29.014, Stats.

### Staff time required

Approximately 214 hours will be needed by the department to develop the rule prior to and following the hearings.

## Natural Resources

### Subject

Proposed revision of Chapter NR 809 Wis. Adm. Code pertaining to reporting of analytical results to the department and procedures for returning to compliance following a nitrate, nitrite or combined nitrate and nitrite maximum contaminant level (MCL) violation.

### Policy analysis

Currently, many laboratories submit drinking water analytical results to the department on paper forms. The information on these forms must be manually entered into the department’s drinking water system database. This process is labor intensive, expensive and prone to errors. Chapter NR 809, Wis. Adm. Code allows the department to specify the format for reporting analytical data to the department. The department intends to clarify that laboratories must electronically submit analytical data to the department. The department believes this offers significant advantages to both laboratories and the department in terms of more timely reporting of data, more accurate data, more timely responses to violations, and lower data processing time and cost.

Chapter NR 809, Wis. Adm. Code specifies the procedures for determining compliance with the maximum contaminant level (MCL) for nitrate, nitrite or combined nitrate and nitrite. The department intends to also specify procedures for returning to compliance following a nitrate, nitrite or combined nitrate and nitrite MCL violation.

### Statutory Authority

Federal Safe Drinking Water Act (40 CFR). Chapters 280 and 281 Wisconsin Statutes.

### Staff time required

Approximately 166 hours will be needed by department staff to develop the proposed revisions.



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## Submittal of rules to legislative council clearinghouse

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

### Employment Relations Commission

**Rule Submittal Date**

On November 18, 2003, the Wisconsin Employment Relations Commission submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed administrative rule raises the filing fees for certain Commission services.

**Agency Procedure for Promulgation**

A public hearing on the proposed rule is required and will be conducted on December 18, 2003.

**Contact**

Peter G. Davis  
266–1381

### Transportation

**Rule Submittal Date**

On November 13, 2003, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule amends ch. Trans 250, relating to oversize and overweight permits for vehicles and loads.

**Agency Procedure for Promulgation**

A public hearing is required and scheduled for December 15, 2003.

The Division of Motor Vehicles, Motor Carrier Services Section is responsible for promulgation of the proposed rule.

**Contact**

Julie A. Johnson, Paralegal  
608–266–8810

### Transportation

**Rule Submittal Date**

On November 24, 2003, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule amends ch. Trans 300, relating to school bus equipment standards.

**Agency Procedure for Promulgation**

A public hearing is required and scheduled for January 7, 2004.

The Division of State Patrol, Bureau of Field Services and Training is responsible for promulgation of the proposed rule.

**Contact**

Julie A. Johnson, Paralegal  
608–266–8810

### Transportation

**Rule Submittal Date**

On December 1, 2003, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule amends ch. Trans 276, relating to allowing the operation of double bottoms and certain other vehicles on specified highways.

**Agency Procedure for Promulgation**

A public hearing is required and scheduled for January 5, 2004.

The Division of Transportation Infrastructure Development, Bureau of Highway Operations is responsible for promulgation of the proposed rule.

**Contact**

Julie A. Johnson, Paralegal  
608–266–8810



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## Rule–making notices

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### Notice of Hearing

#### Public Instruction [CR 03 – 112]

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.045 (3) and 227.11 (2) (a), Stats., and interpreting s. 118.045, Stats., the Department of Public Instruction will hold a public hearing as follows to consider the amending of ch. PI 27, relating to the commencement of a school term.

#### The hearing will be held as follows:

**January 6, 2004** Madison  
1:30 – 4:00 p.m. GEF 3 Building  
125 South Webster St.  
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access the meeting, please call Lori Slauson, at (608) 267–9127 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

#### Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at <http://www.dpi.state.wi.us/dpi/dfm/pb/schstart.html> and <http://www.dpi.state.wi.us/dpi/dfm/pb/schstrfn.html>, respectively. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to [lori.slauson@dpi.state.wi.us](mailto:lori.slauson@dpi.state.wi.us) or by writing to:

Lori Slauson, Administrative Rules and Federal Grants Coordinator

Department of Public Instruction  
125 South Webster Street  
P.O. Box 7841  
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above email or street address no later than January 9, 2004, will be given the same consideration as testimony presented at the hearing.

#### Analysis by the Department of Public Instruction

Chapter PI 27, relating to the commencement of a school term, is modified to allow a high school to begin classes prior to September 1 without making an annual waiver request to the department. The high school must be a registered participant in the International Baccalaureate Program. The program has a standardized examination schedule. The examination period is usually scheduled for early May. The program has prescribed curriculum and designated courses which have to be covered by the examination date. Because the instructional component of the program would not be completed in time to take the examinations given in May each year, the high school's school term must start prior to September 1.

The proposed rules allow a high school to begin the school term prior to September 1 if both of the following apply:

The school is a registered participant in the International Baccalaureate Program and has 50 percent of its 11<sup>th</sup> and 12<sup>th</sup> grade pupils enrolled in one or more courses offered under the program.

The school is in a school district that operates more than one high school allowing a pupil to enroll in another high school that is not subject to the earlier start date.

Although the department estimates this change will pertain to only one high school, the proposed rules may apply to other high schools participating in the International Baccalaureate Program if those schools and school districts meet the requirements described above. It is unknown how many, if any, additional high schools meet these criteria.

#### Fiscal Estimate

Chapter PI 27, relating to the commencement of a school term, is being modified to allow a high school with more than 50 percent of its 11<sup>th</sup> and 12<sup>th</sup> grade pupils enrolled in courses offered under the school's participation in the International Baccalaureate Program to begin classes prior to September 1 without making an annual waiver request to the department.

There may be some costs associated with the change in start date for any affected high school. However, these costs are indeterminate.

The proposed rules will not have a fiscal effect on the department.

### Notice of Hearing

#### Transportation [CR 03 – 116]

NOTICE IS HEREBY GIVEN that pursuant to ss. 86.16 (1), 110.06 (2) and 347.445, Stats., and interpreting ss. 110.06 and 347.445, Stats., the Department of Transportation will hold a public hearing in **Room 551** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **7th day of January, 2004, at 10:00 a.m.** to consider the amendment of ch. Trans 300, Wis. Adm. Code, relating to school bus equipment standards.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business January 9, 2004, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Sgt. David Pabst, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707–7912.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

#### Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 86.16 (1), 110.06 (2) and 347.445, Stats.

Statutes Interpreted: ss. 110.06 and 347.445, Stats.

General Summary of Proposed Rule. This proposed rule making will address the installation, operation and

specifications for retractable school bus crossing gates which will be required on all school buses effective May 1, 2004 as provided by 2001 Wis. Act 58. The Department is also taking this opportunity to clarify minor points of confusion and to update the rule to include approved changes in equipment manufacturing standards, practices and technology.

#### **Fiscal Effect**

The Department estimates that there will be no fiscal impact on state revenues or liabilities. The Department estimates that there will be minimal fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district or sewerage district. The proposed rule will have no fiscal effect independent of the fiscal impact of s. 347.455, Stats. It is estimated that the cost to retrofit existing buses with crossing gates will be \$250.00 per bus and that the additional cost to purchase crossing gates as part of a new bus will be \$175.00 per bus. The delayed effective date of 2001 Wis. Act 58 allows school districts and school bus contractors to budget and plan for these additional costs for their school bus fleets.

#### **Initial Regulatory Flexibility Analysis**

This proposed rule will have no significant adverse impact on small businesses.

#### **Copies of Proposed Rule**

Copies of the rule may be obtained upon request, without cost, by writing to Sgt. David Pabst, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7912, Madison, WI 53707–7912, or by calling (608) 266–0264. Hearing-impaired individuals may contact the Department using TDD (608) 266–3096. Alternate formats of the proposed rule will be provided to individuals at their request.

### **Notice of Hearing** **Transportation** **[CR 03 – 117]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1) and 348.07 (4), Stats., interpreting s. 348.07 (4), Stats., the Department of Transportation will hold a public hearing at the following location to consider the amendment of ch. Trans 276, Wis. Adm. Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways:

**January 5, 2004 at 10:00 a.m.**

Hill Farms State Transportation Building  
4802 Sheboygan Avenue  
Room 501 (Eau Claire Conference Room)  
(Parking is available for persons with disabilities)

The public record on this proposed rule making will be held open until close of business on the date of the hearing to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to Ashwani K. Sharma, Traffic Operations Engineer, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, Wisconsin, 53707–7986.

#### **Analysis Prepared by the Wisconsin Department of Transportation**

Statutory Authority: ss. 85.16 (1) and 348.07 (4), Stats.  
Statute Interpreted: s. 348.07 (4), Stats.

#### **General Summary of Proposed Rule**

This proposed rule amends Trans 276.07 (8) and (13), Wisconsin Administrative Code, to add three segments of highway to the designated highway system established under

s. 348.07 (4), Stats. The actual highway segments<sup>1</sup> that this proposed rule adds to the designated highway system are:

<b>Hwy.</b>	<b>From</b>	<b>To</b>
STH 60	USH 12 at Sauk City	USH 14 at Spring Green
STH 60	USH 18 at Bridgeport	USH 61 at Boscobel
STH 39	USH 151 at Mineral Point	USH 18 at Edmund

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin's regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin's highways without a permit: A single vehicle with an overall length in excess of 40 feet<sup>2</sup>; a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07 (2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

The effect of this proposed rule will be to extend the provisions of s. 348.07 (2) (f), (fm), (gm) and (gr), and s. 348.08 (1) (e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor–semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

<sup>1</sup>The proposed rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

<sup>2</sup>45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

#### **Fiscal Impact**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district or sewerage district.

#### **Initial Regulatory Flexibility Analysis**

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

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## Submittal of proposed rules to the legislature

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

**Health and Family Services  
(CR 03–080)**

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

**Financial Institutions – Credit Unions  
(CR 02–133)**

Ch. DFI–CU 73, relating to annual audits and verification of member accounts by state–chartered credit unions.

**Public Service Commission  
(CR 03–099)**

Ch. PSC 135, relating to incorporating federal pipeline safety rule revisions into the state pipeline safety rules.

**Regulation and Licensing  
(CR 02–103)**

Rules relating to ch. RL 2, extension of disciplinary action time limits.

**Transportation  
(CR 03–093)**

Rules relating to ch. Trans 276, allowing the operation of double bottoms and certain other vehicles on certain specified highways.

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## Rule orders filed with the revisor of statutes bureau

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*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 02–129)**

An order affecting chs. Comm 2, 81 to 85 and 91, relating to fee schedule; definitions and standards; design, construction, installation, supervision and inspection of plumbing; private onsite wastewater treatment systems; plumbing products; soil and site evaluations; and sanitation.

Effective 2–1–04.

### **Ethics Board (CR 03–061)**

An order affecting ch. Eth 1, relating to the identification of a topic of a lobbying communication that relates to an attempt to influence administrative action.

Effective 1–1–04.

### **Medical Examining Board (CR 03–072)**

An order affecting ch. Med 1, relating to accepting examinations from the Medical Council of Canada.  
Effective 2–1–04.

### **Public Instruction (CR 03–073)**

An order affecting ch. PI 8, relating to audits of the school district standards.  
Effective 2–1–04.

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## Public notices

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### Financial Institutions – Division of Banking

#### Notice of Interest Rate on Required Residential Mortgage Loan Escrow Accounts For 2004

Under Section 138.052 (5) (a), Stats., with some exceptions, a bank, credit union, savings bank, savings and loan association, or mortgage banker, which originates a residential mortgage loan requiring an escrow account to assure the payment of taxes or insurance, shall pay interest on the outstanding principal of the escrow.

Section 138.052 (5) (am) 2., Stats., directs the Department of Financial Institutions, Division of Banking, to determine annually the required interest rate. The rate is based on the average interest rate paid by Wisconsin depository institutions on passbook savings accounts.

The Department of Financial Institutions, Division of Banking, has calculated the interest rate required to be paid on escrow accounts under Section 138.052 (5), Stats., to be **0.81%** for 2004. This interest rate shall remain in effect through December 31, 2004.

#### Contact Person

Mr. Michael J. Mach  
Department of Financial Institutions  
Telephone (608) 266–0451

### Health and Family Services

#### (Medical Assistance Reimbursement of Nursing Homes) State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 03–04

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the Wisconsin Department of Health and Family Services, is called Medical Assistance or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Centers for Medicare and Medicaid Services.

The Department is proposing a change in the methods of payment for specialized psychiatric rehabilitation services to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The change is effective January 1, 2004.

The proposed change would update the payment system and make various payment–related policy changes. The estimated fiscal impact of this change will be a decrease of \$204,028 general purpose revenue, or GPR, and an increase of \$306,042 in federal match, or FED, for State Fiscal Year 2004.

The proposed change is being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed change is as follows: Create a payment supplement for specialized psychiatric rehabilitative services for residents with mental illness.

#### Copies of the Proposed Change:

Copies of the proposed change are available and may be obtained free of charge by writing to:

Division of Health Care Financing  
Attention: Nursing Home Medicaid Payment Plan  
P.O. Box 309  
Madison, WI 53701–0309  
or by faxing your request to James Cobb at 608–264–7720.



The proposed change may be reviewed at the main office of any county department of social services or human services.

**Written Comments/Meetings**

Written comments on the proposed change may be sent to the Division of Health Care Financing at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed change based on the comments received.

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