

COMM
105-128

Emergency Rule COMM 105-128

**Relating to the use of rapid
response funds in economically
depressed areas of Wisconsin.**

The Department of Commerce requests an extension of the emergency rule for 60 days.
First Consideration.



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<http://www.commerce.state.wi.us>
<http://www.wisconsin.gov>

Jim Doyle, Governor
Cory L. Nettles, Secretary

July 15, 2003

The Honorable Glenn Grothman
State Representative
Room 15 North
State Capitol
P.O. Box 8952
Madison, WI 53708-8952

The Honorable Joseph Leibham
State Senator
Room 409 South
State Capitol
P.O. Box 7882
Madison, WI 53708-7882

Dear Representative Grothman and Senator Leibham:

On March 22nd of this year, the agency published the enclosed emergency rule that would allow the use of rapid response funds in economically depressed areas of the state to preserve economic development. The emergency rule will expire on August 19, 2003, unless an extension is granted.

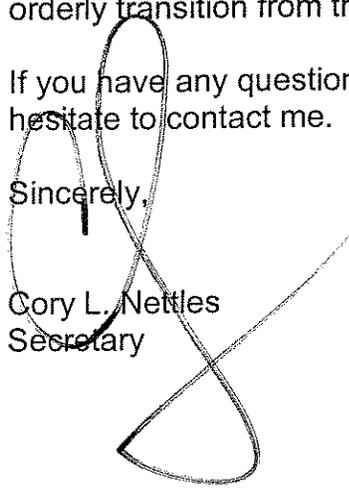
Since adoption, the Department has submitted the rule to the Wisconsin Legislative Council and held a hearing on the emergency rule. The Department will be forwarding a rule in final draft form (Clearinghouse Rule Number 03-046) for legislative review. However, legislative review will most likely not be completed and the Department will not be able to adopt the permanent rule and have it in effect before the emergency rule expires.

The Joint Committee for Review of Administrative Rules (JCRAR) requests that agencies make formal extension requests in advance of the expiration of an emergency rule. I therefore respectfully request an extension of the emergency rule under s. 227.24 (2), Stats., in order to preserve the public peace and provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please don't hesitate to contact me. Thank you in advance for your consideration of this request.

Sincerely,

Cory L. Nettles
Secretary



DEPARTMENT OF COMMERCE

EMERGENCY RULE RELATING TO THE USE OF RAPID RESPONSE FUNDS IN ECONOMICALLY DEPRESSED AREAS OF WISCONSIN TO PRESERVE ECONOMIC DEVELOPMENT

Finding of Emergency and Rule Analysis

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

Analysis of Rules

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

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

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

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

Contact Person

Todd Kearney, Acting Division Administrator

608-266-6675

ORDER

Pursuant to Section 227.24, Stats., the Department of Commerce hereby adopts an emergency rule to renumber ss Comm 108.03 (23) to (25) to (24) to (26), 108.03 (26) to (27) to (28) to (29); to amend ss. Comm 108.06 TABLE 108.06-1, 108.07 (2), 108.07 (6), 108.14, 108.15, Subchapter VII Title, and 108.24; and to create ss. Comm 108.03(23), 108.03(27), relating to the deployment of rapid response funds to preserve economic development in Wisconsin.

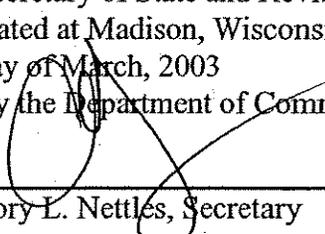
This emergency rule takes effect upon publication in the official state newspaper and filing with the Secretary of State.

Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin, this 18th

day of March, 2003

By the Department of Commerce



Cory L. Nettles, Secretary

SECTION 1. Comm 108.03 (23) through (25) are renumbered (24) through (26):

SECTION 2. Comm 108.03 (23) is created to read:

Comm 108.03 (23) "Person" means an individual, partnership, corporation, nonprofit organization, city, village, town, county, or trustee, including a trustee in bankruptcy.

SECTION 3. Comm 108.03 (26) through (27) are renumbered (28) through (29):

SECTION 4. Comm 108.03.27 is created to read:

Comm 108.03 (27) "Rapid response" means awards to preserve or enhance the economic conditions of an area and the well being of its citizens that would be negatively impacted by actual or potential plant closings, business relocation, layoffs, unemployment, and similar activities.

SECTION 4. Comm 108.06 TABLE 108.06-1 is amended to read:

**TABLE 108.06-1
ANNUAL DISTRIBUTION OF CDBG FUNDS
BY GRANT PROGRAM**

| Grant Program | Percent of CDBG Funds Set Aside |
|--|--|
| Public facilities program (CDBG-PF) | Up to 75% |
| Public facilities planning grant Planning grant program (CDBG-PLNG) | Up to 2% 10% |
| Economic development program (CDBG-ED) | Up to 75% |
| Public facilities economic development program (CDBG- PFED) | Up to 20% |
| Blight elimination and brownfield redevelopment program (BEBR) | Up to 10% |
| Emergency grant program (CDBG-EMER) | Up to 5% |

SECTION 5. Comm 108.07 (2) is amended to read:

Comm 108.07 (2) (a) The maximum amount of CDBG funds that may be awarded to any local government under the economic development program as specified under subch. III shall be \$1 million per ~~calendar year~~ annual federal allocation.

(b) The maximum amount of CDBG funds that may be borrowed by a business from any one or more local governments under the economic development program shall be \$1 million during any 5-year rolling period.

(c) Awards made that meet the department's rapid response criteria as defined in s. Comm 108.03 (27) do not count against the maximum amounts specified in (a) and (b).

SECTION 6. Comm 108.07 (6) is amended to read:

Comm 108.07 (6) (a) The maximum amount of CDBG funds that may be awarded to any local government for a ~~public facilities~~ planning grant as specified under subch. VI shall be ~~\$12,500 per plan in a 12-month period~~ \$25,000 per annual federal allocation.

(b) Awards made that meet the department's rapid response criteria as defined in s. Comm 108.03 (27) do not count against the maximum amounts specified in (a).

SECTION 7. Comm 108.14 is amended to read:

Comm 108.14 Economic development program. (1) The department may award a grant to an eligible local government under the economic development program upon receipt and consideration of an application if the department determines all of the following:

- (a) The project serves a public purpose.
- (b) The local government has a citizen participation plan as required by 24 CFR 570.486 (a).
- (c) The project costs are reasonable.
- (d) All sources of project financing will be committed prior to the disbursement of the grant.
- (e) The project is financially feasible.
- (f) The business person that will benefit from the economic development grant award has the economic ability to repay any funds that are loaned to the business person.
- (g) The project will likely retain or create jobs in this state.
- (h) Funding for the project is unavailable from any other source on reasonably equivalent terms.
- (i) ~~The local government and the business~~ Businesses that will benefit from the economic development grant award will contribute at least 50% of the total cost of the project from funding sources other than the ~~federal and state governments~~ government.
- (j) The local government will use the CDBG funds for one of the following purposes:
 1. For a grant or loan to a business person that agrees to engage in job creation or retention activities under 24 CFR 570.483 (b) (4) designed to benefit low and moderate income persons.
 2. For job training, job placement, child care, transportation or other similar services eligible under 24 CFR 570.483 (b) (2) (v) designed to benefit low and moderate income persons.
 3. For other activities eligible under 24 CFR Part 570 ~~that meet the national objectives of benefit to low and moderate income persons through job creation.~~

(2) When making a determination under sub. (1) (a), the department shall consider all of the following:

- (a) The extent of poverty and unemployment and other economic factors in the area of the project.
- (b) The prospects for new investment and economic development in the area.
- (c) The amount of investment that is likely to result from the project.
- (d) The number of full-time jobs that are likely to be created or retained.

- (e) The total cost per full-time job created or retained.
- (f) The amount of wages and benefits to be provided by the business.
- (g) The willingness of the business person to work cooperatively with the department of workforce development, local job service offices and private industry councils to identify and offer full-time job opportunities to low to moderate income persons.
- (h) The availability of satisfactory collateral and personal guarantees to assure repayment of the economic development loan.
- (i) Whether the award will provide the business person with an unreasonable competitive advantage over other similar Wisconsin businesses persons in the vicinity of the project.
- (j) Whether the project will involve the relocation of a business person and displacement of jobs from one local government in Wisconsin to another local government in Wisconsin.
- (k) Whether the project will involve redevelopment of a brownfield site.
- (L) (l) Whether the project will result in the elimination of slum and blight.

SECTION 8. Comm 108.15 is amended to read:

Comm 108.15 Job creation and retention requirements. (1) If a local government ~~loans~~ awards the CDBG funds to a business person under s. Comm 108.14 (1) (j) 1., the business person shall execute ~~a loan~~ an agreement and other documents prescribed by the department, committing to ~~repay the loan and~~ to create full-time equivalent jobs ~~and~~ or retain full-time equivalent jobs, or both.

(2) In accordance with 24 CFR Part 570.482 (f) (2), ~~The~~ the amount of CDBG funds awarded by the department to a local government for an economic development project may not exceed \$20,000 for each full-time equivalent job created and retained ~~by a business.~~ The amount awarded to any person shall depend upon the department's consideration of the factors in s. Comm 108.14 (2) and in accordance with 24 CFR Part 570.482 (f) (4).

(3) The department may require a business person that receives ~~a loan~~ an award under this subchapter to document full-time equivalent job creation and retention with a list of full-time jobs or positions created and retained, the job title for each full-time equivalent job created and retained, job skills, wages and benefits, and any other information the department considers relevant.

SECTION 9. Title Subchapter VII is amended to read:

Subchapter VII ~~Public Facilities~~ Planning Grants.

SECTION 10. Comm 108.24 is amended to read:

Comm 108.24 Public facilities Planning grant program. (1) General. (a) The department may make a grant to an eligible local government for preparing a plan for a specific project.

(b) An eligible local government may submit an application for a public facilities planning grant to the department at any time.

~~(c) Only one grant in a 12-month period shall be made to an eligible local government submitting an application under this section.~~

~~(d)~~ (c) Grant award limits are as specified in s. Comm 108.07 (6).

(2) Application. An application for a planning grant under this section shall contain sufficient information to identify how all of the following requirements are satisfied:

(a) The local government has identified a specific project that needs further planning.

(b) The specific project will serve a public purpose.

(c) The specific project is an eligible CDBG activity.

(d) The local government has a citizen participation plan as required under 24 CFR ~~507.486~~ 570.486 (a).

(e) The specific planning cost estimates are reasonable.

(f) At least 50% 25% of the total cost of the planning shall originate from local revenues other than grants provided by the federal or state government. Awards made that meet the department's rapid response criteria as defined in s. Comm 108.03 (27) do not count against the maximum percentage amount.

~~At least half of the local financial participation shall originate from the local government or participating local governments.~~

(g) The planning for the specific project has the support of local community and economic development organizations or business groups.

(h) The local government has the capacity and capability to conduct the planning or commits to the retention of professional planning services.

(i) The planning will likely result in the implementation of the specific project being planned.

(j) The local government certifies that the planning grant is not a commitment of CDBG funding at a later date for plan implementation.

(k) The application shall include, where applicable, at least the following:

1. An analysis of the current status and any deficiencies in public facilities, services, buildings or a defined geographic area.

2. An analysis of alternative means of correcting such deficiencies described in subd. 1.

3. A written plan for the selection of a proposed course of action, a narrative description, cost estimates and map of the project location or defined geographic area.

(3) Other considerations. When reviewing the applications received under sub. (2), the department shall consider all of the following:

(a) Whether the specific project plan is intended to address one of the 3 national objectives as specified in s. Comm 108.04.

(b) The extent of poverty, unemployment, labor shortages or other economic factors in the specific project area.

(c) The prospects for other new investment and community and economic development in the specific project area.

(d) The amount of additional investment and public health and safety that is likely to result from the plan implementation.

(e) The likelihood that the specific project will result in the preservation or expansion of the existing tax base.

(f) The planning for the specific project is consistent with other planned or recently completed community or economic development projects such as, but not limited to, smart growth planning as specified in s. 16.965 (1) (b), Stats.

(END)



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

July 30, 2003

Cory Nettles, Secretary
Department of Commerce
123 West Washington Avenue
Madison, WI 53707-7970

Dear Secretary Nettles:

The Joint Committee for the Review of Administrative Rules met in Executive Session on July 29, 2003 and adopted the following motion:

Emergency Rule COMM 105-128 Relating to the use of rapid response funds ineconomically depressed areas of Wisconsin. Moved by Senator Leibham, seconded by Senator Lazich that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends **COMM 105-128** at the request of the Department of Commerce by 60 days.
Motion Carried 9 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

July 30, 2003

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on July 29, 2003 and adopted the following motions:

Emergency Rule COMM 105-128 Relating to the use of rapid response funds ineconomically depressed areas of Wisconsin. Moved by Senator Leibham, seconded by Senator Lazich that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends **COMM 105-128** at the request of the Department of Commerce by 60 days.
Motion Carried 9 Ayes, 0 Noes.

Emergency Rule – NR 16 and 19 Relating to Captive Wildlife. Moved by Senator Leibham, seconded by Senator Lazich that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends NR 16 and 19 at the request of the Department of Natural Resources by 60 days. **Motion Carried 9 Ayes, 0 Noes.**

Emergency Rule – HFS 110 to 113 Relating to licensing of EMT's and certification of first responders, incorporating responding to certain acts of terrorism as a training component. Moved by Senator Leibham, seconded by Senator Lazich that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends HFS 110 to 113 at the request of the Department of Health and Family Services by 60 days. **Motion Carried 10 Ayes, 0 Noes.**

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,


Senator Joseph Leibham
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

END



END

DFI-SEC
4.03

**ORDER OF THE
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
STATE OF WISCONSIN
ADOPTING EMERGENCY RULES**

To repeal DFI-Sec 4.03(6), to renumber DFI-Sec 4.03(7), to repeal and recreate DFI-Sec 4.03(1) through (4), and to amend DFI-Sec 4.05(5) of the Rules of the Division of Securities relating to conforming Wisconsin's Securities Law rules concerning broker-dealer books and records to federally-mandated standards under the Securities Exchange Act.

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

Statute Interpreted: Section 551.33(1), Wis. Stats.

FINDING OF EMERGENCY AND ANALYSIS

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

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

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

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

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

Accordingly, the emergency rules do the following:

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

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

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

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

Pursuant to sections 551.33(1), and 551.63(1) & (2), Wis. Stats., the Division of Securities of the Department of Financial Institutions adopts emergency rules as follows:

Section 1. DFI-Sec 4.03(1) through (4) are repealed and recreated to read:

DFI-Sec 4.03(1) Every licensed broker-dealer shall prepare and keep current at its principal office the books and records as described in rules 17a-3 and 17a-4 under the securities exchange act of 1934.

(2) Every licensed broker-dealer shall preserve the records required under sub. (1) according to the schedule provided in rule 17a-4 under the securities exchange act of 1934 in compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records or other means of retention of records.

(3) Every branch office of a licensed broker-dealer, as defined under section DFI-Sec 1.02(7)(a), shall prepare and keep current the branch office books and records as described in rule 17a-3(f) under the securities exchange act of 1934.

(4) Every licensed broker-dealer shall preserve the branch office records required under sub. (3) according to the schedule provided in rule 17a-4(k) under the securities exchange act of 1934 in compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records or other means of retention of records.

Section 2. DFI-Sec 4.03(6) is repealed

Section 3. DFI-Sec 4.03(7) is renumbered DFI-Sec 4.03(6)

Section 4. DFI-Sec 4.05(5) is amended to read:

DFI-Sec 4.05(5) Each broker-dealer shall provide each customer with a conformed copy of all contracts and agreements between the broker-dealer and the customer not later than ~~20~~ 30 days after the customer's account is first established on the books and records of

the broker-dealer. Each broker-dealer shall provide each customer with a conformed copy of the customer information form prescribed under s. DFI Sec 4.03(1)(k) or an alternative document that contains at a minimum the customer's name, address, net worth, annual income, investment objectives and any other information affecting the agent's ability to make suitable recommendations, not later than 20 days after the customer's account is first established on the books and records of the broker-dealer pursuant to the requirements of rule 17a-3(a)(17) under the securities exchange act of 1934. Each contract or agreement and new account form for a customer whose account involves both an introducing broker and a clearing broker who provides services to the customer, shall contain or be accompanied by a disclosure of the identity and address of each broker-dealer. A copy of any material amendment to a customer's contract, agreement or customer information form shall be provided to the customer within 20 days from the date of the material amendment. In this subsection, a material amendment is presumed to exist, without limitation, in the event the broker-dealer receives from the customer and records on the customer information form, changes to the customer's annual income, net worth, investment objectives or other changes to information affecting the agent's ability to make suitable recommendations for the customer as required under DFI Sec 4.06(1)(e).

* * * * *

EFFECTIVE DATE

The emergency rules adopted by this Order shall take effect upon publication of the rules in the official state newspaper and compliance with other applicable requirements, pursuant to the provisions of sec. 227.24, Wis. Stats.

Dated at Madison, Wisconsin, this 24 day of May 2003.

[SEAL]


 Patricia D. Struck
 Administrator



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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

September 16, 2003
300 NE
State Capitol

Moved by Grothman, Seconded by Lazich

THAT, pursuant to s. 227.24(2)(a), stats. the Joint Committee for Review of Administrative Rules extends the effective period of emergency rule **SEC 4** for 58 days at the request of the Department of Financial Institutions.

| COMMITTEE MEMBER | Aye | No | Absent |
|-----------------------------|-----|----|--------|
| 1. Senator LEIBHAM | ✓ | | |
| 2. Senator WELCH | | | |
| 3. Senator LAZICH | ✓ | | |
| 4. Senator ROBSON | | | |
| 5. Senator LASSA | ✓ | | |
| 6. Representative GROTHMAN | ✓ | | |
| 7. Representative SERATTI | ✓ | | |
| 8. Representative GUNDERSON | | | |
| 9. Representative BLACK | ✓ | | |
| 10. Representative HEBL | | | |
| Totals | | | |

Motion Carried

Motion Failed



State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

September 3, 2003

✓ The Honorable Joseph Liebham, Co-Chair
Wisconsin Senate
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol
Madison, WI 53708

The Honorable Glenn Grothman, Co-Chair
Wisconsin Assembly
Joint Committee for Review of Administrative Rules
Room 15 South
State Capitol
Madison, WI 53708

Re: Division of Securities Request for 58-day Extension of Emergency Rule Effectiveness

Dear Senator Liebham and Representative Grothman:

Pursuant to sec. 227.24(2), Wis. Stats., The Division of Securities of the Department of Financial Institutions hereby requests that the Joint Committee For Review of Administrative Rules take action to extend for 58 days the effectiveness of the emergency rules adopted effective May 7, 2003 by the Division under the Wisconsin Uniform Securities Law relating to securities broker-dealer books and recordkeeping requirements. Those emergency rules were needed to immediately make several revisions to Wisconsin's Securities Law rules concerning securities broker-dealer books and recordkeeping requirements to conform such Wisconsin rules to superseding, federally-mandated standards regarding broker-dealer books and records that were adopted for May 2003 effectiveness by the U.S. Securities & Exchange Commission ("SEC") under the federal Securities Exchange Act.

The Division has instituted the permanent rule-making process to adopt permanent rules in this matter, including conducting a public rule-making hearing (on August 11, 2003), and the rules (as Clearinghouse Rule 03-068) have been filed (on August 13 and 14, 2003, respectively) in their proposed final form with each of the Division's legislative standing committees. However, the final adoption and printing and publication process cannot be completed until, depending on timing considerations for the standing committee review process, an effective date of either November 1, 2003, or December 1, 2003 -- both of which dates are after the October 4, 2003 expiration of the 150 day effectiveness period of the emergency rules.

An emergency continues to exist which necessitated the Division's May 2003 adoption of the rules for the preservation of the public peace, health, safety or welfare, because the facts constituting the

Division of Securities

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emergency set forth below and in the attached materials remain the same as at the time of the emergency rule adoption, and adverse consequences can be avoided only by extending the emergency rules for a 58-day period (maximum to enable a latest possible effective date scenario of December 1) so that the proposed permanent rules can become effective.

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

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

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

Consequently, it was necessary to immediately revise and amend Wisconsin's broker-dealer books and records rules to conform to the federal rules that became effective in May 2003, and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. A subcommittee of the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, had reviewed the impact of the SEC's books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rules treatment as set forth in the Order Adopting Emergency Rules.

Copies are attached of the original emergency rules text containing the Finding of Emergency, and pursuant to sec. 227.24(2)(am), Wis. Stats., a copy of this extension request is being provided to: (i) the presiding officer of each house of the legislature; and to (ii) the Senate Agriculture, Financial Institutions and Insurance Committee, and the Assembly Financial Institutions Committee, where the permanent rules in their proposed final form have been filed.

Any questions with regard to this request may be directed to me at my direct dial telephone number 266-3414.

For the Division,



Randall E. Schumann

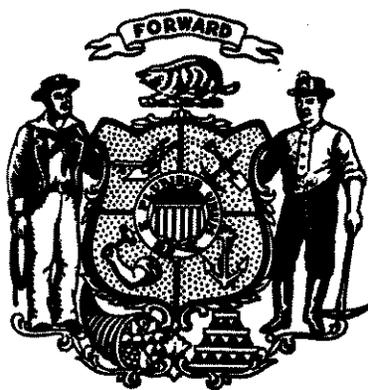
Legal Counsel for the Division

cc: Patricia D. Struck, Administrator, Division of Securities, Department of Financial Institutions
Kathryn Carlson, Executive Assistant, Department of Financial Institutions
President, Wisconsin State Senate
Speaker of the Assembly
Chairperson, Senate Agriculture, Financial Institutions and Insurance Committee
Chairperson, Assembly Financial Institutions Committee

RES

Enclosure

END



END

DOC
314

**EMERGENCY RULE
DOC 316**

**RELATING TO MEDICAL, DENTAL and
NURSING CO-PAYMENT CHARGE**

**JCRAR HEARING
March 27, 2003
10 a.m. – 411 South**



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

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

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 24, 2003

Matthew J. Frank, Secretary
Department of Corrections
P.O. Box 7925
Madison, WI 53707-7925

Dear Secretary Frank:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 23, 2003 and adopted the following motion:

Emergency Rule DOC 316 **Relating to Medical, Dental and Nursing Co-payment Charge.**
Moved by Representative Grothman, seconded by Senator Leibham that, pursuant to s. 227.24(2)(a),
Stats., the Joint Committee for Review of Administrative Rules extends DOC 316 at the request of
Department of Corrections by 60 days. Motion Carried 10 Ayes, 0 Noes, 2 Absent.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

Jim Doyle
Governor

Matthew J. Frank
Secretary



MAR 13 2003 Mailing Address

3099 E. Washington Ave.
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 240-5000
Fax (608) 240-3300

State of Wisconsin
Department of Corrections

March 5, 2003

Senator Joseph K. Leibham, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, State Capitol
P.O. Box 7882
Madison 53707-7882

Representative Glenn S. Grothman, Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
P.O. Box 8952
Madison 53708

RE: Doc 316 relating to Medical, Dental and Nursing Copayment Charge

Dear Senator Leibham and Representative Grothman:

The Department of Corrections (DOC) promulgated an emergency rule concerning the above captioned subject matter on September 3, 2002. The emergency rule expired on January 31, 2003, but was extended until March 31, 2003. However, this rule will expire before it can be replaced with the proposed permanent rule. Therefore, I am requesting that the Joint Committee for Review of Administrative Rules grant a second and final 60-day extension of the emergency rule pursuant to s. 227.24, (2), Stats..

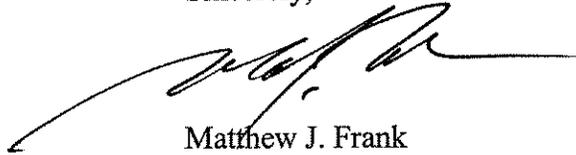
The emergency rule was required by 2001 Wisconsin Act 109 and raised the medical, dental and nursing copayment charge to \$7.50. The Department is now collecting this increased copayment in accordance with the statute. In order to avoid a lapse in the new copayment charge and avoid significant administrative problems, the DOC requests an extension of the emergency rule to allow time for the permanent rule to become effective.

The enclosed proposed permanent rule was submitted to the Administrative Rules Clearinghouse and the Revisor of Statutes on October 4, 2002. The enclosed Administrative Rules Clearinghouse report was sent to DOC on November 1, 2002. On November 18, 2002, public hearings were conducted in Wisconsin Rapids and Waukesha. The permanent rule was submitted to the legislature on January 17, 2003 and legislative jurisdiction has expired. The expected effective date for the permanent rule is May 1, 2003.

Senator Joseph K. Leibham, Co-Chair
Representative Glenn S. Grothman, Co-Chair
March 5, 2003
Page 2

Copies of the hearing notice, order creating the emergency rule, and proposed permanent rule are also enclosed. Should you have any questions concerning the request to extend the effective period of the emergency rule, please contact Julie Kane of the DOC Office of Legal Counsel at 240-5015.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew J. Frank', with a long horizontal flourish extending to the right.

Matthew J. Frank
Secretary

MJF:jk
Enclosures

cc: Representative Garey Bies
Chair, Assembly Committee on Corrections and the Courts

Senator Dave Zien
Chair, Senate Committee on Judiciary, Corrections and Privacy



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

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

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 28, 2003

Matthew J. Frank, Secretary
Department of Corrections
3099 East Washington Avenue
P.O. Box 7925
Madison, WI 53707-7925

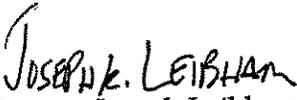
Dear Secretary Frank:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 27, 2003 and adopted the following motion:

Emergency Rule DOC 316 **Relating to Medical, Dental and Nursing Co-payment Charge.**
Moved by Representative Grothman, seconded by Representative Gunderson that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends DOC 316 at the request of the Department of Corrections by 60 days.
Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Joseph Leibham
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:pvs

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

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

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 28, 2003

The Honorable Alan Lasee
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable John Gard
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Lasee and Speaker Gard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 27, 2003 and adopted the following motions:

Emergency Rule DOC 316 **Relating to Medical, Dental and Nursing Co-payment Charge.**
Moved by Representative Grothman, seconded by Representative Gunderson that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends DOC 316 at the request of the Department of Corrections by 60 days.
Motion Carried 10 Ayes, 0 Noes.

Emergency Rule HFS 109 **Relating to SeniorCare.**
Moved by Representative Grothman, seconded by Representative Gunderson that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends HFS 109 at the request of the Department of Health and Family Services by 60 days.
Motion Carried 10 Ayes, 0 Noes.

Emergency Rule NR 10 and 15 **Rules relating to the Control and Management of Chronic Wasting Disease.**
Moved by Representative Scott Gunderson, seconded by Senator Welch that, the Joint Committee for Review of Administrative Rules (JCRAR) requests that Department of Natural Resources (DNR):

1. Extend, pursuant to s. 227.24 (2) (a), Stats., the effective period of emergency rules NR 10 and 15 for a period of 14 days through April 10, 2003.
2. Requests that the Department of Natural Resources amend emergency rules NR 10 and 15 to provide for all of the following:
 - a. A person, north of state highway 10, may not hunt with the aid of more than two gallons of bait within any 40-acre site.
 - b. A person, in order to draw deer or elk for viewing purposes on sites outside of the CWD management zone, may place no more than two gallons of feed within 100 yards of a residence owned or leased by that person, except that feed may not be placed within 100 yards of any highway that is posted with a speed limit of at least 45 miles per hour.

Motion Carried 10 Ayes, 0 Noes.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,



Senator Joseph K. Leibham
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:pv

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson

ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND AMENDING RULES

FINDING OF EMERGENCY

The department of corrections adopts this emergency rule pursuant to the statutory requirements of 2001 Wisconsin Act 109. The Act provides, in relevant part:

“Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section 302.386(4)(a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386(3)(b) of the statutes. “

and,

“Notwithstanding section 302.386(3)(b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386(3)(c) of the statutes, each person to whom section 302.386(1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services.”

Currently, the department's administrative rules provide for a \$2.50 copayment under such circumstances as described above. This emergency rule raises the copayment to \$7.50 as directed by 2001 Wisconsin Act 109.

In addition, pursuant to 2001 Wisconsin Act 109 the department makes no finding of emergency in promulgating this rule. 2001 Wisconsin act 109 expressly exempts the department from the statutory requirements to do so. The Act provides, in relevant part, the following:

“Notwithstanding section 227.24(1)(1), (2)(b), and (3) of the statutes, the department is not required to provide evidence that promulgating under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

ORDER

Under the authority vested in the Department of Corrections by ss. 227.11(2), 302.386 (3) and 302.386 (4), Stats., the Department of Corrections hereby amends rules relating to medical, dental and nursing copayment charge, interpreting ss.302.386(3) and (4), Stats.

SECTION 1. DOC 316.04(3) is amended to read:

DOC 316.04(3) Staff shall charge a ~~\$2-507.50~~ copayment for each face-to-face contact for medical, dental or nursing services regardless of the number of services provided during the face-to-face contact or medical, dental or nursing services, the inmate or juvenile shall sign a disbursement form acknowledging the receipt of health services. If the inmate or juvenile refuses to sign the disbursement form, the health care provider shall make a notation that the inmate or juvenile refused to sign the disbursement form and the health care provider shall sign the notation.

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 Corrections

Date: _____

By _____

Jon E. Litscher
Secretary

Seal:

**NOTICE OF HEARING
DEPARTMENT OF CORRECTIONS
CR02-123 and
Emergency Rule DOC 316 relating to medical, dental and nursing
copayment charge published September 3, 2002.**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 302.386(3) and (4), Stats., the department of corrections proposes the following rules relating to medical, dental and nursing copayment charge:

Hearing Information:

On the following dates, public hearings will be held relating to the permanent proposed rule CR02-123, relating to medical, dental and nursing copayment charge as well as the emergency rule DOC 316 effective September 3, 2002:

Date & Time

Location

November 18, 2002
Monday
11:00 A.M.-1:00 P.M.

Wood County Courthouse
400 Market Street
Room 210B (Second Floor)
Wisconsin Rapids, Wisconsin

November 18, 2002
Monday
11:00 A.M.-1:00 P.M.

State Office Building
141 N.W. Barstow Street
Room 137 A
Waukesha, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections...

Pursuant to 2001 Wisconsin Act 109, the department is required to increase the copayment charge for medical, dental or nursing services provided to inmates and juveniles. The Act provides, in relevant part, the following:

"Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section

302.386(4)(a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386(3)(b) of the statutes. “

and,

“Notwithstanding section 302.386(3)(b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386(3)(c) of the statutes, each person to whom section 302.386(1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services.”

Currently, the department's emergency rule, effective September 3, 2002 pursuant to legislative requirement, provides for a \$7.50 copayment, increased from the previous amount of \$2.50, under such circumstances as described above. This proposed rule, among other minor changes, makes the \$7.50 copayment permanent.

This rule:

- Makes permanent the medical, dental and nursing copayment charge to \$7.50 as required by 2001 Wisconsin Act 109 and consistent with the department's current emergency rule.
- Eliminates the requirement that an inmate must “earn wages” before becoming responsible for the \$7.50 copayment, in regard to inmates who are not housed in a secured correctional facility (juvenile facility). This change is made as a result of prior legislation that removed the “earns wages” requirement from statute. See section 302.386 (3) Stats.
- Establishes criteria to exempt persons in a juvenile correctional facility who do not earn wages. The current rule effectively exempts juveniles from the copayment because they do not “earn wages” as required by the rule. However, since “earn wages” has been removed in this rule proposal, the department has created a specific exemption for persons in juvenile correctional facilities. Section 302.386(3)(c) grants the department authority to except or waive liability “under criteria that the department shall establish by rule.”

- Exempts liability for medical, dental or nursing services provided as a result of an injury sustained through an institution work assignment.

Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) Stats

Dated: _____ Agency: _____
Jon E. Litscher, Secretary

Initial Regulatory Flexibility Analysis:

These rules are not expected to have an effect on small businesses.

Fiscal Estimate:

The Department of Corrections(DOC) under s.302.386(3)(b) is required to receive a minimum medical copayment of \$2.50 from any inmate requesting medical services or dental services. It should be noted the Department cannot deny medical services to any resident that requests services based on their lack of ability to pay. 2001 Wisconsin Act 109 required DOC to promulgate an emergency rule that required the Department to collect a minimum medical copayment of \$7.50 from every inmate that requests medical services. The Department is now requesting that the provisions included in the emergency rule be made permanent.

In FY01, DOC received 47,000 request from inmates for services and collected \$117,500 in revenue. 2001 Wisconsin Act 109 is estimating \$235,000 in additional revenue will be collected in medical copayments in FY03, or a total of \$352,500 on an annual basis.

(A full copy of the fiscal estimate may be obtained through the contact person listed below.)

Contact Person:

Julie Kane (608) 240-5015
Office of Legal Counsel
P.O. Box 7925
Madison, Wisconsin 53707-7925

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

Written Comments:

Written comments on the proposed rules received at the above address no later than November 25th, 2002, will be given the same consideration as testimony presented at the hearing.

**PROPOSED ADMINISTRATIVE RULES – DOC 316,
RELATING TO MEDICAL, DENTAL AND NURSING COPAYMENT CHARGE.
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3) STATS.**

Need for the rule:

Pursuant to 2001 Wisconsin Act 109, the department is required to increase the copayment charge for medical, dental or nursing services provided to inmates and juveniles. The Act provides, in relevant part, the following:

“Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section 302.386(4)(a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386(3)(b) of the statutes. ”

and,

“Notwithstanding section 302.386(3)(b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386(3)(c) of the statutes, each person to whom section 302.386(1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services.”

Currently, the department’s emergency rule, effective September 3, 2002, provides for a \$7.50 copayment, which was increased from the previous amount of \$2.50. This proposed rule, among other minor changes, makes the \$7.50 copayment permanent.

Responses to Clearinghouse Recommendations

This rule was originally submitted to Legislative Council on October 4, 2002. All recommendations were accepted.

Public Hearings

This rule received two public hearings. The schedule and location was as follows:

Date & Time

Location

November 18, 2002
Monday
11:00 A.M.-1:00 P.M.

Wood County Courthouse
400 Market Street
Room 210B (Second Floor)
Wisconsin Rapids, Wisconsin

November 18, 2002

State Office Building

Tuesday
11:00 A.M.-1:00 P.M.

141 N.W. Barstow Street
Room 137 A
Waukesha, Wisconsin

There was one appearance at the public hearings. Mr. and Mrs. Ron Post appeared opposed to the rule and sent in written comments.

Written Comments

Four written comments were received and are summarized, with responses, as follows:

Clayton Mellender, Inmate

Mr. Mellender states that the copayment increase will not have the desired effect of increased revenue for the department of corrections and the department of corrections ought not to be trying to increase revenue in this way.

RESPONSE:

The department of corrections did not increase this copayment charge as a method of increasing revenues. The increase is a result of 2001 Act 109.

Andra' L. Nicholson, Inmate

Mr. Nicholson states that the copayment should not increase because wages have not increased in 20 years and because the rule would be inconsistent with the emergency rule in effect. Mr. Nicholson also states that the public hearings avoid minorities.

RESPONSE:

The department of corrections is promulgating this rule under the direction and requirement of statutory law. 2001 Act 109 requires the department to promulgate rules to increase the copayment to \$7.50. In addition, the permanent rule will not be inconsistent with the emergency rule because it will simply replace the existing emergency rule. Lastly, the department seeks to gain input from all people, including minorities, and does not avoid any individuals or groups of individuals on any basis. The statutes require only one hearing be held on any rule and the department of corrections held two hearings on this rule in an effort to incorporate more areas of the state. In addition, public input is welcomed in written form as well. This is an opportunity for anybody to comment on the proposed rule change, as Mr. Nicholson did.

Mr. and Mrs. Ron Post

Mr. and Mrs. Post state that the copayment should not increase because inmates will not be able to afford the increase and will end up with debt to the department of corrections and the department of corrections will throw the inmates back in jail because of this debt. They also state that inmates should not be charged a copayment when they have to return for more visits when an illness is not cleared up.

RESPONSE:

The department of corrections does charge, according to the rule, a copayment when an inmate requests a medical visit. However, the department does not charge for follow-up visits which the medical staff request or require, such as instances when repeat visits are necessary to treat a certain condition.

Inmates who are released will not be returned to prison based solely on the fact that they have an outstanding medical copayment debt with the department of corrections. When an inmate is released from prison to parole supervision, the inmate enjoys certain rights and one of them is due process. A parolee may be returned to prison for violating the rules of supervision only after a fair hearing on the matter. Owing money to the department of corrections is not a violation of parole supervision.

James Robert Brant, Inmate

Mr. Brant states that the department should not charge inmates for medical visits when the inmates make the requests because it will cause inmates to ultimately decide not to seek medical attention. Mr. Brant also believes this rule is ex post facto as applied to him.

RESPONSE:

The department of corrections does charge, according to the rule, a copayment when an inmate requests a medical visit. However, the department does not charge for follow-up visits which the medical staff request or require. In addition, charging a copayment is not unlike healthcare outside of a prison. This copayment may actually have the effect of ensuring inmates use the health facilities responsibly. Inmates must evaluate their needs and makes choices regarding how to allocate and spend their money. Furthermore, inmates who are ill will use the healthcare facilities and inmates who simply need over the counter medication, available in the canteen, will not.

Lastly, the rule is not ex post facto as applied to Mr. Brant. The United States Constitution prohibits government from passing a law that makes an action done before the passing of the law, and which was not criminal when done, to become criminal. In this case, neither has the department of corrections nor the legislature made any action by Mr. Brant a criminal offense, and therefore any concerns of ex post facto are not relevant.

Modifications Made as a Result of Public Hearings

No modifications were made as a result of public hearings.

Final Regulatory Flexibility Analysis

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1.)

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS
REPEALING AND AMENDING RULES**

The Wisconsin department of Corrections proposes an order amending DOC 316.01, 316.02(1), 316.03, 316.04(1),(2)(a) and (b), 316.04(3), 316.05 (intro.), 316.06(1), (2), and (3); and creating DOC 316.05(7) and (8), relating to medical, dental and nursing copayment charge.

Statutory Authority: ss.302.386 (3) and (4), and 227.11 (2), Stats., and SECTION 9111 (3) of 2001 Wisconsin Act 109.

Statutes Interpreted: ss.302.386 (3) and (4), Stats.

Analysis Prepared by the Department of Corrections...

Pursuant to 2001 Wisconsin Act 109, the department is required to increase the copayment charge for medical, dental or nursing services provided to inmates and juveniles. The Act provides, in relevant part, the following:

“Using the procedure under section 227.24 of the statutes, the department of corrections shall promulgate the rules that are required under section 302.386(4)(a) of the statutes relating to the deductible, coinsurance, copayment, or similar charge that must be imposed under section 302.386(3)(b) of the statutes. ”

and,

“Notwithstanding section 302.386(3)(b) of the statutes, the rules shall require the department to require that, subject to the exception and waiver provisions under section 302.386(3)(c) of the statutes, each person to whom section 302.386(1) of the statutes applies pay a deductible, coinsurance, copayment, or similar charge of at least \$7.50 for each request that the person makes for medical or dental services. ”

Currently, the department’s emergency rule, effective September 3, 2002 pursuant to legislative requirement, provides for a \$7.50 copayment, increased from the previous amount of \$2.50, under such circumstances as described above. This proposed rule, among other minor changes, makes the \$7.50 copayment permanent.

This rule:

- Makes permanent the medical, dental and nursing copayment charge to \$7.50 as required by 2001 Wisconsin Act 109 and consistent with the department's current emergency rule.
- Eliminates the requirement that an inmate must "earn wages" before becoming responsible for the \$7.50 copayment, in regard to inmates who are not housed in a secured correctional facility (juvenile facility). This change is made as a result of prior legislation that removed the "earns wages" requirement from statute. See section 302.386 (3) Stats.
- Establishes criteria to exempt persons in a juvenile correctional facility who do not earn wages. The current rule effectively exempts juveniles from the copayment because they do not "earn wages" as required by the rule. However, since "earn wages" has been removed in this rule proposal, the department has created a specific exemption for persons in juvenile correctional facilities. Section 302.386(3)(c) grants the department authority to except or waive liability "under criteria that the department shall establish by rule."
- Exempts liability for medical, dental or nursing services provided as a result of an injury sustained through an institution work assignment.

SECTION 1. DOC 316.01 is amended to read:

DOC 316.01 Applicability, purpose, authority.

This chapter applies to the department of corrections and inmates who reside in a s. 302.01, Stats., prison or juveniles who reside in a s. 938.02 (15m), Stats., secured correctional facility and who receive medical, dental or nursing services from the department's health services staff. This chapter does not apply to inmates in a s. 301.046 (1), Stats., institution or in a s. 301.048, Stats., institution unless the inmate is housed in a s. 302.01, Stats., prison. This chapter is promulgated pursuant to authority under ss. 227.11 (2) (a), 302.386 (3) and 302.386 (4), Stats. and interprets ss. 302.386 (3) and (4), Stats.

SECTION 2. DOC 316.02 (1) is amended to read:

DOC 316.02 Definitions.

In this chapter:

(1) "Copayment" means the amount charged an inmate or a juvenile for a face-to-face contact with a member of the health services staff who provides services within the health care provider's

area of practice as the result of the inmate's request.

SECTION 3. DOC 316.03 is amended to read:

DOC 316.03 Provision of medical, dental and nursing services.

Health services staff shall provide necessary medical, dental or nursing services to an inmate or a juvenile. Health services staff shall determine the level of access to medical, dental or nursing services and the need to provide medical, dental or nursing services on-site or off-site. Health services staff may not deny an inmate or a juvenile medical, dental or nursing services based only on the inmate's or the juvenile's inability to pay a copayment. An inmate or a juvenile may be subject to a copayment under s. DOC 316.04.

SECTION 4. DOC 316.04(1), (2) (a) and (b) and (3) are amended to read:

DOC 316.04 Copayment.

(1) Except for the exclusions listed under s. DOC 316.05, an inmate or a juvenile shall be charged a copayment for medical, dental or nursing services received at the request of the inmate or juvenile, including any face-to-face contact wherein the inmate or juvenile refuses to consent to a service offered in response to the inmate's or juvenile's request.

(2) (a) During the assessment and evaluation process, the inmate and juvenile shall sign a notice form acknowledging that the inmate and juvenile shall be charged a copayment for non-emergency medical, dental or nursing services received at the request of the inmate or juvenile.

(b) The notice form shall include a statement identifying the medical, dental or nursing services for which the inmate or juvenile will and will not be charged a copayment.

(c) If the inmate or juvenile refuses to sign the notice form, the health care provider shall make a notation that the inmate or juvenile refused to sign the notice form and the health care provider shall sign the notation.

(3) Staff shall charge a \$7.50 copayment for each face-to-face contact for medical, dental or nursing services regardless of the number of services provided during the face-to-face contact. At the time of the face-to-face contact for medical, dental or nursing services, the inmate or juvenile shall sign a disbursement form acknowledging the receipt of health services. If the inmate or juvenile refuses to sign the disbursement form, the health care provider shall make a notation that the inmate or juvenile refused to sign the disbursement form and the health care provider shall sign the notation.

SECTION 5. DOC 316.05 (intro.) is amended to read:

DOC 316.05 Copayment exclusions.

Health services staff shall not charge an inmate or a juvenile a copayment for any of the

following:

SECTION 6. DOC 316.05 (7) and (8) are created to read:

(7) Medical, dental or nursing services provided to persons who reside in a s. 938.02(15m), Stats., secured correctional facility and who do not have the opportunity to earn wages.

(8) Any medical, dental or nursing services provided as a result of an injury sustained through an institution work assignment.

SECTION 7. DOC 316.06 (1), (2) and (3) are amended to read:

DOC 316.06 Copayment deduction from the inmate's or juvenile's general or trust account.

(1) Following the provision of medical, dental or nursing services, the business department staff shall deduct the \$7.50 copayment from the general or trust account of the inmate or juvenile under procedures established by the department.

(2) If the inmate or juvenile has no funds in the inmate's or juvenile's general or trust account, the business department shall perform an accounting transaction that reflects that the inmate or juvenile owes the copayment.

(3) If an inmate or juvenile owes a copayment is released or discharged from a prison or a secured correctional facility, business department staff shall perform an accounting transaction that reflects that the inmate or juvenile owes the copayment. If the inmate or juvenile is recommitted to prison or to a secured correctional facility, the copayment will be deducted from the inmate's or juvenile's general or trust account.

Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) Stats

Dated: _____

Agency: _____
Matthew J. Frank, Secretary

Seal:



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-123

AN ORDER to amend DOC 316.01, 316.02 (1), 316.03, 316.04 (1) and (2) (a) and (b), 316.04 (3), 316.05 (intro.) and 316.06 (1), (2) and (3); and to create DOC 316.05 (7) and (8), relating to medical, dental and nursing copayment charge.

Submitted by **DEPARTMENT OF CORRECTIONS**

10-04-2002 RECEIVED BY LEGISLATIVE COUNCIL.

11-01-2002 REPORT SENT TO AGENCY.

RS:AS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-123

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

The text of the rule should be reformatted in the following manner:

SECTION 1. DOC 316.01 is amended to read:

SECTION 2. DOC 316.02 (1) is amended to read:

SECTION 3. DOC 316.03 is amended to read:

SECTION 4. DOC 316.04 (1), (2) (a) and (b) and (3) are amended to read:

SECTION 5. DOC 316.05 (intro.) is amended to read:

SECTION 6. DOC 316.05 (7) and (8) are created to read:

SECTION 7. DOC 316.06 (1), (2) and (3) are amended to read:

Following each treatment clause, only that portion of the rule text that is affected should be included in the text of the rule. [See ss. 1.04 and 1.06, Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. The statement of statutory authority and the statement of statutes interpreted should include a reference to SECTION 9111 (3) of 2001 Wisconsin Act 109.