

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

*Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

- Appointments ... Appt
- 
- Clearinghouse Rules ... CRule
- 
- Committee Hearings ... CH
- 
- Committee Reports ... CR
- 
- Executive Sessions ... ES
- 97hr\_JCR-AR\_ES\_pt08a
- 
- Hearing Records ... HR
- 
- Miscellaneous ... Misc
- 
- Record of Comm. Proceedings ... RCP
-

September 3, 1997

Public Hearing & Exec.

Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

June 25, 1997

The Honorable Kim Plache  
Room 305, 100 N. Hamilton  
Madison, WI 53702

Dear Senator Plache:

Thank you for contacting me to discuss your concerns regarding DWD 56.08 (CR 97-023), the copayment schedule for child care assistance. I enjoyed meeting with you, Senator Moore and Representative Young on June 23 to discuss Wisconsin's efforts to assist parents to achieve self-sufficiency through work.

In designing the copayment schedule, the Department carefully studied child care costs in the context of the entire range of benefits and tax credits available to low-income working families. A 14-member Child Care Working Group, representing professional child care providers, parents, advocates, elected officials and top policy makers developed the copay schedule during several meetings late last year. This group developed a copayment schedule that is responsive to the needs of low-income parents while maintaining Wisconsin's commitment to quality, affordable child care.

For your information, I have attached examples of the effect of the child care copayments, and other benefits, on net family income. The attached information reinforces the high benefit value of child care assistance, and indicates that most families utilizing child care subsidies will pay only a small percentage of the actual cost of their child care, especially when more expensive center-based care is used.

As we discussed, flexibility is needed within the rule to ensure the copayment schedule can be modified at least annually to incorporate revisions to the federal poverty levels and other necessary modifications. Further, uncertainty related to the estimating factors used including participation rates, market effects and types of care that will be utilized means that flexibility provisions within the rule are not only desirable, but may be necessary to allow for unforeseen circumstances. In addition, Wisconsin is extending eligibility for child care assistance to all who meet the financial eligibility criteria, which will provide assistance to some Wisconsin residents who were never before eligible.

A 26-member advisory committee of industry professionals and other interested parties has been appointed to provide valuable input to the Department on child care issues. Wisconsin is again venturing onto new ground in its welfare reform efforts, and until the Department has more measurable experience with the child care copays, I believe that we must proceed cautiously.



Based on our discussion, I am submitting a revised version of DWD 56.08 containing germane modifications to the rule for your consideration. The attached rule contains the following modifications:

- A revised copayment schedule reflecting recently-announced changes in the federal poverty level. This updated schedule slightly lowers copayments for families.
- A technical change in DWD 56.08 (2)(b) and (c), changing the word "paragraph" to "subsection", as requested by Dan Fernbach of the Legislative Council.

Further, the rule contains two modifications designed to address concerns raised at the meeting:

- A provision has been added stipulating all adjustments to the copayment schedule will be published in the Wisconsin Administrative Register.
- A provision has been added creating a procedure by which the Department would implement adjustments to the schedule that increase parental copayments by fifteen percent or more. Under the new procedure, the Department would promulgate a new copayment schedule via administrative rule; that rule would not take effect for at least one month from the date of announcement of the new schedule.

I believe that these changes are consistent with the principle that minor modifications to the schedule should be made in a timely and efficient manner, while significant changes warrant the review of and input from the Legislature.

Thank you for sharing your concerns over the child care copay rule. I appreciate the opportunity to work with you on this issue. I hope that you will view these proposed germane modifications favorably, allowing us to proceed with rule promulgation.

Sincerely,



Linda Stewart  
Secretary

cc: Senator Gwendolynne Moore  
Senator David Zien  
Representative John Gard  
Representative Rebecca Young

Attachments

**CASE EXAMPLES OF LOW-INCOME FAMILIES  
RECEIVING CHILD CARE ASSISTANCE**

**1. Milwaukee family of 3 participating in a W-2 Community Service Job**

Description: This family has a single parent and 2 children (infant and four-year-old) in a licensed child care center. The family is participating in a W-2 Community Service Job. The family is also eligible to receive Food Stamps and Medical Assistance.

Annual W-2 Community Service Job payment	Annual child care costs (estimated at the 75th percentile of prices in Milwaukee)	Parent copayment required annually	Annual state share of the child care cost	Net annual income (including Food Stamps and minus co-pay)
\$8,000	\$15,072	\$480	\$14,592	\$11,168

**2. Dane County working family of 3 at 92% of poverty**

Description: This family has a single parent and two children ages 3 and 7. The family is working and making \$12,000 in earned income (\$6.00 an hour). The family is using a child care center for the care of its two children, one in care full-time and the other part-time. This family is also eligible to receive Food Stamps, state and Federal Earned Income Tax Credit, state Homestead Tax Credit, Federal Dependent Care Tax Credit, and Medical Assistance.

Annual gross earned income	Annual child care costs (estimated at the 75th percentile of prices in Dane County)	Annual parent copayment required	Annual state share of the child care cost	Net income (including Food Stamps and tax credits, and minus copay)
\$12,000	\$9,659	\$1,032	\$8,627	\$17,064

**3. Racine Co. working family of 3 at 123% of poverty**

Description: This family has a single parent and 2 children ages 2 and 4. The parent is making \$16,000 per year (\$8.00 an hour). The children are full-time at a licensed child care center. This family is also eligible to receive Food Stamps, state and Federal Earned Income Tax Credit, state Homestead Tax Credit, Federal Dependent Care Tax Credit, and Medical Assistance.

Annual gross earned income	Annual child care costs (estimated at the 75th percentile of prices in Racine County)	Annual parent copayment required	Annual state share of the child care cost	Net income (including Food Stamps and tax credits, and minus copay)
\$16,000	\$10,920	\$1,920	\$9,000	\$17,844

*Note that in all three of these examples the state share of the child care cost is a substantial benefit to the parents. These examples include relatively high cost licensed child care arrangements, which are typically used by parents who seek child care subsidies. If parents use certified, rather than licensed child care, the cost to the parent and to the state is less. Other parents are able to keep child care costs low by using extended family or trading child care services with friends and relatives.*

NET EFFECT OF INCOME, TAX CREDITS AND LIABILITIES, AND CO-PAYMENTS

TABLE 1 - PARENT WITH ONE CHILD

Hourly Wage	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Medicare Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Post-Tax FPL	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W2 Child Care Co-Payment	Net Monthly Income	Total Annual Income
\$4.25	\$8,500	\$708	75%	(\$650)	\$0	\$0	\$7,850	71%	\$2,159	\$48	\$734	\$0	\$0	\$7,500	71%	\$625	71%	\$212	\$837	Family	(\$20)	\$817	\$9,304
\$5.15	\$10,300	\$858	80%	(\$765)	\$0	(\$28)	\$9,535	74%	\$2,159	\$66	\$578	\$0	\$2,329	\$8,000	75%	\$607	75%	\$212	\$919	Family	(\$20)	\$899	\$10,304
\$6.00	\$12,000	\$1,000	113%	(\$918)	(\$148)	(\$135)	\$9,507	90%	\$2,099	\$84	\$370	\$135	\$2,031	\$10,829	102%	\$902	102%	\$166	\$1,068	Family	(\$20)	\$1,048	\$12,400
\$7.00	\$14,000	\$1,167	132%	(\$1,071)	(\$282)	(\$435)	\$12,212	115%	\$1,760	\$71	\$162	\$423	\$1,488	\$13,331	118%	\$1,028	127%	\$153	\$1,181	Family	(\$57)	\$1,124	\$13,468
\$8.00	\$16,000	\$1,333	151%	(\$1,224)	(\$443)	(\$603)	\$13,586	128%	\$1,460	\$58	\$0	\$554	(\$330)	\$15,070	136%	\$1,221	148%	\$0	\$1,258	Child < 6	(\$19)	\$1,139	\$13,606
\$9.00	\$18,000	\$1,500	170%	(\$1,377)	(\$1,035)	(\$803)	\$14,965	141%	\$1,140	\$46	\$0	\$624	(\$1,205)	\$16,765	158%	\$1,400	158%	\$0	\$1,500	Child < 6	(\$19)	\$1,181	\$13,344

TABLE 2-A - PARENT WITH TWO CHILDREN (One Child in Child Care)

Hourly Wage	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Medicare Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Post-Tax FPL	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W2 Child Care Co-Pay	Net Monthly Income	Total Annual Income
\$4.25	\$8,500	\$708	56%	(\$650)	\$0	\$0	\$7,850	56%	\$3,400	\$478	\$760	\$0	\$3,968	\$8,000	56%	\$625	56%	\$304	\$929	Family	(\$20)	\$909	\$10,908
\$5.15	\$10,300	\$858	64%	(\$765)	\$0	\$0	\$9,535	59%	\$3,560	\$498	\$604	\$0	\$3,857	\$12,488	64%	\$1,040	64%	\$246	\$971	Family	(\$20)	\$951	\$11,168
\$6.00	\$12,000	\$1,000	80%	(\$918)	(\$45)	(\$98)	\$10,984	72%	\$3,481	\$487	\$396	\$0	\$3,349	\$14,197	107%	\$1,163	107%	\$226	\$1,208	Family	(\$20)	\$1,188	\$15,192
\$7.00	\$14,000	\$1,167	105%	(\$1,071)	(\$45)	(\$232)	\$12,652	85%	\$3,060	\$428	\$168	\$45	\$2,373	\$16,373	123%	\$1,276	123%	\$178	\$1,454	Family	(\$57)	\$1,397	\$16,832
\$8.00	\$16,000	\$1,333	120%	(\$1,224)	(\$345)	(\$383)	\$14,038	105%	\$2,639	\$369	\$0	\$345	\$1,361	\$17,361	130%	\$1,449	130%	\$139	\$1,587	Child < 6	(\$91)	\$1,496	\$17,338
\$9.00	\$18,000	\$1,500	135%	(\$1,377)	(\$945)	(\$533)	\$15,425	116%	\$2,218	\$310	\$0	\$427	\$380	\$18,380	138%	\$1,532	138%	\$0	\$1,532	Child < 6	(\$90)	\$1,442	\$17,533

TABLE 2-B - PARENT WITH TWO CHILDREN (Two Children in Child Care)

Hourly Wage	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Medicare Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Post-Tax FPL	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W2 Child Care Co-Pay	Net Monthly Income	Total Annual Income
\$4.25	\$8,500	\$708	56%	(\$650)	\$0	\$0	\$7,850	56%	\$3,400	\$476	\$760	\$0	\$3,886	\$8,000	56%	\$625	56%	\$304	\$929	Family	(\$40)	\$889	\$10,668
\$5.15	\$10,300	\$858	64%	(\$765)	\$0	\$0	\$9,535	59%	\$3,560	\$468	\$604	\$0	\$3,897	\$12,488	64%	\$1,040	64%	\$255	\$971	Family	(\$40)	\$931	\$11,168
\$6.00	\$12,000	\$1,000	80%	(\$918)	(\$45)	(\$89)	\$10,984	82%	\$3,481	\$487	\$396	\$0	\$3,349	\$14,197	107%	\$1,163	107%	\$240	\$1,208	Family	(\$40)	\$1,168	\$15,080
\$7.00	\$14,000	\$1,167	105%	(\$1,071)	(\$45)	(\$232)	\$12,652	95%	\$3,060	\$428	\$168	\$45	\$2,373	\$16,373	123%	\$1,279	123%	\$228	\$1,423	Family	(\$46)	\$1,377	\$16,524
\$8.00	\$16,000	\$1,333	120%	(\$1,224)	(\$345)	(\$383)	\$14,038	105%	\$2,639	\$369	\$0	\$345	\$1,361	\$17,361	129%	\$1,364	129%	\$219	\$1,583	Family	(\$46)	\$1,537	\$17,064
\$9.00	\$18,000	\$1,500	135%	(\$1,377)	(\$645)	(\$533)	\$15,425	116%	\$2,218	\$310	\$0	\$534	\$486	\$18,486	139%	\$1,541	139%	\$0	\$1,541	Child < 6	(\$60)	\$1,481	\$17,644

TABLE 3-A - PARENT WITH THREE CHILDREN (Two Children in Child Care)

Hourly Wage	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Medicare Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Post-Tax FPL	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W2 Child Care Co-Pay	Net Monthly Income	Total Annual Income
\$4.25	\$8,500	\$708	47%	(\$650)	\$0	\$0	\$7,850	47%	\$3,400	\$1,462	\$760	\$0	\$4,972	\$8,000	47%	\$625	47%	\$388	\$913	Family	(\$40)	\$873	\$11,632
\$5.15	\$10,300	\$858	53%	(\$765)	\$0	\$0	\$9,535	49%	\$3,560	\$1,531	\$630	\$0	\$4,856	\$15,256	50%	\$687	50%	\$368	\$1,053	Family	(\$40)	\$913	\$11,632
\$6.00	\$12,000	\$1,000	64%	(\$918)	\$0	(\$46)	\$11,034	69%	\$3,481	\$1,497	\$422	\$0	\$4,434	\$16,434	64%	\$1,123	64%	\$314	\$1,437	Family	(\$40)	\$1,397	\$12,132
\$7.00	\$14,000	\$1,167	87%	(\$1,071)	(\$45)	(\$182)	\$12,747	79%	\$3,060	\$1,316	\$274	\$0	\$3,336	\$17,336	80%	\$1,370	80%	\$281	\$1,551	Family	(\$40)	\$1,511	\$18,540
\$8.00	\$16,000	\$1,333	100%	(\$1,224)	(\$345)	(\$343)	\$14,433	90%	\$2,639	\$1,135	\$6	\$0	\$2,213	\$16,213	106%	\$1,445	106%	\$251	\$1,696	Family	(\$46)	\$1,650	\$18,500
\$9.00	\$18,000	\$1,500	112%	(\$1,377)	(\$535)	(\$500)	\$15,665	80%	\$2,218	\$854	\$0	\$255	\$1,291	\$19,291	120%	\$1,608	120%	\$232	\$1,840	Child < 6	(\$148)	\$1,692	\$18,718

JUL 11 1997

Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

## Department of Workforce Development

July 8, 1997

The Honorable Richard Grobschmidt  
State Senator  
Room 404, 100 North Hamilton  
Madison, Wisconsin 53702

The Honorable Glenn Grothman  
State Representative  
125 West, State Capitol  
Madison, Wisconsin 53702

Dear Senator Grobschmidt and Representative Grothman:

During a Joint Committee Review for Administrative Rules hearing in May, committee members asked Department staff to provide additional information related to the child care copayment rule (DWD 56.08). I am providing the following information in response to the questions raised:

### 1. What income is counted in determining family income for purposes of determining the copayment amount?

Under s.DWD 56.02(13) "income" means money, wages or salary, net income self-employment, social security, dividends, interest on savings or bonds, income from estates or trusts, net rental income or royalties, public assistance, Supplemental Security Income (SSI), pensions and annuities, unemployment insurance, worker's compensation, alimony and other maintenance payments, child support payments and veteran pensions. Public assistance for this purpose is consistent with the definition found in s.49.95(11), Stats. Food stamp benefits are not included as income for purposes of computing child care co-payment amounts.

### 2. Child care co-payment chart

The child care co-payment chart was developed to implement a co-pay schedule based on four factors: family income, family size, the type of child care provider used, and the number of children receiving child care subsidies. We believe the chart accomplishes this effectively. The co-pay schedule is primarily used by county and tribal child care workers to determine eligibility and co-payment amounts prior to authorizing child care subsidies for a family. The co-pay amounts are set on a per week basis because child care providers generally charge by the week and child care vouchers are generally issued for weekly payments. The Department is working on automating the entire eligibility determination process for late 1997 implementation. The chart itself is not usually used by families.

### 3. What method will the Department use to modify the co-payment chart?

This is an interesting question, and one to which we have given considerable thought. Changes to the schedule will include very routine modifications, and could include major policy decisions as well. Consider three scenarios:



First, the copayment schedule is based upon federal poverty levels, which are modified annually; changes to the federal poverty level provide a more generous child care subsidy for families. Promulgation of permanent administrative rules takes approximately ten months under ideal circumstances, but could take longer in even-numbered years. For these reasons, it would be difficult to maintain the most current federal poverty level in the copayment schedule, as well as make other routine modifications, if we made all changes by rule.

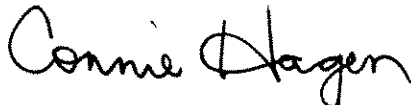
Second, if utilization of subsidized child care increases significantly beyond estimates, available options include maintaining the current copayment schedule and appropriation of additional funds, or adjustment of the copayment schedule to reflect higher copayment amounts. In the first option, Legislative oversight is appropriately provided under current law. 1995 Wisconsin Act 132 requires the Legislature to approve block grant expenditure plans, including expenditure of Child Care Development and TANF Block Grant funds. This is most often done through the biennial budget, however, major modifications to an approved block grant spending plan, such as increased funding that would be required to sustain the current copayment schedule under unexpectedly high usage, would be reviewed by the Joint Committee on Finance. So Legislative review and approval of the financial aspect of the rule already exists.

Finally, if utilization of subsidized care increases and the copayment schedule is adjusted, Legislative and public input and comment is also desirable. For this reason, the Department has submitted a germane modification to the standing committees that are currently reviewing the copay rule. The Department's modification provides, for changes to the schedule that would increase copayments by more than 15%, promulgation of those changes through permanent rule. In addition, the Department would not publish these changes as an emergency rule for at least one month after announcing them, to give the Legislature and the public time to consider and comment on the proposed changes. Routine changes or changes which involve less than a 15% increase in the copay schedule would be published in the Wisconsin Administrative Register.

We believe that this is a reasonable approach to resolve the need for review and comment on significant changes, while also allowing administrative adjustments for less substantive modifications.

Please call me if you have additional questions or concerns related to the child care copayment rule.

Sincerely,



Connie Hagen  
Executive Assistant



**Contact: Steve Krieser**  
Office of Rep. Glenn Grothman  
Phone 608-264-8486  
Fax 608-282-3659  
[www.legis.state.wi.us/assembly/asm59/  
news/jcrar.html](http://www.legis.state.wi.us/assembly/asm59/news/jcrar.html)

Room 125 West, State Capitol  
PO Box 8952  
Madison, WI 53708-8952  
[steve.krieser@legis.state.wi.us](mailto:steve.krieser@legis.state.wi.us)

## Joint Committee for Review of Administrative Rules

# Background

## Skilled Private-Duty Nursing Care for Medically-Fragile Children: Katie Beckett Program

### Description of the Issue

Under the Katie Beckett program, administered by the Department of Health and Family Services, certain medically fragile children may receive Medical Assistance benefits which include a designated number of hours of skilled private-duty nursing care (PDN) at home within a specified period of time. For instance, a child might be allotted 220 hours of PDN on a biweekly basis. The medical necessity of continued PDN care of children receiving benefits under the program must be periodically re-certified by the Department, and another block of hours of PDN care re-allotted. While the overall program is governed by DHFS administrative rule, each child's case is reviewed by Department personnel, utilizing the review criteria set forth in HFS 107.02, and decisions issued under the aegis of statutes which require the Department to hire professional consultants for the purposes of conducting these reviews. Therein lies the dispute.

### Arguments

In a June 19, 1997 letter to the co-chairpersons of the Joint Committee for Review of Administrative Rules, the co-chairpersons of the Legislative Council Special Committee on Programs for Developmentally Disabled persons petitioned the Joint Committee to review the procedures by which the Department establishes the number and distribution of hours of PDN under the Katie Beckett program.

Specifically, The Special Committee alleged in its letter that the Department of Health and Family Services has engaged in *de facto* rulemaking exclusive of the statutorily-defined rulemaking process under Chapter 227, stats, to wit:

- “The BHCF (Bureau of Health Care Financing) has consistently refused to issue prior authorizations for private duty nursing care under ss. HFS 107.02 (3) to (f) and 107.12, Wis. Adm. Code, for any period of 24 consecutive hours because such care is not deemed ‘medically necessary,’ as defined in s. HFS 101.03 (96m), Wis. Adm. Code, if the parents are capable of learning nursing-level tasks.”
- “The BHCF has established a ‘parenting’ requirement for these children . . . such as four hours or more (per day), when a parent is expected to provide for the child’s needs, including complex medical care, regardless of the other duties parents must perform. During these periods, the BHCF will not authorize state-funded care.”
- “The BHCF has adopted a ‘policy’ that prior authorizations for private duty nursing care for children must be made weekly . . . even though the needs of many of these children are not likely to change.”

The Special Committee further alleged in its letter that the Department has enforced the policies enumerated above in violation of s. 227.10, stats, which requires an agency to engage in formal rulemaking if a policy it enforces meets the definition of a “rule” as set forth in s. 227.01 (13), stats.

The Special Committee has requested that the Joint Committee determine that the “policies” set forth by the Department as described above meet the statutory definition of administrative rules. The Special Committee has further requested that the Joint Committee direct the Department to promulgate these “policies” as rules. Finally, the Joint Committee has been requested to suspend the rules promulgated by the Department pursuant to the Joint Committee’s prior order.

The Department contends that it has not engaged in rulemaking outside of the process set forth in Chapter 227, stats. The Department set forth this argument in a May 21, 1997 letter to the Legal Aid Society of Milwaukee in the case of a specific recipient of PDN:

***“Contesting (the Department’s) right to limit PDN hours is contesting the legislative mandate for (the Department) to hire professional consultants to apply the PA review criteria of HFS 107.02 . . . . If one follows (the Legal Aid Attorney’s) interpretation of administrative code, every PDN recipient – child or adult – is entitled to 24 hours/day of PDN, regardless of medical necessity, appropriateness, cost-efficacy, and other PA review criteria.”***

The Department argues that the putative “policies” derided by the Special Committee and other critics are actually and simply decisions reached through the application of existing administrative codes governing the Katie Beckett program. The result, then, of ordering rulemaking in this case would be that separate administrative rules would need to be promulgated for *each individual case*.

**Options Available to the Joint Committee**

- The Joint Committee may determine that the Department has established policies which fit the definition of a “rule,” and direct the Department to promulgate the policies as administrative rules.
- The Joint Committee may take no further action.
- The Joint Committee may decide, after public hearing, to undertake a further review of the existing administrative rules on which the putative policy decisions in dispute are based.

**Wisconsin Bureau of Health Care Financing**  
**Survey of Private Duty Nursing Medicaid Benefits for Children In Fifteen States**  
**1997**

## **Summary**

The Wisconsin Bureau of Health Care Financing (BHCF) conducted a comparative study of fifteen<sup>1</sup> other states' private-duty nursing (PDN) benefits. BHCF found that, for children, thirteen of the states had established limits based on hours per day; eight of the states had established limits based on dollars per month; and eleven of the states had established limits by the cost of an alternative care facility. With the exception of Indiana, all other states either do not pay for, will discontinue paying for, or try to avoid paying for, twenty-four hour PDN care for child recipients *on an ongoing basis*.

## **Background**

- The Wisconsin Medicaid's home health benefit covers PDN and defines it as registered nurse (RN) or licensed practical nurse (LPN) services provided to a recipient requiring eight or more hours of skilled nursing care in a day. PDN can be provided by home health agencies or independent nurses.
- The Department of Health and Family Services (DHFS) is mandated by the Wisconsin Administrative Code to apply prior authorization review criteria to determine the medical necessity and appropriateness of PDN.
- In January 1997, BHCF surveyed fifteen other states on the use of home health care services for ventilator-dependent and nonventilator Medicaid recipients with significant home care needs. This report focuses primarily on the survey results for PDN benefits for children.

## **Findings**

### General

- The results of the survey show that fourteen of the fifteen states do not pay for, will discontinue paying for, or try to avoid paying for twenty-four hour PDN care for child recipients on an ongoing basis. Under special circumstances, Indiana may provide ongoing twenty-four hour PDN care.
- With the exception of Indiana, New York, and Florida, every state surveyed has clearly defined criteria (hourly, dollar, alternative facility cost, and/or "medically necessary") for limiting their PDN care benefit.
- New York is in the process of establishing new PDN benefit guidelines.
- Florida is reviewing Oregon's home care guidelines.

---

<sup>1</sup> California, Florida, Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, South Carolina, Utah, and Washington.

- All states expect parents and/or primary care givers to learn care-giving skills and to participate in care-giving activities on a daily basis.

#### Private Duty Nursing Coverage

- All fifteen states cover PDN for children either under Medicaid or a Medicaid Waiver Program.
- Eleven states cover PDN for adults as well as children: CA, IN, MI, MN, NJ, NY, OH, OR, SC, UT, WA. Four states do not provide PDN for adults: FL, IA, IL, KS.

#### Limitations on Private Duty Nursing Coverage for Children

- **Hourly:** Thirteen states have hourly limits per day, which are based on a client's condition and/or "medical necessity" criteria: CA, FL, IA, IL, IN, KS, MI, NJ, OH, OR, SC, UT, WA.
  - ✓ Sixteen hours per day maximum limit: FL, IA, MI.
  - ✓ New York currently has no specified hourly limits per day; however, parents are expected to be involved in providing daily cares.
  - ✓ Washington has no specified hourly limit; however, hours are determined by medical necessity and are expected to decrease over time.
  - ✓ Kansas's limit is "under 24 hours" as medically needed.
  - ✓ Ohio, under its monthly limit, allows approximately 11 hours per day.
  - ✓ Oregon bases its hourly limits on an acuity grid.
- **Monthly limits and limits based on alternative care facilities**
  - ✓ Eight states limit their PDN (non-ventilator and ventilator-dependent) benefit by dollars per month: CA, MN, NJ, OH, OR, SC, UT, WA.
  - ✓ Eleven states limit their PDN (non-ventilator and ventilator-dependent) benefit to the cost of an alternative care facility: CA, IL, IN, MI, MN, NJ, NY, OH, SC, UT, WA.
  - ✓ California uses a yearly aggregate benchmark that is less than or equal to similar institutional care.
  - ✓ New York's 1997 fiscal assessment will compare the costs of PDN plus all home care services to 90% of nursing facility costs.
  - ✓ Utah's cost comparison to alternative facilities is flexible. Initial PDN costs can be high immediately after discharge from a hospital, but they are expected to decrease over time to at most eight hours of PDN home care per day.
- **Twenty-four hour care for children:**
  - ✓ Not allowed:
    - Four states do not provide 24-hour PDN under any circumstances: IA, KS, OH, SC.

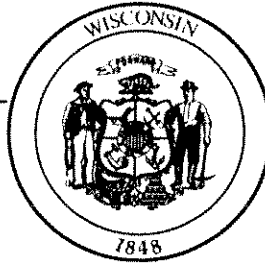
- ✓ Allowed under exceptional conditions:
  - Nine states allow 24-hour PDN care for a short term under very exceptional conditions, i.e., immediately after discharge from the hospital or when the primary care giver has a serious illness. In most all cases, further administrative review and approval is required: CA, FL, IL, MI, NJ, NY, OR, UT, WA.
  - Indiana tries to avoid 24-hour PDN, but has a handful of very special circumstances.
  - Minnesota has no 24-hour PDN program but allows 24-hour PDN as an alternative of last choice. Twenty-four hour PDN care is based on medical necessity and is limited by the costs of an alternative facility.

### **Role of Parents and/or Primary Caregivers**

- All fifteen states expect parent(s) and/or primary care giver(s) of non-ventilator or ventilator-dependent recipients to learn and provide all cares necessary to allow the child to remain in the home.
  - ✓ In Minnesota, parents are required to complete a comprehensive training program and sign a contractual agreement about their responsibilities, before the child is discharged from a hospital.
  - ✓ In Washington, parents must agree to participate in care giving; otherwise, benefits can be denied, and the child can be placed in a foster home.
  - ✓ In Oregon, "Parents and foster parents are the primary care givers, and the services are intended to support, not supplant, the natural support supplied by the family."
  - ✓ In Florida, parents are "encouraged" to provide care. Florida will propose tighter requirements for parents to decrease its 39% growth rate in PDN costs.
  - ✓ In Illinois, care givers are expected to work with case managers and to participate in care giving to the fullest extent possible, even if only for four hours per day.
  - ✓ In Michigan, care givers (parents, foster, adoptive, legal guardian, grandparents, spouse, or other responsible party) are to care for children/adults who meet the Hourly Home Care Program criteria at least eight hours per day.
  - ✓ In California, approval of Medicaid waiver services involves active daily participation of family and/or primary care giver in the home care program.
  - ✓ In New Jersey, family/primary care givers are expected to provide a minimum of eight hours per day for adult and child recipients.
  - ✓ In Iowa, home health services are "not available to meet a family's normal needs for child care and supervision, i.e., day care while a parent works."
  - ✓ In Ohio, parental/ primary care giver involvement is expected on a daily basis, because monthly limits allow for approximately eleven hours per day of PDN cares.
  - ✓ In Utah, parent, guardian, or primary care givers must sign an agreement, "I understand that as my skills and expertise increase, PDN support, in my home, will decrease to a minimum level to meet the medical needs of my child." Parents are expected to care for their children twelve to sixteen hours per day.

SENATOR RICHARD GROBSCHMIDT  
CO-CHAIRMAN

Room 404 • Hamilton  
Madison, WI 53707  
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIRMAN

Room 125 West • State Capitol  
Madison, WI 53703  
Phone: 608-264-8486

2

JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES

MEMORANDUM

*will extend*

To:	Members, JCRAR
From:	Senator Richard Grobschmidt, Co-Chairman Representative Glenn Grothman, Co-Chairman
Date:	July 31, 1997
Re:	Objection by standing committee to clearinghouse rule

Pursuant to s. 227.19(5), Stats, the Joint Committee for Review of Administrative Rules has obtained jurisdiction over a portion of Clearinghouse Rule 97-023, relating to the administration of child care funds and required parent copayments. A copy of the rule, and the record of standing committee proceedings is attached for your review.

Unless extended for an additional 30 days, the JCRAR review period for this rule will conclude on August 9, 1997.

Senate

Record of Committee Proceedings

**Committee on Labor, Transportation and Financial Institutions**

**Clearinghouse Rule 97-023**

Relating to the administration of child care funds and required parent copayments.  
Submitted by the Department of Workforce Development.

- April 30, 1997      Referred to committee on Labor, Transportation and Financial Institutions.
- May 30, 1997      **MEETING WITH AGENCY REPRESENTATIVES REQUESTED**
- June 23, 1997      **MEETING WITH AGENCY REPRESENTATIVES HELD – MODIFICATIONS TO BE MADE BY AGENCY**
- June 25, 1997      **MODIFICATIONS RECEIVED FROM AGENCY**
- July 9, 1997      **EXECUTIVE SESSION - POLLING**

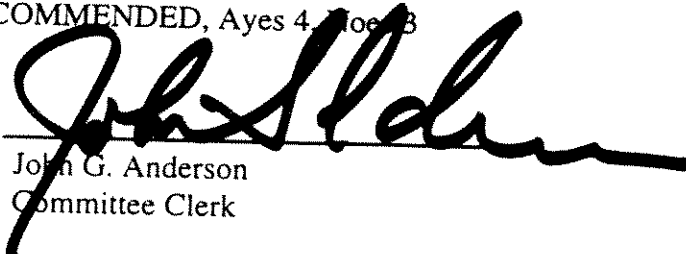
Moved by Senator Plache that **Clearinghouse Rule 97-023** be recommended for objection in part.

Motion: To object to part of **Clearinghouse Rule 97-023**, specifically the words, **“that would increase parental copayments by 15% or more”** in proposed s. DWD 56.08(3)(c), on grounds set fourth in s.227.19(4)(d)6.,Stats.

Ayes: (4) Senators Plache, C. Potter, Moore and Decker.

Noes: (3) Senators Zien, Darling and Farrow.

**OBJECTION IN PART RECOMMENDED, Ayes 4, Noes 3**

  
\_\_\_\_\_  
John G. Anderson  
Committee Clerk



*Senate*

**Committee Report**

---

The committee on **Labor, Transportation and Financial Institutions**, reports and recommends:

**Clearinghouse Rule 97-023**


Relating to the administration of child care funds and required parent copayments.  
Submitted by the Department of Workforce Development.

OBJECTION IN PART RECOMMENDED, Ayes 4, Noes 3, Absent 0

Ayes: (4) Senators Plache, C. Potter, Moore and Decker.

Noes: (3) Senators Zien, Darling and Farrow.

Absent: (0) None.

  
\_\_\_\_\_  
Senator Kimberly Plache  
Chair

Objection lang.  
on p3 of this  
rule

DWD 56.08, Wis. Adm. Code

**PROPOSED PERMANENT RULE RELATING TO  
THE ADMINISTRATION OF CHILD CARE FUNDS  
AND REQUIRED COPAYMENTS**

Pursuant to the authority vested in the Wisconsin Department of Workforce Development by §§49.132(2)(b), (2r)(d), (4)(d) and (e)2 and (5)(e), and 49.155(5), Stats., the department proposes an order to renumber subchapter VII of HSS 55 and to create DWD 56.08, relating to the administration of child care funds and required parent copayments.

---

Analysis

The Department is authorized by s. 49.132(2)(b), (2r)(d), (4)(d) and (e)2 and (5)(e), Stats., to create a rule interpreting s. 49.155(5), Stats.

This rule contains a schedule of required copayments for parents who receive state child care funds. Under the schedule, a parent who receives a child care subsidy will not be required to pay more than 16% of gross income as a copayment. The copayments for licensed child care are 30% more than the copayments for certified child care.

The rule also provides that the schedule may be adjusted in the future to reflect changes in costs or other economic factors. Adjustments to the schedule will be published in the Wisconsin Administrative Register. A new rule will be promulgated to make adjustments to the schedule involving an increase in copayments of 15% or more, and advance public notice of at least one month will be given before an emergency rule involving an increase of 15% or more is adopted.

---

PROPOSED ORDER

Pursuant to the authority vested in the Wisconsin Department of Workforce Development by ss. 49.132(2)(b), (2r)(d), (4)(d) and (e)2 and (5)(e), and 49.155(5), Stats., the department proposes an order to renumber subchapter VII of HSS 55 and to create DWD 56.08, relating to the administration of child care funds and required parent copayments.

SECTION 1. Subchapter VII of HSS 55 is renumbered ch. DWD 56.

SECTION 2. DWD 56.08 is created to read:

**DWD 56.08 Parent copayments.** (1) SCHEDULE. The department shall set a schedule for parent copayment responsibilities which meets the following criteria:

(a) All families will have a copayment responsibility.

(b) Copayment amounts will be based on family size, family gross income, the number of children in a given family in child care, and the type of child care selected.

(c) The initial schedule is Table DWD 56.08(1)(c).

**Note: Table DWD 56.08(1)(c) is reproduced at the end of this document.**

**(2) APPLICATION. (a) The copayment schedule applies to the following parents:**

1. Parents who receive low-income child care funds under s. 49.132(3) and (4), Stats.
2. Parents who receive at-risk child care funds under s. 49.132(2m) and (2r), Stats.
3. Parents who receive child care funds as former AFDC recipients under s. 49.191(2), Stats.
4. Parents who receive child care funds as participants in the food stamp employment and training program under s. 49.124, Stats., to the extent permitted by federal statutes and rules.

(b) This subsection applies to all parents who receive child care financial assistance under s. 49.141(2)(b), Stats.

(c) This subsection applies before the sunset of s. 49.132, Stats., takes effect in accordance with ss. 49.132(6), Stats.

**(3) ADJUSTMENTS. (a) The department may adjust the amounts in the schedule to reflect the following factors:**

1. A change in child care prices or in the rates paid by county or tribal agencies.
2. A change in the amount of funds available for child care assistance.
3. A change in costs due to a change in the consumer price index.
4. A change in the federal poverty level.

Objection  
language

5. A change in economic factors affecting the cost of child care to the state, such as an increase in the demand for child care financial assistance under s. 49.141(2)(b), Stats.

(b) The department shall publish adjustments to the copayment schedule in the Wisconsin administrative register.

(c) If the department proposes to make adjustments to the copayment schedule that would increase parental copayments by 15% or more, the department shall promulgate an administrative rule to make such adjustments, and the department shall not issue an emergency rule to implement such adjustments before providing advance public notice of at least one month.

[Table DWD 56.08(1)(c) appears here.]

(End)



Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

---

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
P.O. Box 7948  
Madison, WI 53707-7948  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

June 25, 1997

The Honorable Kim Plache  
Room 305, 100 N. Hamilton  
Madison, WI 53702

Dear Senator Plache:

Thank you for contacting me to discuss your concerns regarding DWD 56.08 (CR 97-023), the copayment schedule for child care assistance. I enjoyed meeting with you, Senator Moore and Representative Young on June 23 to discuss Wisconsin's efforts to assist parents to achieve self-sufficiency through work.

In designing the copayment schedule, the Department carefully studied child care costs in the context of the entire range of benefits and tax credits available to low-income working families. A 14-member Child Care Working Group, representing professional child care providers, parents, advocates, elected officials and top policy makers developed the copay schedule during several meetings late last year. This group developed a copayment schedule that is responsive to the needs of low-income parents while maintaining Wisconsin's commitment to quality, affordable child care.

For your information, I have attached examples of the effect of the child care copayments, and other benefits, on net family income. The attached information reinforces the high benefit value of child care assistance, and indicates that most families utilizing child care subsidies will pay only a small percentage of the actual cost of their child care, especially when more expensive center-based care is used.

As we discussed, flexibility is needed within the rule to ensure the copayment schedule can be modified at least annually to incorporate revisions to the federal poverty levels and other necessary modifications. Further, uncertainty related to the estimating factors used including participation rates, market effects and types of care that will be utilized means that flexibility provisions within the rule are not only desirable, but may be necessary to allow for unforeseen circumstances. In addition, Wisconsin is extending eligibility for child care assistance to all who meet the financial eligibility criteria, which will provide assistance to some Wisconsin residents who were never before eligible.

A 26-member advisory committee of industry professionals and other interested parties has been appointed to provide valuable input to the Department on child care issues. Wisconsin is again venturing onto new ground in its welfare reform efforts, and until the Department has more measurable experience with the child care copays, I believe that we must proceed cautiously.



Senator Kim Plache  
Page Two

Based on our discussion, I am submitting a revised version of DWD 56.08 containing germane modifications to the rule for your consideration. The attached rule contains the following modifications:

- A revised copayment schedule reflecting recently-announced changes in the federal poverty level. This updated schedule slightly lowers copayments for families.
- A technical change in DWD 56.08 (2)(b) and (c), changing the word "paragraph" to "subsection", as requested by Dan Fembach of the Legislative Council.

Further, the rule contains two modifications designed to address concerns raised at the meeting:

- A provision has been added stipulating all adjustments to the copayment schedule will be published in the Wisconsin Administrative Register.
- A provision has been added creating a procedure by which the Department would implement adjustments to the schedule that increase parental copayments by fifteen percent or more. Under the new procedure, the Department would promulgate a new copayment schedule via administrative rule; that rule would not take effect for at least one month from the date of announcement of the new schedule.

I believe that these changes are consistent with the principle that minor modifications to the schedule should be made in a timely and efficient manner, while significant changes warrant the review of and input from the Legislature.

Thank you for sharing your concerns over the child care copay rule. I appreciate the opportunity to work with you on this issue. I hope that you will view these proposed germane modifications favorably, allowing us to proceed with rule promulgation.

Sincerely,



Linda Stewart  
Secretary

cc: Senator Gwendolynne Moore  
Senator David Zien  
Representative John Gard  
Representative Rebecca Young

Attachments

**CASE EXAMPLES OF LOW-INCOME FAMILIES  
RECEIVING CHILD CARE ASSISTANCE**

**1. Milwaukee family of 3 participating in a W-2 Community Service Job**

Description: This family has a single parent and 2 children (infant and four-year-old) in a licensed child care center. The family is participating in a W-2 Community Service Job. The family is also eligible to receive Food Stamps and Medical Assistance.

Annual W-2 Community Service Job payment	Annual child care costs (estimated at the 75th percentile of prices in Milwaukee)	Parent copayment required annually	Annual state share of the child care cost	Net annual income (including Food Stamps and minus co-pay)
\$8,000	\$15,072	\$480	\$14,592	\$11,168

**2. Dane County working family of 3 at 92% of poverty**

Description: This family has a single parent and two children ages 3 and 7. The family is working and making \$12,000 in earned income (\$6.00 an hour). The family is using a child care center for the care of its two children, one in care full-time and the other part-time. This family is also eligible to receive Food Stamps, state and Federal Earned Income Tax Credit, state Homestead Tax Credit, Federal Dependent Care Tax Credit, and Medical Assistance.

Annual gross earned income	Annual child care costs (estimated at the 75th percentile of prices in Dane County)	Annual parent copayment required	Annual state share of the child care cost	Net income (including Food Stamps and tax credits, and minus copay)
\$12,000	\$9,659	\$1,032	\$8,627	\$17,064

**3. Racine Co. working family of 3 at 123% of poverty**

Description: This family has a single parent and 2 children ages 2 and 4. The parent is making \$16,000 per year (\$8.00 an hour). The children are full-time at a licensed child care center. This family is also eligible to receive Food Stamps, state and Federal Earned Income Tax Credit, state Homestead Tax Credit, Federal Dependent Care Tax Credit, and Medical Assistance.

Annual gross earned income	Annual child care costs (estimated at the 75th percentile of prices in Racine County)	Annual parent copayment required	Annual state share of the child care cost	Net income (including Food Stamps and tax credits, and minus copay)
\$16,000	\$10,920	\$1,920	\$9,000	\$17,844

*Note that in all three of these examples the state share of the child care cost is a substantial benefit to the parents. These examples include relatively high cost licensed child care arrangements, which are typically used by parents who seek child care subsidies. If parents use certified, rather than licensed child care, the cost to the parent and to the state is less. Other parents are able to keep child care costs low by using extended family or trading child care services with friends and relatives.*



NET EFFECT OF INCOME, TAX CREDITS AND LIABILITIES, AND CO-PAYMENTS

TABLE 1 - PARENT WITH ONE CHILD

Hourly Wage	W-2 Transferral	W-2 CSJ	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Med. Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W-2 Child Care Co-Payment	Total Net Annual Income	Total Net Monthly Income
\$4.25	\$8,000	\$8,000	\$8,000	\$667	71%	\$0	\$0	\$0	\$7,500	71%	\$0	\$0	\$0	\$0	\$0	\$7,500	71%	\$625	\$212	\$625	Family	\$0	\$8,000	\$667
\$5.15	\$10,500	\$10,500	\$10,500	\$875	74%	\$0	\$0	\$0	\$9,500	74%	\$0	\$0	\$0	\$0	\$0	\$9,500	74%	\$825	\$272	\$825	Family	\$0	\$10,500	\$875
\$6.00	\$14,000	\$14,000	\$14,000	\$1,167	80%	\$0	\$0	\$0	\$12,500	80%	\$0	\$0	\$0	\$0	\$0	\$12,500	80%	\$1,042	\$166	\$1,042	Family	\$0	\$14,000	\$1,167
\$7.00	\$18,000	\$18,000	\$18,000	\$1,500	97%	\$0	\$0	\$0	\$16,500	97%	\$0	\$0	\$0	\$0	\$0	\$16,500	97%	\$1,588	\$108	\$1,588	Family	\$0	\$18,000	\$1,500
\$8.00	\$24,000	\$24,000	\$24,000	\$2,000	100%	\$0	\$0	\$0	\$24,000	100%	\$0	\$0	\$0	\$0	\$0	\$24,000	100%	\$2,000	\$0	\$2,000	Family	\$0	\$24,000	\$2,000

TABLE 2-A - PARENT WITH TWO CHILDREN (One Child in Child Care)

Hourly Wage	W-2 Transferral	W-2 CSJ	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Med. Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W-2 Child Care Co-Pay	Total Net Annual Income	Total Net Monthly Income
\$4.25	\$8,000	\$8,000	\$8,000	\$667	56%	\$0	\$0	\$0	\$7,500	56%	\$0	\$0	\$0	\$0	\$0	\$7,500	56%	\$625	\$304	\$625	Family	\$0	\$8,000	\$667
\$5.15	\$10,500	\$10,500	\$10,500	\$875	64%	\$0	\$0	\$0	\$9,500	64%	\$0	\$0	\$0	\$0	\$0	\$9,500	64%	\$825	\$304	\$825	Family	\$0	\$10,500	\$875
\$6.00	\$14,000	\$14,000	\$14,000	\$1,167	80%	\$0	\$0	\$0	\$12,500	80%	\$0	\$0	\$0	\$0	\$0	\$12,500	80%	\$1,042	\$248	\$1,042	Family	\$0	\$14,000	\$1,167
\$7.00	\$18,000	\$18,000	\$18,000	\$1,500	105%	\$0	\$0	\$0	\$16,500	105%	\$0	\$0	\$0	\$0	\$0	\$16,500	105%	\$1,480	\$226	\$1,480	Family	\$0	\$18,000	\$1,500
\$8.00	\$24,000	\$24,000	\$24,000	\$2,000	135%	\$0	\$0	\$0	\$24,000	135%	\$0	\$0	\$0	\$0	\$0	\$24,000	135%	\$2,000	\$178	\$2,000	Family	\$0	\$24,000	\$2,000

TABLE 2-B - PARENT WITH TWO CHILDREN (Two Children in Child Care)

Hourly Wage	W-2 Transferral	W-2 CSJ	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Med. Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W-2 Child Care Co-Pay	Total Net Annual Income	Total Net Monthly Income
\$4.25	\$8,000	\$8,000	\$8,000	\$667	56%	\$0	\$0	\$0	\$7,500	56%	\$0	\$0	\$0	\$0	\$0	\$7,500	56%	\$625	\$304	\$625	Family	\$0	\$8,000	\$667
\$5.15	\$10,500	\$10,500	\$10,500	\$875	64%	\$0	\$0	\$0	\$9,500	64%	\$0	\$0	\$0	\$0	\$0	\$9,500	64%	\$825	\$304	\$825	Family	\$0	\$10,500	\$875
\$6.00	\$14,000	\$14,000	\$14,000	\$1,167	80%	\$0	\$0	\$0	\$12,500	80%	\$0	\$0	\$0	\$0	\$0	\$12,500	80%	\$1,042	\$248	\$1,042	Family	\$0	\$14,000	\$1,167
\$7.00	\$18,000	\$18,000	\$18,000	\$1,500	105%	\$0	\$0	\$0	\$16,500	105%	\$0	\$0	\$0	\$0	\$0	\$16,500	105%	\$1,480	\$226	\$1,480	Family	\$0	\$18,000	\$1,500
\$8.00	\$24,000	\$24,000	\$24,000	\$2,000	135%	\$0	\$0	\$0	\$24,000	135%	\$0	\$0	\$0	\$0	\$0	\$24,000	135%	\$2,000	\$178	\$2,000	Family	\$0	\$24,000	\$2,000

TABLE 2-C - PARENT WITH THREE CHILDREN (Two Children in Child Care)

Hourly Wage	W-2 Transferral	W-2 CSJ	Annual Gross Earned Income	Monthly Earned Income	Gross FPL	FICA Med. Tax	Federal Income Tax	State Income Tax	Adjusted Gross Income	Adj. Gross FPL	Federal EITC 1998	State EITC 1998	State Homestead Credit	Federal Dependent Care Ded.	Total Refund (Taxes)	Annual Post-Tax Income	Post-Tax FPL	Monthly Post-Tax Income	Food Stamps	Monthly Income w/ Food Stamps	MA Coverage	W-2 Child Care Co-Pay	Total Net Annual Income	Total Net Monthly Income
\$4.25	\$8,000	\$8,000	\$8,000	\$667	47%	\$0	\$0	\$0	\$7,500	47%	\$0	\$0	\$0	\$0	\$0	\$7,500	47%	\$625	\$368	\$625	Family	\$0	\$8,000	\$667
\$5.15	\$10,500	\$10,500	\$10,500	\$875	53%	\$0	\$0	\$0	\$9,500	53%	\$0	\$0	\$0	\$0	\$0	\$9,500	53%	\$825	\$368	\$825	Family	\$0	\$10,500	\$875
\$6.00	\$14,000	\$14,000	\$14,000	\$1,167	64%	\$0	\$0	\$0	\$12,500	64%	\$0	\$0	\$0	\$0	\$0	\$12,500	64%	\$1,042	\$337	\$1,042	Family	\$0	\$14,000	\$1,167
\$7.00	\$18,000	\$18,000	\$18,000	\$1,500	75%	\$0	\$0	\$0	\$16,500	75%	\$0	\$0	\$0	\$0	\$0	\$16,500	75%	\$1,480	\$281	\$1,480	Family	\$0	\$18,000	\$1,500
\$8.00	\$24,000	\$24,000	\$24,000	\$2,000	100%	\$0	\$0	\$0	\$24,000	100%	\$0	\$0	\$0	\$0	\$0	\$24,000	100%	\$2,000	\$281	\$2,000	Family	\$0	\$24,000	\$2,000



State of Wisconsin  
**Department of Health and Family Services**

AUG 14 1997

Tommy G. Thompson, Governor  
Joe Leean, Secretary

August 14, 1997

The Honorable Richard Grobschmidt, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 404, 100 N. Hamilton  
Madison, Wisconsin

Dear Senator Grobschmidt:

The Department of Health and Family Services has an emergency rulemaking order in effect that amends ch. HSS 163, relating to certification for lead (Pb) abatement, other lead hazard reduction work and lead management activities, and accreditation of corresponding training courses. The emergency rules will expire on September 16, 1997, before they are replaced by permanent rules unless the effective period of the emergency rules is extended. Pursuant to s. 227.24(2), Stats., I ask the Joint Committee to extend the effective period of the emergency rules by 46 days, through October 31, 1997.

The amendments add certification requirements for persons who provide lead (Pb) management services, namely, lead inspectors, risk assessors and project designers; accreditation requirements for training courses in those new disciplines; and fees for accreditation of training courses. The rules were published by emergency order to prevent persons who do not have the appropriate training and experience from providing lead management services.

Replacement permanent rules were submitted to the presiding officers of the Legislature on August 5, 1997, for review by standing committees. The Department expects to file the permanent rules by September 12 for a November 1, 1997 effective date.

If the effective period of the emergency rules is not extended, the Department will lack the authority in the interim to prevent unqualified persons from offering and providing lead management services which are intended to inform renters and home buyers about the presence of lead in rental units and in homes that are being sold.

Senator Grobschmidt

August 14, 1997

Page 2

A copy of the emergency order is attached to this letter. If you have any questions about the rules, you may contact Perry Manor of the Department's Asbestos and Lead Program at 267-2297.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Llean", with a long horizontal flourish extending to the right.

Joe Llean

Secretary

Attachment

cc Representative Grothman

**ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING, REPEALING AND RECREATING, AND CREATING RULES**

**FINDING OF EMERGENCY**

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

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead-safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead-based paint and lead-contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a \$6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employes who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state-accredited training courses and state-certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state's residential marketplace. Based on an inaccurate inspection, a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead-based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over \$6.5 million. The grants require that money be disbursed only for lead-based paint activities performed by state-certified persons who have completed state-accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1997, certification of lead inspectors, risk assessors and project designers. In addition, references to "lead abatement or HUD-funded lead hazard reduction" have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

### **ORDER**

Pursuant to authority vested in the Department of Health and Family Services by ss. 254.176(1) and (3), 254.178(2) and 227.24(1), Stats., the Department of Health and Family Services hereby amends, repeals and recreates, and creates rules interpreting ss. 254.176 and 254.178, Stats., as follows:

SECTION 1. HSS 163 (title) and 163.01 to 163.05, subch. II (title), and 163.10 and 163.11 are repealed and recreated to read:

CHAPTER HSS 163  
CERTIFICATION FOR LEAD ABATEMENT, OTHER LEAD HAZARD REDUCTION  
AND LEAD MANAGEMENT ACTIVITIES, AND ACCREDITATION OF TRAINING  
COURSES

**HSS 163.01 AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of ss. 254.176 (1) and (3) and 254.178 (2) Stats., to ensure that persons who perform lead abatement, HUD-funded lead hazard reduction or lead management activities do so safely to prevent the exposure of building occupants to hazardous levels of lead. This is accomplished by requiring that before a person engages in a lead abatement, a HUD-funded lead hazard reduction or a lead management activity, he or she shall successfully meet the requirements of this chapter and have a certification card issued by the department. This chapter also requires that lead hazard reduction and lead management training courses for certification of lead (Pb) inspectors, project designers, risk assessors, workers and supervisors be accredited by the department and, to ensure that training is conducted by professionally competent instructors, that instructors be separately approved as part of the training course accreditation process.

**HSS 163.02 SCOPE.** (1) **APPLICABILITY.** (a) 1. This subchapter and subch. II apply to any person performing or supervising a lead abatement or HUD-funded lead hazard reduction or lead management activity in or on a privately or publicly owned residential dwelling, child care facility or other building occupied by a child younger than 6 years or upon the real property on which the child-occupied building stands, except as provided in s. HSS 163.10 (2).

2. The applicability date of this subchapter and subch. II for any person performing lead abatement or HUD-funded lead hazard reduction activity as a lead (Pb) worker or lead (Pb) supervisor shall be June 1, 1994, and the applicability date of this subchapter and subch. II for any person performing a lead management activity as a lead (Pb) inspector, lead (Pb) project designer or lead (Pb) risk assessor shall be April 19, 1997, except that certification may be applied for and granted on or after February 18, 1997.

(b) 1. This subchapter, subch. III and Appendix A apply to any person or organization that offers, conducts or teaches a lead (Pb) inspector, lead (Pb) project designer, lead (Pb) risk assessor, lead (Pb) worker or lead (Pb) supervisor training course leading to certification by the department.

2. The applicability date of this subchapter, subch. III and Appendix A for any person or organization that offers, conducts or teaches lead (Pb) worker or lead (Pb) supervisor training courses shall be June 1, 1994, and for lead (Pb) inspector, lead (Pb) project designer or lead (Pb) risk assessor training courses the applicability date shall be February 18, 1997.

(2) APPROVED COMPARABLE COMPLIANCE. The department may approve an alternative to any requirement in this chapter that is not a statutory requirement when the department is provided with satisfactory written proof that the alternative will achieve results which are closely equivalent to the expected results of a literal application of the requirement.

**HSS 163.03 DEFINITIONS.** In this chapter:

(1) "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards, such as the on-site removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead contaminated soil, and all preparation, cleanup, disposal and post-abatement clearance testing activities associated with those measures.

(2) "Child care facility" means a facility licensed or certified by the department to provide day care services or any public or private school or preschool attended by children younger than 6 years of age including state-operated residential treatment centers.

(3) "Department" means the Wisconsin department of health and family services.

(4) "Discipline" means one of the specific job classifications in s. HSS 163.10 (4) for which individuals may receive training from accredited programs and become certified by the department.

(5) "EPA" means the U.S. environmental protection agency.

(6) "Guest lecturer" means a person who teaches one topical area of an accredited lead training course and is a recognized professional in that topical field.

(7) "HUD-funded" means funded from any U.S. department of housing and urban development (HUD) grant awarded to the state of Wisconsin to fund lead-based paint hazard reduction activities in low and moderate income housing where



children under the age of 6 are found to have lead in their blood at a level higher than what can be considered safe.

(8) "Imminent lead hazard" means a lead hazard that, if allowed to continue, will place a child under 6 years of age at risk of developing lead poisoning or other lead exposure, as determined by the department or other state agency, a local health department or a federal agency.

(9) "Instructor" means a person who is trained in the principles and methods of adult learning, has training and experience in the topics he or she will teach and teaches more than one topical area in an accredited lead training course.

(10) "Interim control activity" means any set of measures designed to temporarily reduce human exposure or likely exposure to a lead hazard, including specialized cleaning, repair, maintenance, painting, temporary containment, and ongoing monitoring of lead hazards or potential lead hazards.

(11) "Lead-based paint" means paint or any other surface coating material containing more than 0.06% lead by weight, calculated as lead metal, in the total nonvolatile content of liquid paint or more than 1.0 mg/cm<sup>2</sup> by X-ray fluorescent spectroscopy in the dried film of applied paint.

(12) "Lead hazard" means any substance, surface or object that contains lead and that, due to its condition, location or nature, may contribute to the lead poisoning or lead exposure of a child under 6 years of age.

(13) "Lead hazard reduction activity" means any action designed to permanently or temporarily reduce human exposure to lead-based paint hazards through abatement or interim control activities involving lead-based paint, lead-contaminated dust or soil or clearance activities that determine whether or not an environment is lead-safe.

(14) "Lead inspection" means the inspection of a dwelling or premises for the presence of lead, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

(15) "Lead (Pb) inspector" means a person who conducts lead inspections and samples for the presence of lead.

(16) "Lead management" means a lead inspection or the design or management of lead hazard reduction.

(17) "Lead (Pb) project designer" means a person who designs abatement projects, which may include occupant protection plans, and writes abatement reports.

(18) "Lead risk assessment" means the inspection of a dwelling or premises for lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

(19) "Lead (Pb) risk assessor" means a person who conducts lead inspections or lead risk assessments, and samples for the presence of lead.

(20) "Lead (Pb) supervisor" means a person who supervises lead (Pb) workers or performs on-site lead abatement or HUD-funded lead hazard reduction activities, and has the authority to require changes in performance practices or to halt the project or is an employer of lead (Pb) supervisors or workers performing lead abatement or HUD-funded lead hazard reduction activities.

(21) "Lead (Pb) worker" means a person who performs on-site lead abatement or HUD-funded lead hazard reduction activities, including but not limited to preparation, cleanup and disposal.

(22) "Model accreditation plan" or "MAP" means the lead hazard reduction and lead management training accreditation requirements in Appendix A.

(23) "Occupant protection plan" means a written plan developed prior to an abatement project which describes the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(24) "Occupied" means being in a residential dwelling or in a facility subject to ch. ILHR 56 or 60.

**Note:** Chapter ILHR 56 applies to schools and ch. ILHR 60 applies to day care facilities for 9 or more children.

(25) "Pb" means lead, the metal.

**Note:** Pb is the symbol for the metallic element, lead, in the periodic table of chemical elements.

(26) "Real property" means all continuous land property under the same ownership upon which the building stands.

(27) "Regional lead (Pb) training center" means an institution or a consortium of institutions approved by the EPA to develop and conduct lead (Pb) training courses.

(28) "Residential dwelling" means any single housing unit or multiple housing units, including attached structures, used or intended to be used for living, sleeping, cooking or eating, but not a housing unit or housing units occupied for a limited term, such as a motel, hotel, homeless shelter, restaurant or summer cottage.

(29) "Training provider" means any individual, partnership, corporation, institution or other organization or agency, including an agency of state government or a local government, that applies for or receives accreditation under this chapter to offer training courses for lead (Pb) inspectors, project designers, risks assessors, supervisors or workers.

**HSS 163.04 PENALTY.** As provided by s. 254.30(2), Stats., any person who violates this chapter may be required to forfeit not more than \$1,000. Each day of continued violation constitutes a separate offense. A forfeiture under this section may be in addition to the suspension or revocation of lead (Pb) inspector, project designer, risk assessor, supervisor or worker certification or training course accreditation or instructor approval.

**HSS 163.05 APPEAL.** (1) Any denial of an application for certification, training course accreditation or instructor approval under this chapter or any suspension or revocation of a certification card, a training course accreditation or an instructor approval is subject to administrative review under ch. 227, Stats.

(2) An appeal shall be in writing and shall take the form of a request for a hearing. The request for a hearing shall be filed with the Wisconsin department of administration's division of hearings and appeals no later than 20 calendar days after the date of the denial, suspension or revocation and is considered filed when received by that office.

**Note:** The mailing address of the Division of Hearings and Appeals is P.O. Box 7875, Madison, WI 53707.

**Subchapter II**  
**Certification of Persons to Perform Lead Abatement,**  
**Other Lead Hazard Reduction Activities or Lead Management Activities**

**HSS 163.10 CERTIFICATION OF LEAD (Pb) INSPECTORS, PROJECT DESIGNERS, RISK ASSESSORS, WORKERS AND SUPERVISORS.** (1)  
REQUIREMENT. Except as provided in sub. (2), no person may engage in a lead abatement or HUD-funded lead hazard reduction or lead management activity without having been certified by the department.

(2) REQUIREMENT NOT APPLICABLE. No certification is required for lead abatement, other lead hazard reduction or lead management activities conducted by a homeowner in or on his or her own non-rental residential dwelling or real property unless ordered by the department or another state agency or a local agency to use certified lead (Pb) inspectors, project designers, risk assessors, workers and supervisors.

**Note:** The definition of abatement does not include and, therefore, no certification of workers or supervisors is required when repainting over or covering lead-based paint with nonlead-based paint; when doing cleaning activities designed to maintain a no-lead hazard or reduced lead-hazard condition; or when disturbing lead-based paint surfaces incidental to the performance of remodeling, renovation or repair activities where the intent of the project is not to reduce the hazard or potential hazard of lead exposure.

(3) CONDITIONS FOR CERTIFICATION. A person wanting to be certified under this subchapter shall complete a department-accredited course in the particular job classification under sub.(4) in which certification is sought, meet any other qualifications specified in Section VII of Appendix A, and pass a certification examination approved by the department, administered by the department or administered under the direction of the department.

(4) JOB CLASSIFICATIONS. Certification shall be specific to one of the following job classifications:

- (a) Lead (Pb) inspector;
- (b) Lead (Pb) project designer;
- (c) Lead (Pb) risk assessor;
- (d) Lead (Pb) supervisor; or
- (e) Lead (Pb) worker.

(5) APPLICATION. An applicant for certification shall complete a form provided by the department and shall submit that form to the department along with a recent identifying photograph, proof of birth date, a notarized copy of the original certificate showing successful completion of a department-accredited training course not more than 24 months before the date of the application in the job classification in which certification is being sought, documentation that the applicant meets any qualifications in Section VII of Appendix A, and the appropriate certification fee under sub.(8).

**Note:** For a copy of the application form, write or phone the Bureau of Public Health, Room 117, 1414 E. Washington, Madison, WI 53703, telephone (608)266-6876

(6) CERTIFICATION CARD ISSUANCE. (a) Within 14 days after receipt of a completed application for certification, the department shall grant or deny certification. If the certification is granted, the department shall issue or arrange for the issuance of a certification card for a specific job classification under sub.(4). Issuance of the card means the person has met certification requirements for that job classification. If certification is not granted, the department shall give the applicant reasons in writing why the application was denied and shall notify the applicant of the right to appeal that decision under s. HSS 163.05.

(b) The person to whom a training certificate and a certification card are issued is responsible for that certificate and card. They are not the property of that person's employer. The employer may not confiscate an employee's training certificate or certification card.

(c) Certification shall remain valid for one year from the date of issuance of the certification card unless sooner revoked or suspended.

(7) SUSPENSION OR REVOCATION OF CERTIFICATION. The department may suspend or revoke certification by written notification to a person who was issued a certification card if the department determines that:

(a) The person has been issued a training certificate without attending an appropriate course or an entire course or without passing an approved examination;

(b) The person has displayed conduct relating to lead abatement, other lead hazard reduction or lead management activities which in the department's judgment constitutes unreasonable risk to the health of persons;

(c) False information was provided as part of the certification application or course enrollment process;

(d) The check tendered to make payment to the state under this section is not paid by the bank on which it is drawn; or

(e) The person has been or is violating any other provision of this subchapter.

(8) FEES. (a) An applicant for certification or recertification under this subchapter, except an employe of a local government, shall pay a fee as follows:

1. For certification as a lead (Pb) inspector, a fee of \$150.00;
2. For certification as a lead (Pb) risk assessor, a fee of \$250.00;
3. For certification as a lead (Pb) project designer, a fee of \$250.00;
4. For certification as a lead (Pb) supervisor, a fee of \$100.00;
5. For certification as a lead (Pb) worker, a fee of \$50.00.

(b) If a certification card is lost, stolen or damaged, the person who was issued the card shall request the department to issue a replacement card and shall include with the request the payment of a fee of \$8.00 and a recent identifying photograph.

(9) EMPLOYER RESPONSIBILITY. (a) The employer of persons conducting lead abatement, HUD-funded lead hazard reduction or lead management activities shall verify the certification status of persons performing or supervising those activities before the start of each project and may not make use of non-certified lead (Pb) inspectors, project designers, risk assessors, workers or supervisors in lead abatement, HUD-funded lead hazard reduction or lead management activities for which certified lead (Pb) inspectors, project designers, risk assessors, workers and supervisors are required.

(b) The responsible employer performing lead abatement shall be certified as a lead (Pb) supervisor for purposes of ensuring the safe performance of lead abatement or HUD-funded lead hazard reduction activities, notification under s. HSS 163.13 and fixing responsibility for verification of employe certification and compliance with this chapter.

(c) The responsible employer performing lead management shall be certified as a lead (Pb) risk assessor for purposes of ensuring the safe performance of lead management activities and fixing responsibility for verification of employee certification and compliance with this chapter.

**HSS 163.11 RECERTIFICATION.** (1) No person may perform lead abatement, HUD-funded lead hazard reduction or lead management activities for which certification as a lead (Pb) inspector, project designer, risk assessor, worker or supervisor is required after the expiration date on that person's certification card. To continue to perform those activities after that date, the person shall in advance of the expiration date take a refresher course if it has been more than 15 months since the person took a training course or a refresher training course in the job classification specified on the card, apply to the department for recertification, pay the fee under s. HSS 163.10 (8) and be recertified by the department.

(2) A person who was certified and whose certification has expired may take a refresher course up to a year after the expiration of his or her certification. The applicant shall retake the initial training course if the time period between the expiration date of the card and the refresher class is one year or more. In the interim, no lead abatement, other lead hazard reduction or lead management activity for which a certified lead (Pb) inspector, project designer, risk assessor, worker or supervisor is required may be performed.

(3) As a condition of recertification, the department may require a person to pass an examination when:

(a) It has reason to believe that there may be a problem with the certificate issued by the training provider;

(b) The applicant for recertification has had no applicable training in more than 24 months; or

(c) The applicant for recertification has requested certification under s. HSS 163.12.

SECTION 2. HSS 163.14 (4), (5) and (6) are amended to read:

**HSS 163.14 ENFORCEMENT.** (4) Only a Wisconsin lead (Pb) certification card is valid in this state for lead abatement or HUD-funded lead hazard reduction or lead management activities. A valid certification card for each person engaged in lead abatement or HUD-funded lead hazard reduction or lead management

activities for which certification is required shall be on the job site during work periods.

(5) A lead (Pb) supervisor certified by the department shall be at the lead abatement or HUD-funded lead hazard reduction activity site at all times that lead abatement or lead hazard reduction work requiring certification is being done.

(6) Any authorized representative of the department, any health or building inspector employed by the state or by a local government or any other person designated by the department may issue an immediate cease-work order to any person who violates the terms or conditions of a certification issued under this chapter if, in the best judgment of the enforcement representative or inspector, the violation presents a clear and significant health risk to any occupant or other person at the lead abatement or HUD-funded lead hazard reduction or lead management activity site. The cease-work order shall remain in effect until the violation is corrected.

SECTION 3. HSS 163.20 (1) is amended to read:

HSS 163.20(1) No person may advertise or conduct a lead (Pb) training course in lead hazard reduction or lead management in this state that is represented as qualifying persons for certification or preparing persons to carry out lead abatement or HUD-funded lead hazard reduction or lead management activities if that training course has not received accreditation from the department.

SECTION 4. HSS 163.21 (1) and (2) (c) 2. are amended to read:

HSS 163.21(1) SUBMISSION. Any person seeking accreditation of a lead (Pb) training course for lead abatement and, lead hazard reduction or lead management under this subchapter shall apply to the department on forms provided by the department and shall submit with the application the information and materials specified in the model accreditation plan, the qualifications of persons seeking instructor approval or approval as a guest lecturer, the examination to be administered at the conclusion of the course, the fee under sub.(3), and any other pertinent information and materials requested by the department.

**Note:** For a copy of the application form, write or phone the Bureau of Public Health, Room 117, 1414 E. Washington Ave., Madison, WI 53703, telephone (608) 266-6876.

(2) (c) 2. A training provider may only advertise a training course as department-accredited or EPA-accredited if the course is accredited and related to



lead abatement or, lead hazard reduction or lead management certification or recertification.

SECTION 5. HSS 163.21(3) is created to read:

HSS 163.21 (3) FEES. (a) Each application for course accreditation shall be accompanied by a fee as follows:

1. For an initial course for any one discipline, a fee of \$750; or
2. For a refresher course for any one discipline, a fee of \$250.

(b) Application fees shall not be prorated or refunded.

SECTION 6. HSS 163.22(2)(a) is amended to read:

HSS 163.22 (2) INSTRUCTOR QUALIFICATIONS. (a) Training. A person seeking approval as an instructor shall have completed a two-day train-the-trainer course or an equivalent teaching methods course that meets the requirements of the model accreditation plan and shall also successfully complete a lead training course for lead (Pb) supervisors approved by the EPA or accredited by the department under s. ~~HSS 163.21~~ and be currently certified in each discipline for which instructor approval is sought.

SECTION 7 Appendix A of Chapter HSS 163 is repealed and recreated to read:

Appendix A

WISCONSIN MODEL ACCREDITATION PLAN  
FOR TRAINING IN LEAD ABATEMENT, OTHER LEAD  
HAZARD REDUCTION AND LEAD MANAGEMENT

The Model Accreditation Plan (MAP) for Lead (Pb) Abatement, Lead Hazard Reduction and Lead Management Training consists of accreditation requirements for lead (Pb) inspector, lead (Pb) project designer, lead (Pb) risk assessor, lead (Pb) worker and lead (Pb) supervisor training courses and approval qualifications for training course instructors. The MAP has nine (9) parts:

- I. Submission of application materials;
- II. Instructor qualifications;
- III. Topics for initial training;
- IV. Learning goals and objectives;
- V. Examinations;
- VI. Refresher training courses;
- VII. Other qualifications;
- VIII. Rescinding course accreditation or instructor approval; and
- IX. Reciprocity.

The MAP emphasizes hands-on guided practice for lead inspectors, risk assessors, workers and supervisors that permits students to have actual experience performing tasks associated with lead hazard reduction or lead management activities while using non-hazardous substitute materials. To this end, training providers shall provide a sufficient quantity of equipment and materials to enable each student to perform hands-on learning activities.

Accreditation of a lead abatement, lead hazard reduction or lead management training course is based on evaluation of the training course materials and instruction manuals and the separate approval of instructors. The

training provider needs approval of both course materials and instructors in order to conduct accredited training courses leading to the certification of lead (Pb) inspectors, project designers, risk assessors, workers or supervisors.

### **I. Submission of application materials**

In order to demonstrate compliance with this chapter, the training provider shall submit to the department the following:

A. A completed application form, including the training provider's name, address and phone number;

B. A letter that clearly indicates how the course meets the MAP for:

1. Length of training hours; and

2. The hands-on training and identification of equipment used, and the number of pieces of equipment.

C. An index of all the information and material submitted for accreditation to facilitate review for compliance;

D. The course curriculum indicating learning goals and objectives, duration of instruction and teaching styles to be used per session;

E. A copy of all course materials, including handouts;

F. A copy of the keyed examination and a detailed statement about the development of the examination;

G. The names and verifiable documentation of instructor and guest lecturer qualifications as outlined in s. HSS 163.22;

H. Copies or samples of all advertising materials published or to be published by the training provider to promote lead training courses;

I. A copy or sample of a training certificate issued or to be issued by the training provider to students who attend and pass the course and pass the examination. The certificate shall include a unique certificate number, the name of the student, discipline, dates of the course and expiration date; the name, address and telephone number of the training provider; and a statement that training complies with the MAP; and

J. A copy of the EPA or state approval letter if the course was previously approved by the EPA or a state.

## **II. Instructor qualifications**

### **A. Training.**

A person seeking approval as an instructor of a lead (Pb) inspector, project designer, risk assessor, supervisor or worker training course shall have successfully completed:

1. A teaching methods course which covers at a minimum the following topics: principles of adult learning, training course design, non-lecture instructional methods, use of audio-visual and other instructional resources, teaching methods, such as, instructional objectives, guided discovery and learning styles, and maintaining classroom control for a learning environment. The course shall consist of at least 16 hours of instruction and shall include a practice teaching component involving critique and evaluation of the applicant's teaching skills. Any degree with an education emphasis which includes educational coursework that covers the topics required by this subdivision satisfies this requirement;

2. Lead training courses in each of the disciplines for which instructor approval is sought, as demonstrated by having current certification from the department in each corresponding job classification; and

3. For a lead inspector or risk assessor course, training in radiation safety and use of the x-ray fluorescence (XRF) device used in the course, as documented by a certificate of training from the manufacturer of the XRF device.

### **B. Experience.**

A person seeking approval as an instructor of a lead (Pb) inspector, project designer, risk assessor, supervisor or worker training course shall be minimally qualified in the topics to be taught by having at least one year of experience working in a related field in the 5 years preceding the date the initial application for approval is received by the department. Experience may include being directly responsible for tasks that are related to one or more of the following appropriate fields: lead hazard reduction activities, lead (Pb) health effects, lead (Pb) regulations, industrial hygiene activities involving lead, construction of homes or other buildings, painting, weatherization, rehabilitation or home improvement, lead (Pb) worker protection or abatement and management activities relating to other hazardous materials. One year teaching experience instructing adults in lead-

related topics as part of a course or curriculum recognized by a federal or state governmental agency is also an acceptable qualification. The department shall evaluate qualifications in relation to the topic or topics that the applicant will teach.

C. Equivalent training and experience.

The department may approve training and experience qualifications other than those in parts A and B if the department, following consideration and evaluation of them on a case-by-case basis, finds that they are substantially equivalent to the training and experience qualifications in parts A and B.

**III. Topics for initial training**

For purposes of this MAP, an hour means a minimum of 50 minutes of actual teaching, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

At a minimum, an accredited training course shall cover the topics listed below.

A. Lead (Pb) Inspector Courses.

All persons seeking certification as lead (Pb) inspectors shall complete a minimum of 24 hours of lead inspector training. The lead inspector course shall include lectures, demonstrations and a minimum of 8 hours of hands-on practice, a course review and written examination. The lead inspector training course shall adequately address the following topics:

1. *Role and responsibilities of an inspector.* The role and responsibilities of a lead inspector, including working with related professionals, liability issues and insurance issues.

2. *Background information on lead and its adverse health effects.* The history of lead use, where lead is found, and lead's health effects on adults and children.

3. *Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.* An overview to locating and reading current regulations to ensure compliance. Current regulations, which are continuously evolving, may include the following: (a) *Federal regulations:* 40 CFR Part 745, Subparts L and Q (Lead: Requirements for Lead-based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule), 24 CFR Part 35 and 40 CFR Part 745 (Lead: Requirements for Disclosure of Known Lead-based Paint and/or Lead-based Paint Hazards in Housing), 29 CFR 1926.62 with Appendices A, B and C (Lead Exposure in Construction Interim Final Rule), Consumer Product Safety Commission Act of 1977 and Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992); (b) *State regulations:* applicable sections of Wisconsin statutes ch. 254 (Environmental Health), s. 704.07 (landlord and tenant, repairs; untenability) and ch. 709 (Disclosures by Owners of Residential Real Estate); applicable sections of Wisconsin Administrative Codes ch. HSS 163 (certification for lead hazard reduction work and accreditation of lead training courses), ss. ILHR 32.15 and 32.50 (safety and health standards for public employees), ch. ATCP 110 (Home Improvement Trade Practices), ch. NR 500 (General Solid Waste Management), ch. NR 502 (Solid Waste Storage, Transportation, etc.), ch. NR 506 (Landfill Operational Criteria), s. NR 600.03 (95) (household waste defined), s. NR 605.08 (toxicity testing defined), s. NR 610.07 (very small quantity generators), s. NR 615.06 (large quantity generator standards) and ch. NR 620 (Transporter Standards and Licensing Requirements); (c) *Federal guidelines:* Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (HUD, June 1995), A Statement by the Centers for Disease Control, 'Preventing Lead Poisoning in Young Children', (U.S. Department of Health and Human Services, Oct 1991), applicable EPA standards for lead abatement and lead hazard reduction activities; and (d) *Local ordinances:* s. 66-20, Subch. 2, Milwaukee ordinance (Toxic and Hazardous Substances, Lead Poisoning Prevention and Control), Madison Ordinance 749 (Standards for Exterior Painting and Remodeling) and other applicable local ordinances.

4. *Lead-based paint inspection methods, including selection of rooms and components for sampling or testing, including hands-on activities as an integral component of the course.* Preparing for an inspection, obtaining background information, selecting sample locations, and documented protocols for conducting lead-based paint inspections of single-family and multi-family housing.

5. *Paint, dust, soil and water sampling and measurement techniques, including hands-on activities as an integral component of the course.* Documented standards, protocols and methodologies for taking samples and measuring lead in paint, dust, soil and water, including using an x-ray fluorescence (XRF) analyzer and XRF legal and liability issues, chemical

tests, dust wipe sampling, soil sampling, water sampling, and laboratory selection and sample analysis.

6. *Clearance standards and testing for abatement projects, including hands-on activities as an integral component of the course.* The purpose of clearance testing, visual examination procedures, documented protocols and methodologies for clearance dust and soil sampling, and documented clearance standards.

7. *Preparation of the lead inspection report, including hands-on activities as an integral component of the course.* The content of the lead inspection report, including identifying information, each testing method and device used, specific locations tested, and results of the inspection.

8. *Recordkeeping.* Recordkeeping responsibilities, record content, and length of record retention.

#### B. Lead (Pb) Project Designer Courses.

All persons seeking certification as lead (Pb) project designers shall complete a minimum of 8 hours of lead project designer training after successful completion of the lead supervisor course. The lead project designer course shall include lectures, demonstrations, a course review and written examination. The lead project designer training course shall adequately address the following topics:

1. *Role and responsibilities of a project designer.* The role and responsibilities of a project designer, including contract specifications and cost estimates, Wisconsin certification and abatement notification requirements.

2. *Development and implementation of an occupant protection plan for large-scale abatement projects.* Measures and management procedures to protect building occupants from exposure to lead-based paint hazards during abatement, educating building occupants, and preparing the occupant protection plan.

3. *Lead-based paint abatement and lead-based paint hazard reductions, including restricted practices for large-scale abatement projects.* Personal protection, containment, decontamination, documented abatement and hazard reduction protocols and methodologies, and prohibited practices.

4. *Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.* The major sources of lead in dust, effects of long-term exposure compared to short-term exposure, and documented cleaning protocols and methodologies.

5. *Clearance standards and dust sampling for abatement projects.* The purpose of clearance testing, visual examination procedures, documented protocols and methodologies for clearance dust and soil sampling, and documented clearance standards.

6. *Integration of lead-based paint abatement methods with modernization and rehabilitation projects for abatement projects.* Lead abatement versus interim controls, and the relationship of lead-based paint abatement and hazard reduction to renovation, repainting, remodeling, rehabilitation, weatherization and other construction work.

### C. Lead (Pb) Risk Assessor Courses.

All persons seeking certification as lead (Pb) risk assessors shall complete a minimum of 16 hours of lead risk assessor training after successful completion of the lead inspector course. The lead risk assessor course shall include lectures, demonstrations and a minimum of 4 hours of hands-on practice, a course review and written examination. The lead risk assessor training course shall adequately address the following topics:

1. *Role and responsibilities of a lead risk assessor.* The role and responsibilities of a lead risk assessor, including working with related professionals, liability issues and insurance issues.

2. *Collection of background information to perform a risk assessment.* The objectives of the initial client contact, gathering background information on building occupants, including children with an elevated blood lead level, and gathering background information on the property.

3. *Sources of environmental lead contamination, such as paint, surface dust and soil, water, air, packaging and food.* Sources of lead contamination, possible locations for lead and lead-based paint in buildings, and conditions when lead-based paint is considered a hazard.

4. *Visual inspection for the purposes of identifying potential sources of lead-based hazards, including hands-on activities as an integral component of the course.* The purpose of the visual inspection for hazard detection, and documented protocols and methodologies for performing a visual inspection.

5. *Lead hazard screen protocol.* When a lead hazard screen may be appropriate, and documented lead hazard screen protocols and methodologies for conducting a lead hazard screen.



6. *Sampling for other sources of lead exposure, including hands-on activities as an integral component of the course.* Documented standards, protocols and methodologies for taking samples and measuring lead in addition to the sampling methodologies for paint, dust, soil and water taught in the lead inspector course.

7. *Interpretation of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards, and including hands-on activities as an integral component of the course.* Evaluating sample results and applying current local, state, and federal guidance and regulations to the results.

8. *Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.* Abatement and other hazard control options, interim control options, cost/benefit ratios of options, and schedules for re-evaluation of interim controls.

9. *Preparation of a final risk assessment report.* The content of a lead risk assessment report, including identifying information, results of the visual inspection, testing method and sampling procedures used, locations sampled, data collected, laboratory results, a description of the hazards, abatement or interim control options for addressing each hazard, and a recommended maintenance and monitoring schedule for interim controls.

#### D. Lead (Pb) Supervisor Courses.

All persons seeking certification as lead (Pb) supervisors shall complete a minimum of 32 hours of training. The course shall include lectures, demonstrations and a minimum of 10 hours of hands-on practice, a course review and written examination. The training course shall adequately address the following topics:

1. *Background information on lead.* Identification of lead-based paint (LBP) and coatings, exposure measurements, examples and discussion of the uses of lead in buildings, such as in pipes, petroleum products and solder, locations of lead-based paint in buildings, sources of environmental lead contamination, such as paint, surface dust and soil, water, air and food, and association of deteriorated LBP and elevated blood lead levels and the need for objective testing.

2. *Health effects of lead exposure.* The nature of lead-related diseases, including the definition of lead poisoning in terms of symptoms and diagnosis.

3. *Employee information and training.* Training requirements under the Occupational Safety and Health Administration, such as 29 CFR 1910.1200, 1910.1025, and

29 CFR 1926.59, and any pertinent state government and local government requirements for training employees.

4. *Regulatory review.* An overview to locating and reading current regulations to ensure compliance. Current regulations, which are continuously evolving, may include the following: (a) *Federal regulations:* 40 CFR Part 745, Subparts L and Q (Lead: Requirements for Lead-based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule); 24 CFR Part 35 and 40 CFR Part 745 (Lead: Requirements for Disclosure of Known Lead-based Paint and/or Lead-based Paint Hazards in Housing); 29 CFR 1926.62 with Appendices A, B and C (Lead Exposure in Construction Interim Final Rule), Consumer Product Safety Commission Act of 1977 and Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992); (b) *State regulations:* applicable sections of Wisconsin statutes ch. 254 (Environmental Health), s. 704.07 (landlord and tenant, repairs; untenability) and ch. 709 (Disclosures by Owners of Residential Real Estate); applicable sections of Wisconsin Administrative Codes ch. HSS 163 (certification for lead hazard reduction work and accreditation of lead training courses), ss. ILHR 32.15 and 32.50 (safety and health standards for public employes), ch. ATCP 110 (Home Improvement Trade Practices), ch. NR 500 (General Solid Waste Management), ch. NR 502 (Solid Waste Storage, Transportation, etc.), ch. NR 506 (Landfill Operational Criteria), s. NR 600.03 (95) (household waste defined), s. NR 605.08 (toxicity testing defined), s. NR 610.07 (very small quantity generators), s. NR 615.06 (large quantity generator standards) and ch. NR 620 (Transporter Standards and Licensing Requirements); (c) *Federal guidelines:* Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (HUD, June 1995), A Statement by the Centers for Disease Control, 'Preventing Lead Poisoning in Young Children', (U.S. Department of Health and Human Services, Oct 1991), applicable EPA standards for lead abatement and lead hazard reduction activities; and (d) *Local ordinances:* s. 66-20, Subch. 2, Milwaukee ordinance (Toxic and Hazardous Substances, Lead Poisoning Prevention and Control), Madison Ordinance 749 (Standards for Exterior Painting and Remodeling) and other applicable local ordinances.

5. *Personal protective equipment.* Respiratory protection, respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, filter use, respiratory program, protective clothing and equipment, hygiene practices, hands-on practice in use of personal protective equipment.

6. *Lead hazard reduction methods.* Lead-based paint abatement methods, soil and exterior dust abatement methods, engineering and work practices, cleaning methods, interior dust abatement methods and clean up, waste disposal, hands-

on practice in lead reduction work practices and advantages and disadvantages of each lead hazard reduction activity.

7. *Construction terminology.* Overview of the following: windows, siding and eaves, doors, stairways and porches.

8. *Hazard recognition and control.* Site characterization, exposure measurements, material identification, program implementation, safety and health care plan, medical surveillance and engineering and work practices.

9. *Project management.* Overview of abatement process, supervisory techniques, community relations, contract specifications, project recordkeeping and review of HUD guidelines.

10. *Legal and insurance issues.* An overview of contract liability, standard of reasonable care, property damage and personal injury, tort liability, vicarious liability, types of lead abatement insurance and workers' compensation insurance.

#### E. Lead (Pb) Worker Courses.

All persons seeking certification as lead (Pb) workers shall complete a minimum of 24 hours of training. The course shall include lectures, demonstrations and a minimum of 10 hours of hands-on practice, a course review and a written examination. The training course shall adequately address the following topics:

1. *Background information on lead.* Identification of lead-based paint (LBP) and coatings, exposure measurements, examples and discussion of the uses of lead in buildings, such as in pipes, petroleum products and solder, locations of lead-based paint in buildings, sources of environmental lead contamination, such as paint, surface dust and soil, water, air and food, and association of deteriorated LBP and elevated blood lead levels and the need for objective testing.

2. *Health effects of lead exposure.* The nature of lead-related diseases, including the definition of lead poisoning in terms of symptoms and diagnosis.

3. *Worker protection.* Material Safety Data Sheets (MSDS) organization, respiratory protection program, basic lead (Pb) engineering controls, and personal protective equipment uses and limitations.

4. *Personal protective equipment.* Respiratory protection, respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, filter use,

respiratory program, protective clothing and equipment, hygiene practices and hands-on practice using personal protective equipment.

5. *Lead hazard reduction methods.* The federal and state statutory and regulatory requirements concerning lead-based paint abatement methods, soil and exterior dust abatement methods, engineering and work practices, cleaning methods, interior dust abatement methods and clean-up, waste disposal and hands-on practice for lead hazard reduction work practices.

#### **IV. Learning goals and objectives**

The department may issue additional learning goals and objectives that shall be met by lead (Pb) training courses. Teaching to goals and objectives is one evaluation method used by the department to decide whether or not to accredit a training course and to approve an instructor.

#### **V. Examinations**

##### **A. Approval and administration.**

The department shall approve examinations administered by a training provider.

##### **B. Content.**

An examination shall reflect the learning goals and objectives of the training course in content or job dimension, weighing or ranking these in importance, and the appropriate difficulty level. The examination key shall be provided to the department.

##### **C. Passing score.**

The minimum passing score on an examination is 70% of the total number of multiple-choice questions.

#### **VI. Refresher training courses**

A refresher training course for recertification shall be a minimum 8 hours in length for lead inspector, 4 hours in length for lead project designer, 8 hours in length for lead risk assessor, 6 hours in length for lead supervisor and 6 hours in length for lead worker. The refresher course shall be specific to each job

classification. For each job classification, the refresher course shall review and discuss changes in federal and state regulations, developments in the state-of-the-art procedures and review of key aspects of the initial training course as approved by the department. After completing the refresher course, persons may be eligible to have their certification extended an additional year. The department may require persons to pass a recertification examination.

## **VII. Other qualifications**

### **A. Qualifications.**

To be certified in any of the following job classifications, the applicant must meet the following additional education and experience qualifications:

1. For lead project designer certification, an applicant shall successfully complete an accredited lead supervisor course prior to taking the lead project designer course and shall meet or exceed one of the following:

a. Have a Bachelor's degree in engineering, architecture or a related profession and one year experience in building construction and design or a related field;

b. Have four years experience in building construction and design or a related field.

2. For lead risk assessor certification, an applicant shall successfully complete an accredited lead inspector course prior to taking the lead risk assessor course and shall meet or exceed one of the following:

a. Have a Bachelor's degree and one year experience in a related field (e.g., lead, asbestos, environmental remediation work or construction);

b. Have an Associate's degree and two years experience in a related field;

c. Have a high school diploma, or equivalent, and at least three years experience in a related field (e.g., lead, asbestos, environmental remediation work or construction); or

d. Be certified as an industrial hygienist, professional engineer, registered architect, or in a related engineering, health or environmental field (e.g. safety professional, environmental scientist).

## B. Documentation.

An individual seeking initial certification as a lead risk assessor or lead project designer shall submit one or more of the following to substantiate meeting the pertinent qualifications in A:

1. *Experience.* To document experience in a relevant field, submit one or more of the following:

a. A letter describing the tasks performed by the individual and signed by the employer or employers where the experience was obtained;

b. Letters of reference from individuals with competent knowledge of the applicant's experience;

c. Copies of inspection reports prepared by the applicant; or

d. Copies of certifications issued by other jurisdictions which allowed the individual to perform related work.

2. *Education.* To document receipt of a high school diploma or bachelor's degree, submit an official transcript which includes a statement regarding the diploma or degree awarded.

3. *Other certification.* To document other certification, submit a copy of the certification documentation, notarized as a true copy of the original document.

## VIII. Rescinding course accreditation or instructor approval

Grounds for rescinding the approval of an instructor or a guest lecturer or the accreditation of a training course are found in s. HSS 163.26. The process for appealing that action is found in s. HSS 163.05.

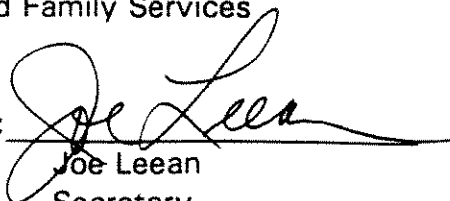
## IX. Reciprocity

Requirements for reciprocal acceptance of training certificates issued by states other than Wisconsin are found in s. HSS 163.12.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24(1) (c), Stats.

Wisconsin Department of Health  
and Family Services

Dated: February 7, 1997

By:   
Joe Leraan  
Secretary

SEAL:

**FISCAL ESTIMATE**  
DOA-2048 N(R10/94)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
HSS 163  
Amendment No. if Applicable

**Subject**  
CERTIFICATION FOR LEAD ABATEMENT, OTHER LEAD HAZARD REDUCTION AND LEAD MANAGEMENT ACTIVITIES AND ACCREDITATION OF TRAINING COURSES

**Fiscal Effect**  
State:  No State Fiscal Effect  
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input checked="" type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Create New Appropriation		

Local:  No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

**Fund Sources Affected**  
 GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

Although s. 254.176(2)(e), Stats., requires fees for certification, it exempts State and local employees who must be certified in order to perform duties within the scope of their employment from the certification fees. Therefore, certification fees are not imposed on State and local government agencies.

In addition, proposed new training requirements should not adversely affect State and local government agencies, because government employees have been provided opportunity to attend Department-sponsored, EPA-funded lead management training in Wisconsin.

By certifying lead management professionals, the Department will have access to \$1.5 million, and the City of Milwaukee to \$5 million, in federal HUD grants to fund lead hazard reduction activities in Milwaukee and across Wisconsin.

Certification fees of \$150 per lead management professional for an estimated 71 lead professionals are projected to increase program revenues by \$10,650 annually. Training course accreditation application fees for a projected 10 initial courses and 10 refresher courses are expected to increase program revenues by \$10,000 annually.

Currently authorized staff will handle any increase in workload that may result from these rules. At this time, the lead training and certification program is funded by federal EPA grants. However, the available grant funds are only start-up funds for establishing a training and certification program, and require the program to move toward self-sufficiency.

**Long-Range Fiscal Implications** Program revenues must become sufficient to operate the training and certification program as federal start-up funding disappears. The program revenues generated by the certification and accreditation fees in this rule are needed if the program is to become self-sufficient.

Agency/Prepared by: (Name & Phone No.) DHFS/Gail Boushon (266-5280)	Authorized Signature/Telephone No.  Richard Lorang, 266-9622	Date 2-7-27
--	--	----------------



**FISCAL ESTIMATE WORKSHEET**

1995 Session

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.    Amendment No.  
HSS 163

Subject: CERTIFICATION FOR LEAD AGATEMENT, OTHER LEAD HAZARD REDUCTION AND LEAD MANAGEMENT ACTIVITIES AND ACCREDITATION OF TRAINING COURSES

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations - Salaries and Fringes		\$	\$ -
(FTE Position Changes)		( FTE)	(- FTE)
State Operations - Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>TOTAL State Costs by Category</b>		\$	\$ -
<b>B. State Costs by Source of Funds</b>		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>III. State Revenues -</b>	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS		20,650	-
SEG/SEG-S			-
<b>TOTAL State Revenues</b>		\$ 20,650	\$ -

**NET ANNUALIZED FISCAL IMPACT**

		<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$	_____	\$ _____
NET CHANGE IN REVENUES	\$	20,650	\$ _____

Agency/Prepared by: (Name & Phone No.)  
DHFS/Gail Boushon (266-5280)

Authorized Signature/Telephone No.  
*Richard Lorang*  
Richard Lorang, 266-9622

Date  
2-7-97

Date: August 27, 1997

Dear Chairmen Grobschmidt and Grothman and members of  
the Joint Committee for Review of Administrative Rules,

I am very concerned about the treatment of medically fragile children and how life has become so much more difficult for them and the families caring for them. This has come about in the way they are being treated by the Bureau of Health Care Finance.

At present the Bureau of Health Care Finance (BHCF) authorizes Private Duty Nursing (PDN) hours for the care of medically fragile and technology dependent children. These children have recently become the focus of the BHCF cut backs by taking away the nursing care ordered by the child's physician. They have also created arbitrary guidelines for the distribution of authorized PDN care. This might meet the needs of the BHCF, but it does not meet the needs of a medically fragile child being cared for at home.

It has become apparent that some very important items need to be addressed immediately. It is wrong that a program which is supposed to help children stay with their families is treating the child and family in such a irresponsible manner!

1. The drive to control the exact time per day of PDN does not treat the child and family with respect and dignity.
2. Informal policymaking by the BHCF should be stopped!
  - a. Informal policy changes occur to meet department needs and do not reflect the needs of the child recipient.
  - b. It is subject to the bias of individual interpretation, that interpretation may change at any given moment and may not take into account the quality of life for the child.
  - c. The life of the child and family gets thrown into turmoil when all the "rules" as they know change.
3. The BHCF should be required to establish policies for the department by formal administrative rule starting immediately!

PDN hours that have been authorized by the BHCF should be distributed as deemed fit by the family of the recipient child. 24 hours of care in any day is acceptable for any reason providing it does not exceed the monthly allotment of hours. This supports the family in their ability to maintain the child's medical needs safely in the home along with the needs of the family, as day to day needs can vary greatly. This is how PDN hours were distributed in the past and was more successful in meeting the needs of the medically fragile child being home with their family.

Sincerely,

*Kathryn Tarabie*



## CHILDREN'S SERVICE SOCIETY OF WISCONSIN

August 29, 1997

### SOUTHEASTERN AREA

2707 N. 54<sup>th</sup> St.  
Milwaukee, WI 53210  
(414) 445-2520  
Fax (414) 445-2753

818 Sixth St.  
Racine, WI 53403  
(414) 633-3591  
Fax (414) 633-2619

5727 Sixth Ave.  
Kenosha, WI 53140  
(414) 652-5522  
Fax (414) 652-7228

### CENTRAL OFFICE

1212 S. 70<sup>th</sup> St.  
Milwaukee, WI 53214  
(414) 453-1400  
Fax (414) 453-3389

*Chartered in 1889*

*Licensed as  
a child placing agency by  
the State of Wisconsin*

Senator Richard Grobschmidt, Co-Chairman  
Joint Committee for Review of Administrative Rules  
100 North Hamilton Street, Room 404  
Madison, WI 53703

Representative Glenn Grothman, Co-Chairman  
Joint Committee for Review of Administrative rules  
State Capitol, Room 125 West  
Madison, WI 53702

Dear Senator Grobschmidt and Representative Grothman:

This letter is in regard to the Joint Committee Hearing on the provision of skilled private duty nursing care to medically fragile children eligible for federal Medical Assistance.

Our agency has a foster home providing foster care to a medically fragile, ventilator dependent child. These foster parents have cared for this child, Samantha, for 13 years. They have literally dedicated their lives to Samantha. One small example of this dedication is shortly after the initial placement they bought a home across the street from Children's Hospital where the child's doctors work. Samantha has had as wonderful a life as possible given her many medical problems because of this foster home's dedication.

A major component of Samantha being able to live in a foster home rather than being institutionalized are the private duty nursing services essential to Samantha's survival. Throughout the years the foster home has been able to manage and use the nursing hours as they were needed to keep Samantha in the home. Recently, the Bureau of Health Care Finance has told the foster home and the private duty nurses that the family will no longer be able to decide when they can use the nursing hours in one to two week blocks. Instead, the BHCF demands that the nursing hours be rigidly set for each 24 hour period with no thought for the family's need. This goes against every professional's advice that is involved in Samantha's life. This demand also goes against the family-focused philosophy many governmental and helping professionals espouse and believe in.




Samantha and her foster parents need the flexibility and decision-making power to flex nursing hours as their family needs them. This flexibility would be revenue neutral in the sense that the available hours remain the same. This may make the difference between Samantha continuing in the nurturing, family-centered care where she has excelled or be placed in a nursing home for the rest of her life. There are no other foster homes that would be willing or able to provide the care that Samantha needs every minute of every day to keep her alive. The only other places for Samantha, if not in this home, are a nursing home or Central Center.

Samantha is but one example of a medically fragile, ventilator-dependent children who are being affected by the BHCF recent policy. Our agency strongly recommends your committee follow the recommendations of the Joint Legislative Council's Special Committee on Programs for Developmentally Disabled Persons.

If you have any questions about my concerns, please feel free to contact me at (414) 453-1400.

Thank you,

  
\_\_\_\_\_  
Steve Gardner  
Social Worker

  
\_\_\_\_\_  
Dean Peck, A.C.S.W., C.I.C.S.W.  
Supervisor

SG/mz  
k:\letters\jointcmt.897