



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Attendance Form

July 18, 2001

Room 417 North, G.A.R. State Capitol Building

Accounting for: Public Hearing Executive Session

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator SCHULTZ	✓		
5. Senator COWLES			✓
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals	9		1


Maggie Delaporte, Committee Clerk



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

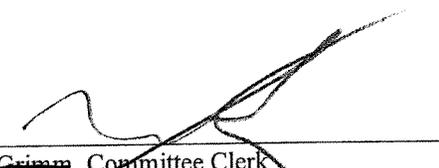
Attendance Form

May 30, 2001

Room 328 Northwest, State Capitol Building

Accounting for: Public Hearing Executive Session

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator SCHULTZ	✓		
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals	10	—	


Maggie Grimm, Committee Clerk

De la parte

Clayton H. Mellender
#200408
Jackson Correctional Inst.
22 Nov 2002

Julie Kane
Office of Legal Counsel
Box 7925
Madison, WI 53707-7925

Dear Ms. Kane,

This is written testimony in lieu of testimony at the public hearings for proposed rule change [CR 02-123]. The proposed increase in the copayment for medical services in the correctional system will not have the desired effects of increased revenue.

As an inmate I have kept a careful watch on daily appointments that would require a copayment. Following the implementation of the emergency rule on 3 September there has been a significant drop in the number of inmates making appointments that qualify for copayment. I estimate that there are only 20%-25% of the former number of qualifying appointments being made. The increase of the copayment has made a number of inmates make the choice of having the basic human needs met, and having medical attention. Most inmates make the choice in favor of purchasing personal hygiene items like deodorant and shampoo, and stamps, writing materials, and envelopes to communicate with loved ones. An inmate that is not working because of medical or punitive issues, receives an allowance of \$6.40 every two weeks. That amount was reduced from \$13.60 at approximately the same time copayments were implemented. Now that those inmates who cannot work due to medical reasons have less money to pay more for the healthcare that is needed. Bureau of Health Services is not supposed to be charging inmates who do not earn a wage a copayment. That codicil has been totally ignored for as long as most inmates can remember. I see that is proposed to change also in this rule modification. That sounds like someone is trying to make legal something that has been done illegally for quite some time. I have complained many times about being charged while not earning wages, to no avail. Even while showing people the rule that is being ignored. Now that people are having to make a choice between healthcare and personal hygiene, many inmates are getting very ill, when simple treatment at onset of conditions would have saved the DOC more than the cost of the copayment. I also believe that it is cruel and unusual punishment to have to make this choice.

Many members of the legislature and public would say \$7.50 is a cheap price for healthcare, but how many of those that make \$1000 per week be willing to \$2343.75 for a simple visit to their doctor. Even if I was making \$52,000 per year I would think a long time before I would make a \$2343.75 copayment, however that is what it works out to be equivalent for those of us that make \$6.40 every two weeks. The thing that hurts most of all is that this is deducted at a rate of 100%. I cannot even spread out this burden across four pay periods.

In closing I hope that the legislature does the right thing by allowing the emergency rule to expire, and leaving alone the prerequisite that one must be earning wages to be required to make the copayment, and enforcing that provision on DOC 316.

What will happen when the copayment increase does not generate what it was expected to do? Will it be tripled again? Will inmate pay be cut again? If the DOC wants to save money, maybe they should be laying off the Unit Managers that they are required to do, instead of ignoring that part of AB-1.

Most sincerely,

CF: MS. Julie Kane
Clerk of the state Senate
Clerk of the assembly
Joint Committee for the review of administrative rules


Clayton H. Mellender
#200408
Jackson Correctional Inst.

Scott Gunderson



STATE REPRESENTATIVE • 83RD DISTRICT

June 7, 2001

The Honorable Judith Robson, Co-Chair
Wisconsin Senate
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, WI 53707

The Honorable Glenn Grothman, Co-Chair
Wisconsin Assembly
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, WI 53707

Dear Senator ^{Judy} Robson and Representative Grothman:

As you may or may not know, during the last budget debate, the Department of Natural Resources had the terminology "nature based" added to the wording for the Stewardship program. In adding the terms "nature based", the allocation of funding to local park districts have been severely limited. Under the old language, park districts were able to apply for funding from the stewardship program to help build parks, baseball fields, soccer fields, and many other worthwhile outdoor activities for the people of our state. With the new language in place, funding from the Stewardship program can only be used for "nature based" reasons. "Nature based" means that monies can only be spent to help preserve land for parks, hunting, etc., and does not allow for park districts to apply for funds to help promote parks and recreation for use by local citizens. NR 00-135 is the rule that recently came up before the Natural Resources Committee for review, but Chairman Johnsrud decided against having a hearing on the rule. I would respectfully request that the Joint Committee for Review of Administrative Rules take up NR 00-135 and consider removing the words "nature based" from the rule.

Thank you for taking the time to address my concerns on this issue. If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

Representative Scott Gunderson
83rd District
Wisconsin State Assembly

State Capitol:

P.O. Box 8952
Madison, WI 53708
(608) 266-3363

Toll-Free:
(888) 534-0083

Fax:
(608) 282-3683

E-Mail:
Rep.Gunderson@
legis.state.wi.us

83rd District:

P.O. Box 7
Waterford, WI
53185

(262) 895-6254



NATIONAL MUTUAL BENEFIT

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WAYNE L. KOSBAU, FIC, LUTCF
Agency Vice President

April 17, 2002

1902 * Celebrating 100 Years of Service * 2002

Senator Judith Robson
Room 15 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Robson:

I'm petitioning you and the legislative branch to reconsider making changes to the **"Do Not Call"** rules before drafting and passing the **final version** of the proposed legislation. It's important that you hear the **"other side"** of the story from someone who has spent 34 years in the life insurance business. In the past I was an agent working directly with the consumer and I've also been a manager of agents. I have experienced first-hand the importance of making a difference with the number of lives I have insured over the years. For the past 10 years I have been the Agency Vice President of a Madison based fraternal life insurance company that is celebrating 100 years in business this year.

Our industry provides a valuable service to the residents of Wisconsin and to local governments as well. Since September 11th there is a higher awareness of the need for people to plan ahead for financial security. Many families are faced with the prospect of not surviving financially in the event of a disaster such as September 11th or the loss of a loved one because of an **illness** or other **accident**.

Research has shown us that consumers are likely to consider themselves particularly invulnerable to hazards they have never experienced. Most people put too much faith in their ability to avoid financial risks that are associated with premature death, disability, serious illness or accident. They see the threat as something in the distant future rather than being imminent. Many believe that disasters only happen to others. For instance, people who are afraid to fly normally do not fear driving. Interestingly, the odds of being involved in a car accident are considerably higher than those of being in an airplane crash.

Intense media coverage of disastrous events such as airplane crashes, lead people to overestimate the dangers of flying. Likewise the same thing has happened with the **media's intense coverage** of regulating telemarketing calls. People's perception is that all telemarketing calls are the same (annoying) when in fact they are not all the same. Most telemarketers they are relating to are from out of state and are trying to sell them a product or service over the phone. These are annoying calls because there is no customer relationship building between the seller and the consumer.

The financial services profession is built on customer relationships through **face-to-face** meetings. It is important to understand that a face-to-face meeting is when the relationship building begins between the insurance professional and the consumer. What happens during the initial face-to-face meeting is a gathering of information to help both the agent and the client discover if there is a need to do business together. These face-to-face meetings help clients think about the realistic financial risks facing them and their families and giving them the opportunity to purchase life insurance to fill any gaps between what they have and what they really need. People's perception of risk is governed by what is known and also what is unknown and their understanding of how they can protect themselves against financial hazards.

HOME OFFICE: 6522 Grand Teton Plaza • P.O. Box 1527 • Madison, WI 53701-1527 • (608) 833-1936

Fax: (608) 833-8714 Executive/General • (608) 833-6425 Marketing/Fraternal • (608) 833-4849 Membership Services
Wayne Kosbau is a registered representative of and securities offered through Woodbury Financial Services Inc., Bielenberg Drive, Woodbury, MN 55125; (800) 800-2000.

Financial service advisors are often faced with clients who have assumed too much debt—the number of people who are financially over committed is growing rapidly. A **face-to-face** meeting with a professional agent can help protect families who are underinsured and unaware they could be facing financial disaster. Our State government, with its budgeting problems, certainly doesn't have the resources to provide for families who have lost a family member due to an untimely death or disability. It is the life insurance professional who helps remind people of their responsibility to provide for their families—it's not the role of the government to provide these resources.

It is generally acknowledged that Americans have the lowest personal savings rate of all industrialized nations. Based on some estimates, the savings of Americans amount to only one-fifth of the citizens of other industrialized nations. Based on figures from Federal Reserve, Americans have personal debt totaling over **\$800 million**, in addition to **\$2.7 trillion** in mortgage debt. Even more alarming is the growing number of personal bankruptcies. Also alarming is the fact that people are unaware of how much money they will need to retire comfortably.

Our government's role should be to protect the ability of a professional agent to make calls for a face-to-face meeting with clients to help them put together a financial program that places them in a better financial position today and into the future. When the consumer is contacted by an insurance professional they are given the name of the person who is calling, the company they represent, and the purpose of the call—which is to arrange a face-to-face meeting where both the agent and the client can work on **building a long term business relationship**. All agents are licensed and must continue with educational training to maintain a license in Wisconsin.

I'm asking that Wisconsin use similar language which was incorporated in the "Do Not Call" proposal in Minnesota. Minnesota added language to the bill that would exempt telephone solicitations for prospecting of potential clients as long as a face-to-face sales presentation is required. The specific language in the bill exempts telephone calls *"by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser."*

I'm asking that you support such an amendment to the "Do Not Call" bill that is before the Senate. If you would like to discuss this further, please feel free to call me (608) 833-1936 or 1-800-779-1936.

Sincerely,



Wayne L. Kosbau, FIC, LUTCF
Agency Vice President

WLK:pas

May 17, 2002

Senator Judith Robson
Joint Committee for Review
of Administrative Rules
State Capitol
P. O. Box 7882
Madison, Wis. 53707-7882

Dear Senator Robson:

I have received your letter dated May 14, 2002 in alleged response to mine of May 6.

Madam, I am **outraged!** I wrote you a three page letter citing statutes, the Wisconsin Constitution and court cases. Your "response" was a brush-off, advising me to contact my senator. I wish to inform you that I am well aware that Peggy Rosenzweig is my senator and I have already written her. She, along with my assemblyman, Tony Staskunas, has proven to be no help. However, Peggy did send me the "legislative history" relevant to Trans. Rule 102.14.

The problem falls in your lap and I expect you to take affirmative action and mighty soon.

Again, you have responded without consulting the COMMITTEE to whom I wrote. Please advise me of every member, title, and address of those currently serving on the Joint Committee for Administrative Rules.

I have no intention of accepting your brush-off. This problem belongs to the COMMITTEE and it is your DUTY to introduce every one of my letters to it. I am a citizen of Wisconsin who has informed you of a CONSTITUTIONAL PROBLEM. If you are not in your position to abide by the constitution, just what are you getting paid for and why are you a senator?

I noted with interest that you stated the Rule about which I am complaining became effective on February 1, 1997 after publication in January 1997. HOWEVER, PLEASE NOTE THAT THE ADMINISTRATIVE AGENCY, DOT/DMV, PUT RULE 102.14 INTO EFFECT IN SEPTEMBER 1996 **BEFORE AUTHORIZED TO DO SO**. In September, 1996, they refused to issue me a license with a reservation of rights and actually CUT UP MY HUSBAND'S LICENSE WHICH HAD NOT YET EXPIRED. They were clearly acting IN THE ABSENCE OF AUTHORITY.

Are you under the impression that you can simply ignore the Constitution and my complaint? I am not one bit interested in any "legislative history" of Rule 102.14. I already received that information from Peggy Rosenzweig. IT DOES NOT CHANGE THE FACT THAT THE RULE CONTRADICTS THE CONSTITUTION.

I have absolutely NO obligation to obey bureaucrats and their UNconstitutional rules. My obligation is to obey LAWS DULY PASSED BY THE **ONLY LAW-MAKING BODY ELECTED TO THAT POSITION - I.E., THE LEGISLATURE AND ONLY WHEN THE LAWS THEY PASS ARE IN CONFORMITY WITH OUR CONSTITUTION.**

I strongly suggest you re-read my letter of May 8, 2002. I did NOT ask you for the promulgation of the administrative code as you suggest. I DID ask you for to send me documentation proving to me that Rule 102.14 was passed in accordance with the Wisconsin Constitution by the Legislature. I don't care one whit what any bureaucratic agency does. As I pointed out to you, since you apparently never read the Wisconsin Constitution, that every law which affects the public must be passed in accordance with Article IV, Section 17. It is obvious that you cannot produce the documentation I requested because it does not exist. If not, just say so rather than trying to snow me.

You, on the other hand, seem to think that any bureaucrat may put any rule into effect it feels like, the Legislature can rubber-stamp it, and I must obey. Wrong!!! **The public gave you rules which you are obliged to obey to hold your position as senator and they are contained in the Wisconsin Constitution.** I am most curious to know if you ever read the Constitution.

My position is: I am climbing the ladder. My own representatives would not be of service; the governor would not aid me, even in light of a PETITION; and DOT/DMV proved totally incapable of responding with any common sense or reasons for Rule 102.14. Scott Walker's response was insane.

THIS COMMITTEE is the last stop before I initiate a lawsuit in which you may well be named. It is apparent you did not read my letter nor submit my letters to the Committee, **as I requested**, and according to the statutes, you are culpable for you failed in your statutory duty to submit my letters to the Committee and presumed to answer for it.

Please send me the names and addresses of every person making up the Joint Committee for Review of Administrative Rules. That Committee will be given one last chance to respond and act appropriately before I initiate a lawsuit. I wish to inform them of your failure to abide by your statutory duty.

I will expect your response by return mail.

Very truly,

Mrs. Nancy Knies
9707 W. National Ave. #26
West Allis, Wisconsin 53226

Dear JCRAR Member:

The Department of Health and Family Services, Division of Public Health has submitted an administrative rule for adoption to increase license fees for campgrounds, recreational and educational camps, public swimming pools, hotels, motels, tourist rooming houses, bed and breakfasts, food vending operations and restaurants. The Environmental Sanitation Section in the Bureau of Environmental Health is responsible for licensure and inspection of these facilities. The submittal process for these fee increases employed by DHFS was contrary to established rules making processes, departmental procedure and possibly statute.

Background:

The Environmental Sanitation Section is funded through revenue generated from license fees. DHFS had not raised license fees since 1998. A one time technical surcharge was included for the 1998 - 1999 licensing year. The surcharge was to offset the costs of developing and implementing an electronic inspection system. The system has never fully worked and has resulted in a deficit of several hundred thousand dollars. In order to offset the continued costs of a failing system, license fee increases were necessary.

In the summer of 2000, the Environmental Sanitation Section Chief, Ed Rabotski began to draft a Scope Statement for the proposed fee increases. Prior to the scope statement, Mr. Rabotski distributed a "Licensing Options" draft to staff for review and comments. All were in agreement to base the fee on gross annual receipts. (Attachment 1) Mr. Rabotski prepared the Scope Statement based on consensual staff agreement.

In the fall of 2000, Ed Rabotski was relieved of his duties by the Environmental Health Bureau Director, Tom Sieger and reassigned to other duties. Mr. Sieger acted as interim Section Chief until a new one was hired. Mr. Rabotski was still responsible for getting the Scope Statement published.

The Scope Statement was published in the Administrative Registry as required by statute in the December 31, 2000 issue, No. 540. (Attachment 2) The fee increase proposed for restaurant operators was to be based on gross annual receipts. Paragraph 3 of the statement states "To minimize the impact of fee increases on small facility owners and operators, the Department will propose in this rule a revised license fee schedule for restaurants that is based upon gross annual receipts for the facility". This proposal would make licensing of restaurants similar to the DATCP licensing of retail food establishments. (Attachment 3) As of February 2001, both restaurants and retail food establishments would be inspected under one code, the Wisconsin Uniform Food Code. To further support this, a committee was formed in 1998 to develop a strategic plan to strengthen Environmental Health in Wisconsin. Mr. Tom Sieger was co-chairman of this committee. The committee distributed a draft plan in 1999 and another in April 2000. Bullet 5 of the 2000 plan included a process to "revise the restaurant, lodging and recreational facility license fee schedule to ensure equity across facilities and to fully fund the activities of the program". For restaurants the plans was to "examine a variable fee structure based upon self reported facility receipts". (Attachment 4)

Even though he was relieved of his Section Chief duties, Ed Rabotski was still responsible for preparing the rule draft for public hearing and scheduling dates for the hearing. In December 2000, Mr. Rabotski prepared a rule draft, that included increasing restaurant fees based on gross annual

receipts as stated in the statutorily required Scope Statement, for public hearings scheduled for March 2001.

In mid January 2001, Tom Sieger hired a new Section Chief, Greg Palaski. Mr. Sieger hired Mr. Palaski without any State service experience and without any public service management experience, bypassing several candidates in the Environmental Health program with several years state service experience and public service management experience. Mr. Sieger also started Palaski's salary near the salary cap, approximately \$10,000 per year more than the previous chief was making after 5 years experience.

Within two weeks of employment, the new Section Chief was requested to finalize the rule draft for the public hearings scheduled for March 2001. The new Chief, deleted the restaurant fee increase proposal based on gross annual receipts and created a fee increase structure of his own without any prior discussion with Environmental Sanitation staff or the Environmental Health planning committee. Staff was not notified of the change until Mr. Palaski sent an e-mail requesting superficial input. (Attachment 5) Once staff became aware of this proposed fee increase change, contrary to the published scope statement, several questioned its equity, uniformity and feasibility. The fee structure would result in approximately 40% of licensed restaurants would receive a 102% increase in license fees, another approximately 40% would receive a 67% increase and approximately 20% would receive minimal increase. This fee increase would have a severe negative effect on small businesses, many of which are already struggling. All questions were left unanswered and Mr. Palaski, supported by Tom Sieger prepared a rule draft for public hearing that was contrary to the published scope statement. (Attachment 6)

Mr. Palaski took his questionable restaurant fee increase structure to public hearing. DHFS has a several hundred page document entitled "The Rules Guide" to assist in the rule making process. The Guide includes procedures for developing scope statements and protocol for conducting public hearings. The Guide states that at least two employees should conduct the public hearing, one as the hearing officer and another serving as the technical expert. In addition to acting contrary to the published Scope Statement, Mr. Palaski conducted the hearings alone, blatantly violating established departmental policy. (Attachment 7)

The public hearings resulted in an overwhelming rejection of the restaurant fee increase based on Mr. Palaski's proposal. Testimony included both oral and written comments. Most testimony supported the original proposal as stated in the scope statement, one based on gross annual receipts. As a result of the public hearings, Mr. Palaski was unable to address the comments rejecting his proposal. Rather than realizing his proposal was not publicly supported, on April 10, 2001 Mr. Palaski issued a statement indicating the license fee increases could not be implemented as projected by July 1, 2001. Mr. Palaski also issued statements on April 11, 2001 and April 16, 2001 defending his position. (Attachment) This delay would now cost the Environmental Sanitation Section approximately \$300,000 in lost revenues for a program already operating at a deficit. In addition, because Mr. Palaski proposed a fee schedule for restaurants contrary to the published scope statement that was not supported, all other fee increases for other operations, riding on the same rule, would not be implemented.

This act of mismanagement has not only caused the loss of program revenue; there is no database available to support this fee structure. The result would be to spend several hundred thousand dollars to create a database, again straining program solvency. This fee structure would require

sanitarians to review every licensed restaurant prior to license renewal just to determine the category. The result would be that fee structures would be inconsistent on a statewide basis and operators may be penalized for upgrading facilities rather than being rewarded. Many small operators, including rural facilities could end up paying more for license fees than large volume facilities in urban areas. Again there would be no equity. There are 33 agent health departments that charge fees either based on a flat rate or gross annual receipts. Some of these agents are also agents of The Department of Agriculture, Trade and Consumer Protection. The expectation is that these health departments would change their fee schedules to the one proposed by Mr. Palaski. Most agent programs will oppose this, again creating more disparity rather than uniformity.

Mr. Palaski took a rule proposal to public hearing that contradicted the statutorily required Scope Statement, literally threw out all comments from the public hearings and continued to promote his unpopular and questionable fee increase structure. He refused to listen to any comments or suggestions. Tom Sieger supported Mr. Palaski throughout this process. Yet, on the other hand, as co-chairman of the Environmental Health Planning Committee, Mr. Sieger supported the committee's proposal to base restaurant fee increases on gross annual receipts. To further illustrate this, in November 2001, at a State and Local Agent Health Department staff meeting, Mr. Sieger distributed the committee's final "Plan to Strengthen Environmental Health in Wisconsin". On page 11, of the plan it states to "examine a variable fee structure based upon self-reported facility receipts". The plan also includes a signed statement by Division Administrator, John Chapin supporting the committee's efforts and proposals. There appears to be a contradiction. (Attachment 9)

Prior to reviewing the proposed restaurant fee increase as proposed by Mr. Palaski, all comments, both oral and written, from the public hearings should be evaluated. The entire process needs to be reviewed to determine whether statute was violated by drastically changing the rule after the scope statement was published, taking it to public hearing, discarding all public hearing comments and submitting a rule to the legislature without any further public comment.

If an audit of the Environmental Sanitation program was conducted several other inconsistencies and acts of mismanagement would be discovered. This would include written decisions made that either contradict or are not supported by statute and Mr. Palaski abusing the broad banding provision by hiring his friend for \$4.50 per hour more than another employee with equal experience for the same job classification. Mr. Palaski's friend makes \$2.00-\$4.00 per hour more than employees with several years experience in the same job classification. Mr. Palaski's friend was hired without any prior state service experience, bypassing individuals with several years of state service experience in the program. One example is that chapter 254.69 (2) (b) requires DHFS to review agent health departments on an annual basis. (Attachment 10) Agent health departments have not been evaluated for approximately 7 years. The last formal reviews in 1995 resulted in some unfavorable results for Agent programs. As a result, Mr. Sieger buried the results and ordered reviews to be suspended until further notice. In his "Strategic Plan" for 2001, submitted to the Division Administrator in the fall of 2000, Mr. Sieger stated that "100% of agent health departments evaluated in CY 2001". No evaluations were completed again. (Attachment 11)

If departmental employees were allowed to testify without fear of retribution, all statements in this report would be found to be true.

Licensing Options

- A. Across the board increase of 40%
- B. Stepped approach in restaurants, based upon gross facility revenues, similar to the present approach in lodging & camps
- C. Revise license schedule to incorporate a fixed license fee and a multiplier of gross revenue

Option A - 40% across the board

	• Current Fee (examples)	• Proposed (examples)
- restaurant	\$148	- restaurant \$207
- sm lodging	124	- sm lodging 174
- lg lodging	212	- lg lodging 297
- B&B	106	- B&B 148
- sm camp	106	- sm camp 148
- lg camp	171	- lg camp 239
- rec/ed camp	77	- rec/ed camp 108
- pool	130	- pool 182

Option B - stepped approach

• Present Fees (examples) • Proposed (examples)

– restaurant	\$148	– restaurant	
		• \$0 - 250K	\$150
		• \$250 - 500K	175
		• \$500 - 750K	225
		• \$750 - 1,000K	275
		• \$1,000K+	325
– lodging		– lodging	
• 5 - 30 rooms	124	• 5 - 30 rooms	150
• 31 - 99 rooms	165	• 31 - 99 rooms	300
• 100+ rooms	212	• 100+ rooms	450

Option C - multiplier of gross revenue

- License fee = base fee + (multiplier x gross revenue)
- Program revenue would grow with industry
- Would involve linking DOR and HFS databases via the F.I.N.
- Would require an additional year to implement
- Has a number of tricky issues to be resolved

1. The definitions of reportable conditions under Act 114 differ from the old statute language. The proposed rule recreation must specify the birth defects that are a structural deformation, disruption or dysplasia, or a genetic inherited or biochemical disease.
2. Only infants and defects up to the age of 2 will be required to be reported to the Department.
3. The list of persons required to report a birth defect to DHFS will be expanded beyond physicians to include hospitals and pediatric specialty clinics.
4. The rules will specify the content, format, and procedures for submitting a report to the Department necessary for the Department's establishing and maintaining an up-to-date registry of birth defects.
5. Act 114 creates an entity known as the Council on Birth Defect Prevention and Surveillance for the purpose of making recommendations to the department regarding the establishment of the registry and the Department's administrative rules and the content of the reports required from medical care providers.
6. Beginning in April 2002, the Council is to biennially report to the legislature on the effectiveness of the registry.
7. Create a mechanism to assure confidentiality by requiring parental or guardian written consent before reporting or releasing an infant's name and address.

Statutory Authority

Sections 253.12 and 227.11 (2), Stats.

Staff Time Required

Estimated 60 hours of Department staff time to draft and submit to the Legislative Counsel Rules Clearinghouse a rulemaking order and associated materials. A statutorily-required Council on Birth Defect Prevention and Surveillance is to make recommendations concerning the rule promulgation.

Health and Family Services**Subject**

Permit fees for vending of food and beverages, bed and breakfast establishments, restaurants, hotels/motels and tourist rooming houses, swimming pools, campgrounds, and recreational and educational camps.

Description of Policy Issues

The Department and agent local government health departments regulate campgrounds, recreational and educational camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations under the authority of Chs. 254 and 250 Stats., to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department's rules are in Chs. HFS 172, 175, 178, 195, 196, 197, and 198, Wis. Adm. Code. None of these facilities may operate without receiving a permit from the Department or an agent local government health department. A permit is evidence that a facility complies with the Department's rules on the date of issuance of the permit. Under the rules, a facility is charged a permit fee. The restaurant, lodging, and recreational facility regulation and licensing program is 100% funded by licensing revenue. Current budget projections indicate a deficit in the upcoming fiscal year. License fees need to be increased to fully fund the program. Significant investment in technology - licensing

and inspection software - have stressed the regulation and licensing program budget. The major expenditures in technology are behind us, however, the workload of staff continues to be very heavy, with each staff member providing consultation and inspection services to approximately 550 facilities. Also, with the anticipated promulgation of the new food rule (HFS 196), the Department is committing to inspect every full service restaurant (approximately 9,000 facilities) at a minimum of once per year. This will require that we fill every authorized position and provide for LTE support during our busy summer months, where inspections include food festivals and fairs.

To minimize the impact of fee increases on small facility owners and operators, the Department will propose in this rule a revised license fee schedule for restaurants that is based upon gross annual receipts for the facility.

Alternatives to increasing fees include:

1. Allowing the regulation and licensing program budget to end in deficit for SFY 01 and future years.
2. Reducing the costs associated with the program. (Note: personnel costs represent approximately 70% of the budget. A reduction in staffing would extend the frequency of facility inspections beyond the current average of approximately once every 18 months.)

Statutory Authority

Chapter 250, Stats., and ss. 254.47 (4) and 254.68, Stats.

Staff Time Required

40 hours.

Natural Resources**Subject**

Department's intent to convene a group of Department technical experts and representatives outside the agency to develop a strategy for regulating mercury releases from wastewater.

Description of Policy Issues

With EPA's recent approval of a new ultra-sensitive test method for mercury, and the department's approach of disregarding effluent tested as a viable tracking mechanism is no longer appropriate. Limited available low-level data indicates many permittees will not be able to achieve effluent limitations called for by rules protecting water quality. We need a new approach that recognizes the widespread distribution of mercury in the environment, continues to emphasize pollution prevention as a control strategy and provides a rational mechanism that allows permittees to work toward achieving water quality based effluent limitations.

The department's current approach for mercury in wastewater is authorized by a provision in ch. NR 106, Wisconsin Administrative Code, promulgated in 1997. The newly approved test method changes the condition such that mercury is no longer covered under this provision. Rulemaking that provides an expedited water quality standards variance has been suggested by department staff as one possible solution to the potential that a significant number of permittees will be unable to meet effluent limitations for mercury. Other solutions that may present themselves will also be investigated.

Statutory Authority

Chapter 283

Staff Time Required

348 hours

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter ATCP 75

RETAIL FOOD ESTABLISHMENTS

ATCP 75.01 Authority and purpose.
ATCP 75.02 Retail food establishments; licensing.

ATCP 75.03 Denial, suspension or revocation of license; conditional license.
ATCP 75.04 Standards for retail food establishments.

Note: Chapter Ag 32 was renumbered ch. ATCP 75 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 75 as it existed on January 31, 2001 was repealed and a new chapter ATCP 75 was created effective February 1, 2001.

ATCP 75.01 Authority and purpose. (1) AUTHORITY. The department of agriculture, trade and consumer protection licenses and regulates retail food establishments under s. 97.30, Stats. The department has adopted this chapter, and the appended model food code, under authority provided in ss. 93.07(1), 97.30 (5) and 227.14 (1s), Stats. Pursuant to s. 227.14 (1s), Stats., the department has adopted the model food code in the format published by the federal food and drug administration.

(2) SCOPE AND PURPOSE. This chapter applies to retail food establishments as defined in s. 97.30 (1) (c), Stats. This chapter establishes licensing requirements for retail food establishments. It also establishes standards for the construction and operation of retail food establishments. A retail food establishment must comply with the model food code appended to this chapter.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

ATCP 75.02 Retail food establishments; licensing.

(1) LICENSE REQUIRED. Except as provided under sub. (7), no person may operate a retail food establishment without a valid license issued by the department or an agent municipality or county. Licenses expire on June 30 annually. Each retail food establishment shall have a separate license, which shall be prominently displayed in the retail food establishment. A license is not transferable between persons or establishments.

(2) LICENSE APPLICATION. A person applying for a retail food establishment license shall apply on a form provided by the department, or by the agent municipality or county. The application shall include the fees under sub. (3).

(3) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay an annual license fee as follows:

(a) For a retail food establishment that has annual sales of at least \$25,000 but less than \$1,000,000 and processes potentially hazardous food, an annual license fee of \$175.

(b) For a retail food establishment that has annual food sales of at least \$1,000,000 and processes potentially hazardous food, an annual license fee of \$450.

(c) For a retail food establishment that has annual food sales of at least \$25,000 and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of \$125.

(d) For a retail food establishment that has annual food sales of less than \$25,000, and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of \$60.

(e) For a retail food establishment that is not engaged in food processing, an annual license fee of \$30.

(4) REINSPECTION FEE. (a) If the department reinspects a retail food establishment because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the retail food establishment operator the reinspection fee specified in par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue

a demand for payment when it issues a license renewal application form to the retail food establishment operator.

(b) The reinspection fee required under par. (a) is as follows:

1. For a retail food establishment that has annual food sales of at least \$25,000 but less than \$1,000,000, and processes potentially hazardous food, the reinspection fee is \$125.

2. For a retail food establishment that has annual food sales of at least \$1,000,000 and processes potentially hazardous food, the reinspection fee is \$300.

3. For a retail food establishment that has annual food sales of at least \$25,000, and is engaged in food processing but does not process potentially hazardous food, the reinspection fee is \$125.

4. For a retail food establishment that has annual food sales of less than \$25,000 and is engaged in food processing, the reinspection fee is \$60.

5. For a retail food establishment that is not engaged in food processing, the reinspection fee is \$60.

(5) ACTION ON LICENSE APPLICATION. Within 15 business days after the department or its agent municipality or county receives a complete license application, the department or its agent shall do one of the following:

(a) Grant the application.

(b) Deny the application. If the department or its agent denies the application it shall give the applicant written notice specifying the reasons for the denial.

(c) Issue an interim license under sub. (6).

(6) INTERIM LICENSE. The department or its agent municipality or county may issue an interim license, for a period not to exceed 40 business days, pending final action on an application for an annual retail food establishment license. The department or its agent shall grant or deny the annual license application before the interim license expires. If the department or its agent denies a license application before the applicant's interim license expires, the interim license is automatically terminated when the applicant receives written notice of the denial. The holder of an interim license acquires no license rights beyond those conferred by the interim license under this subsection. The department or its agent may not issue an interim license in response to a renewal application by the holder of an existing license.

(7) PRE-LICENSE INSPECTION. The department or its agent municipality or county may inspect a retail food establishment, as the department or agent deems necessary, before issuing a license to the retail food establishment. The department or its agent may not issue a license or interim license for a new retail food establishment until it inspects the new retail food establishment for compliance with this chapter. A previously licensed retail food establishment is not considered a new retail food establishment under this subsection solely because of a change of ownership, or solely because of alterations in the retail food establishment.

(8) PLAN REVIEW. A person may ask the department or its agent to review plans for the construction, reconstruction or alteration of a retail food establishment before the person constructs, reconstructs or alters the retail food establishment, or converts an existing structure for use as a retail food establishment.

**Minutes of the Environmental Health Planning Meeting
12/16/99**

Present: Ken Baldwin, Steve Bell, Kay Bender, Sherry Gehl, Larry Gilbertson, Doug Klitzkie, Keith Krenz, Lisa Lucht, Ed Rabotski, Tom Sieger, Liz Temple, Terri Timmers, Mark Wallen, Ken Walz

Location: Stage Stop Restaurant, Mosinee

Ken Baldwin welcomed the participants and asked for any comments regarding the planning process.

Larry Gilbertson reported that information was gathered at the first three meetings. Now we need to put this information on paper. This report should be started in January.

Tom Sieger reminded the group that the deadline for biennial budget issues is March/April.

Ken asked that the group carefully critique the following reports from the various workgroups to be sure that all workgroups are moving in the right direction.

1. Ed Rabotski reported on the workload summary and responsibilities of the central office workforce. He explained the administration of all food service operation, lodging establishment, public pool, campground and educational camp, tattoo and body-piercing establishment, and agent programs. Other responsibilities include the following:
 - Contracts with, monitors and trains LPHD's with agent status
 - Processes applications and renewals for the programs
 - Processes certifications and renewals for body piercing practitioners, tattoo artists, food service managers, and registered sanitarians
 - Conducts evaluation surveys of Grade A dairy operations
 - Tests and registers food contact surface sanitizers
 - Develops and implements MOUs
 - Draft rule changes
 - Develop and implement program related training
 - Review variance requests, etc.

Ed distributed a list of all staff and their major responsibilities. Ed mentioned that he has received two resignations and that these positions will not be filled in the near future.

Tom mentioned that we have a gentleman's agreement to hold vacancies open until this group has finalized a plan. All staff has an important role but we must evaluate to see what is the best way or best type of position to do the functions of the program. Also all staff has enough to do. We must do an evaluation of each to see what each position should be doing in the future. We must consider what the LICS system will provide in terms of efficiency. The handout distributed by Ed

- Hold meetings via videophone, conference call, etc. This would be the most cost effective and time efficient.
- Encourage sans living near or in the area to work from their homes. This would reduce travel time and office expenses. There is a procedure for home basing and is subject to supervisor approval.
- Eliminate TRH inspections or inspect every 3-5 years. This needs to be a statewide policy. The program has out grown its usefulness. Can they self regulate? Are there other ways to inspect or for them to get something for their money?
- Raise all fees to the average charged by the agents to reduce the deficit.
- Enforce only DHFS codes. A lot of time is spent on Commerce, plumbing, and DNR code enforcement. Have a policy from Madison on releasing permits with debits in these areas.
- Encourage over-nighters for inspections. Do a cost analysis on overnighters and 1-2 week relocations to see if they are cost effective. Have the summer interns do the TRHs.
- Announce all inspections to maximize the benefits from the inspection and talk to the person in charge. Don't make 2 trips.

Revising the Fee Structure

- Fee restructuring handout for food service operations showing the current fee, plus 15%, 20%, and 25% by establishment and the annual revenue received for each rate.
- Add wording in the rule that the fee may be (or will be) increased each year at the annual rate of inflation as determined by movement in the consumer price index for all urban consumers.
- Restructure the campground and special events fees by adding the category 201+ sites.
- Add a per event license for the temporary restaurants.
- Restructure the Rec/Ed Camp fees by adding 4 categories ranging from \$150 to \$300.
- Increase existing pre-inspection fees
- Establish a pre-inspection fee for campgrounds, rec/ed camps, and swimming pools.
- Increase fee for food manager certificate.
- Establish a 15 month extended license fee.
- Establish a fee for the sanitizer list
- Establish a plan review fee.
- Propose an annual B & B fee.
- Increase late fees
- Establish a waiver/variance fee
- Establish a fee for operating without a license.

DRAFT

**A PLAN TO STRENGTHEN
ENVIRONMENTAL HEALTH IN
WISCONSIN**

Interim Final Report

April 1, 2000

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References

Environmental Health Planning Team – DPH Members

Ken Baldwin
Deputy Administrator
Division of Public Health

Steve Bell
Public Health Sanitarian
Green Bay Regional Office

Kay Bender
Budget and Policy Analyst
Division of Public Health

Sherry Gehl
Chief, Section of Contract Administration
Division of Public Health

Larry Gilbertson, Co-chair
Director, Eau Claire Regional Office

Doug Klitzkie
Public Health Sanitarian
Madison Regional Office

Keith Krenz
Public Health Sanitarian
Eau Claire Regional Office

Lisa Lucht
Public Health Sanitarian
Green Bay Regional Office

Bill Otto, Chief
Health Hazard Eval. Section
Division of Public Health

Ed Rabotski, Chief
Environmental Sanitation Section
Division of Public Health

Tom Sieger, Co-chair
Bureau of Environmental Health
Division of Public Health

Elizabeth Temple
Evaluation and Training Office
Environmental Sanitation Section

Mark Wallen
Public Health Sanitarian
Rhineland Regional Office

Ken Walz
Public Health Sanitarian
Milwaukee Regional Office

Environmental health activities are frequently disjointed from state and local public health agencies, resulting in disjointed policy development, fragmented service delivery, lack of accountability and a generally weakened public health effort. The removal of environmental authority from public health agencies has led to fragmented responsibility, lack of coordination and inadequate attention to the health dimensions of environmental problems.

The committee recommends that state and local public health agencies strengthen their capacities for identification, understanding and control of environmental problems as health hazards. The agencies cannot simply be advocates for the health aspects of environmental issues, but have direct operational involvement.

**“The Future of Public Health”
The Institute of Medicine, 1988**

- As position vacancies permit, create an Evaluation and Training Officer position (Public Health Sanitarian - Advanced) in each region. This position can act as a lead for regulation and licensing staff and begin to assume responsibility for broad environmental program support for local environmental health program activities.
- As position vacancies permit, convert one or more existing position(s) to an Environmental Health Technician (classification to be established). These positions can assume responsibility for inspection of lower risk facilities and offset personnel costs associated with the creation of the ETO position in each region.
- Take maximum advantage of limited term employee college interns to assist with heavy seasonal workloads and provide inspection service of lower risk facilities.
- Work with the WI Department of Commerce to determine if there are mechanisms to reduce the amount of time and effort associated with enforcement of COMM codes referenced in HFS administrative rule.
- Examine the WI Science Professionals labor agreement to establish work rules that allow flexible hours to accommodate heavy seasonal work loads such as temporary food stands at summer fairs and festivals.
- Contract with a state-wide collection agency to relieve regional field staff of the responsibility for the collection of late licensing fees.

4. Improve the quality of our educational products and pursue innovations to improve the quality of the facility inspection process.

- Develop an algorithm for prioritizing facility inspections, based upon the level of risk presented to the consumer to assist with the management of heavy staff workloads.
- Initiate a pilot process with the Wisconsin Innkeepers Association that provides for operator training, facility self-inspection and a reduced presence by state inspectors.
- Examine if opportunities exist to recognize the inspections and quality assurance operations provided by qualified restaurant employees in lieu of similar services provided by regional staff.
- Significantly improve education and information products provided to facility owners and operators. Take maximum advantage of new technologies, including internet/world-wide-web content and distance learning opportunities.
- Develop a program to recognize those facility owners and operators who consistently meet and maintain high quality standards with respect to food and facility safety.
- Make announced inspections to reduce the need for a second trip (facility closed, past business hours, etc.) and maximize the interaction with the person-in-charge.

- 5. Revise the restaurant, lodging and recreational facility license fee schedule to ensure equity across facilities and to fully fund the activities of the program.**
- Examine a variable fee structure based upon self reported facility receipts.
 - Explore a revision to chapter 254 Wi. Stats. to allow a re-inspection fee, a penalty for operating without a license and pre-inspection fees for campgrounds, rec/ed camps and swimming pools.
 - Revise the license requirements for temporary restaurants to better reflect the amount of inspection time devoted to these facilities.
 - Meet with industry representatives to discuss revisions to the fee schedule and to develop a biennial budget proposal for state fiscal years 2002/2003.
- 6. Secure funding sources to offset the loss of agent revenue to maintain environmental health generalists in each of the regional offices.**
- Continue the dialogue with CDC on funding opportunities for regional staff.
 - Pursue the use of tobacco settlement funds for enforcement and consultation activities related to Wisconsin's Clean Indoor Air Act.
 - Explore increased medicaid reimbursement for childhood lead services.
 - Use HUD round 7 dollars to support staff training and development in the area of childhood lead poisoning prevention.
 - Pursue revenue associated with the distribution of the ESS as a potential funding source to offset the need for license fee increases.
- 7. Take steps to strengthen environmental health programs in local public health agencies.**
- Work toward consistent and coherent agent programs among the DHFS, DNR, DATCP and Department of Commerce. These could include:
 - The DHFS restaurant/lodging/recreational facility program
 - The DATCP retail food program
 - DNR well delegation program
 - DNR non-municipal water supply program
 - DNR NESHAPS/asbestos inspection program
 - DNR open burning investigations
 - Department of Commerce on-site wastewater disposal

ACTION PLAN

From: Gregory Pallaske
To: ETO's
Date: 1/29/01 4:16PM
Subject: Risk Assessment Questionnaire

Hi Guys- I could use some immediate feedback. As you are aware, we are strongly considering going to a risk-based fee system. The problem is, how do we effectively, fairly, and quickly categorize our restaurants?

The attached questionnaire attempts to do this. It is a "takeoff" of the table some of you have already seen, but it is easier to work with.

Your comments and opinions are welcome, but as I indicated, I need a quick turnaround.

To best test this out, think about some establishments you've been in recently, and do a quick score. Do they fall where you think they should?

Proposed Fee Increase

Most of you are, by now, aware that our department is proposing a fairly dramatic fee increase for the coming licensing year. I've been getting a lot of questions from the field, so I thought this would be a good forum.

Risk-based fee schedule

There were originally 2 proposals on the table for the new fee schedule for restaurants. The first was a straight 40% across the board increase for all '02's. The second was a sliding scale based on gross food sales. We found some fundamental problems with both of these approaches.

At \$148 annually, the State fee was lower than any Agent, and perhaps the inherent inequity of charging the little Mom & Pop hot dog stand the same as the large supper club was not much of an issue. With a proposed 40% increase, however, the unfairness factor becomes more prominent.

Although a number of Agencies are successfully using the sliding sales volume method of setting fees, there are admittedly a couple of problems with this system also. Many operators are reluctant to disclose sales numbers. There can be confusion regarding what sales count as food. There is built in incentive for operators to under-report to save on fees. And the average menu price can really skew total sales volume.

For these reasons, and our desire to better allocate scarce resources by identifying operations more in need of inspection and consultation services, we have decided to base our fees on the relative risk of each facility.

Assessment tool

The next step was to construct a method to quickly and easily separate hundreds of facilities per each Environmental Health Specialist into low, moderate, and high risk. The questionnaire below is the tool we decided to use. It is far from perfect, but it had to be easy to use, as fair as possible, and simple. Several of our agents are using risk assessment tools to determine which establishments should receive HACCP training or more frequent inspections. These are excellent tools, but too complex for the volume and speed required by us at this time. Of course, assuming these proposals become law, there is nothing that says we can't refine this assessment tool for next year. Your comments and suggestions are welcome as always.

For the table below, use the following scoring evaluation:

A restaurant whose total score is 0 to 2 shall be included in the simple permit category.

A restaurant whose total score is 3 to 5 shall be included in the medium permit category.

A restaurant whose total score is 6 to 11 shall be included in the complex permit

DESCRIPTION OF FACILITY OR OPERATION	Point(s)
The restaurant contains a self-service salad or food bar.	2
The restaurant handles raw chicken, meat, poultry, seafood, or shell eggs, frozen raw hamburger patties or frozen non-breaded raw chicken.	2
The seating capacity is 40 or more or there is a drive-through window for food pickup.	1
Potentially hazardous foods are cooled or reheated.	2
Food is prepared in one location and then transported to be served in another location.	2
The kitchen contains more than one deep fryer, or more than one grill or more than 2 hot-holding units.	1
The most recent inspection revealed 2 or more critical item violations.	1
The restaurant currently implements a HACCP plan approved by the department.	-1

Unfortunately, we have discovered a typo in the language. Simple establishments are listed as 0 – 1, rather than 0 to 2. This would place small taverns with very limited food service, but that do make burgers, in the moderate category. Please alert your staff to this error.

Here's a list of the proposed new fees:

Pools	\$175
Camps	\$125
Campgrounds 1-25 sites	\$125
Campgrounds 26-50 sites	\$150
Campgrounds 51-100 sites	\$175
Campgrounds >100 sites	\$200
Hotel 5-30 rooms	\$160
Hotel 31-99 rooms	\$250
Hotel >99 rooms	\$340
Tourist Rooming House	\$160
Restaurant 01	\$95
Restaurant 02- simple	\$160
Restaurant 02- moderate	\$230
Restaurant 02- complex	\$300
Temporary Restaurant	\$110
B&B	\$125

I recognize this is not an exhaustive list, but it should give you a good overview.

Agent Impact

Obviously there is going to be a fiscal impact on Agents. The most frequently asked question at this point is:

How are Agents supposed to determine which restaurant fee to base their reimbursement on?

Our plan is to offer two alternatives (actually 3). We strongly encourage every LPHD to do a risk assessment, not for our sake, but for yours. If you do a risk assessment using our tools, we will accept your numbers. If you use your own risk assessment, chances are you are already classifying establishments into the same three categories we are using. If not, you could probably do so with little trouble, and again we would accept your numbers. Finally, perhaps you don't presently do a risk assessment, and you choose not to do one using either our plan or your own. In that case, you may use our basic assumptions- that 40% of establishments will fall into the simple range, another 40% in the moderate, and 20% complex. We have checked this assumption against several large LPHD's, and found an almost exact match with the above numbers.

We believe this system is fair and equitable. If you disagree please let me know if you have a better system. I will listen. As I have said repeatedly to anyone within earshot, my objective is to unify every environmental health agency in the State under a common vision. That leaves little room for any "us against them" activities.

Other News

Recognizing I've gone on long enough, I will keep this section short:

- We currently have 2 openings for ETO positions in the Central Office. The listing appeared in last Monday's State Bulletin, and has been mailed to all RS's in the State.
- Public Hearings regarding the fee increases will be held next week- 3/19 in Rhinelander, 3/20 in Green Bay, 3/21 in Eau Claire, and 3/22 in Madison. Send me an email if you need more information.
- We are going to be requesting a fair amount of data from all of you in the near future. We are in the process of redefining what an "evaluation" looks like, and I welcome your thoughts.
- I'm in the process of travelling around the State, trying to meet with every Agency and every Regional Office. I will also be attending the periodic WALHDAB meetings held in the Dells. If I'm not on your calendar yet, please contact me so we can arrange a meeting. I firmly believe that communication is the key to meeting our goal of working as a single unit to bring excellent public health to Wisconsin.
- By the end of this week, DHFS and DATCP will be issuing a hand washing protocol for use in the field. If an establishment wants to be allowed to have bare hand contact of ready to eat foods, the Environmental Health Specialist can hand this document to the operator. If the protocols can be met, the Environmental Health Specialist may then grant permission. This is designed to help us all be consistent in application of the food code throughout the State.

Enough for now. Please do not hesitate to keep in touch.