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**Carol Roessler**  
STATE SENATOR

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care

From: Senator Carol Roessler, Chair

Date: August 14, 2003

Re: Clearinghouse Rule 03-033, relating to a variety of Wisconsin Administration Code chapters administered by the Department of Health and Family Services.

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CR 03-033 has been referred to the Senate Health, Children, Families, Aging and Long Term Care Committee. This administrative rule contains a variety of minor revisions to the Department's administrative rules. The Department is issuing these changes in a single order to conserve limited agency resources while making necessary updates and improvements in the Department's body of administrative code. The exact revisions can be found in the rules.

If you would like the committee to hold a hearing on CR 03-033, please contact Jennifer Halbur in my office at 266-5300. The committee has jurisdiction over this rule until Friday, September 12, 2003.



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

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Jim Doyle, Governor  
Helene Nelson, Secretary

August 8, 2003

The Honorable Alan J. Lasee, President  
Wisconsin State Senate  
17 West Main St., Room 401  
Madison, WI 53702

The Honorable John Gard, Speaker  
Wisconsin State Assembly  
17 West Main, Suite 208  
Madison, WI 53702

Re: Clearinghouse Rule 03-033

An omnibus order affecting various provisions of Wisc. Admin. Code chapters administered by the Department of Health and Family Services.

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Larry Hartzke at 267-2943.

Sincerely,

Helene Nelson  
Secretary

cc Gary Poulson, Assistant Revisor of Statutes  
Senator Joseph Leibham, JCRAR  
Representative Glenn Grothman, JCRAR  
Gary Radloff, Secretary's Office

**PROPOSED ORDER OF  
THE STATE OF WISCONSIN  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING,  
REPEALING AND RECREATING, AND CREATING RULES**

The Wisconsin Department of Health and Family Services proposes an order to **repeal** HFS 90.06 (2) (m), 105.39 (4) (b) 2., 107.10 (2) (a), 120.11 (3) (f), 120.14 (1) (c) 4. c., 132.44 (1) (b), 132.66 (1) (d) and ch. HFS 155; to **renumber** HFS 105.39 (4) (b) 3.; to **renumber and amend** HFS 120.14 (1) (c) 3.; to **amend** TCB 1.04 (1) (d) 1. b. and 1.07 (1) (a), HFS 56.02 (2) (a) 1., 83.05 (1) (c), 90.05 (4) (a) and (c) 1., 90.08 (3) (b) 3. and 11., 90.10 (2) (b) (intro), 90.11 (1) (b) 7., (3) (b), (6) (a) 4., 10., 11. and 14., 90.12 (6) (e), 101.03 (49), 105.01 (3) (intro), 105.41 (title) and (intro), 105.52 (1) (L) and (2) (a) (intro), 1., 6., 7. and 8., 105.53 (3) (a) 3. and 4., (c) 1. and (6) (b), 107.02 (2m) (a) 10. and (c), 107.10 (1) and (note), (2) (d), (3) (b) to (d), (h) (intro) and (i), (4) (L) and (5) (a), 107.11 (6) (b) 5., 107.12 (1) (e), 107.24 (2) (a) and (3) (h) 1. (intro) and 2. and (5) (j), 107.36 (1) (a) 4., (b) to (i) and (2) (a) and (b) 2., 111.03 (36), 120.02, 120.03 (7) (note), (13), (20) and (34), 120.05 (2), 120.11 (3) (c) and (d) 1. and (4) (e) 1. and 2., 120.12 (2) (b) 1., (3) (b) 11., (c) 1., (5) (b) 2., (5m) (b) 2. and 5. a. and (6) (a) and (c) 2., 120.13 (2) (a), 120.14 (1) (b) 1. and (note), 2., 4. b., 5. and 6. (intro), (c) 2. (intro), 4. b., 5. (intro), b., (e) 1. and 4., 120.20 (3) (b), 120.21 (1) (a), 120.22 (1) (a) 1., 124.05 (3) (h), 132.42 (3) (a), 132.52 (2) (c), 133.03 (8) (b), 134 (title), 134.11, 134.12 (1), 134.13 (7) and (note), (10) (a), (12), (13) (17), (39) (intro), 134.14 (1), (2) (a) (intro) and (5m), 134.815 (1) and (2) (a), 134.82 (title), 144.03 (2) (b), (c) and (e) and footnotes 1. and 4. to Table 144.03-A and 145.05 (2), (3) and (4) (note); to **repeal and recreate** HFS 132.42 (4) and 132.51 (2) (b) 1.; and to **create** HFS 107.10 (3) (h) 8. and 120.12 (5m) (a) 30. and 31., relating to a variety of Wisc. Admin. Code chapters administered by the Department of Health and Family Services.

**Analysis Prepared by the Department of Health and Family Services**

This proposed rulemaking order contains a variety of minor revisions to the Department's administrative rules. These revisions have little substantive effect on those regulated by the rules. The Department is issuing these changes in a single order to conserve limited agency resources while making necessary updates and improvements in the Department's body of administrative code.

Changes to the following provisions are being proposed for the following purposes:

- HFS 56.02 (2) [Foster Home Care for Children] in Section 1 to give licensing agencies the ability to grant an exception to the requirements in s. HFS 56.04 (4) (a) 3., 56.05 (4) (a) and 56.07 (4) (d);
- HFS 83.05 (1) (c) in Section 2 to fix a spelling error;
- HFS 90.05 (4) (a) [Early Intervention Services for Children From Birth to Age 3 With Developmental Needs] in Section 3 to add language limiting the time within which complaints that administrative procedures were violated can be submitted and to make the provision consistent with recently revised federal regulations;
- HFS 90.05 (4) (c) 1. in Section 3 to remove a requirement that the Department must provide notice that a complainant or agency may request review of a Department decision by the Secretary of the U.S. Dept. of Education, because the requirement was removed from federal regulations;
- HFS 90.06 (2) (m) in Section 4 to repeal a provision requiring that a county administrative agency ensure that an impartial decision-maker be appointed to resolve complaints of parents under s. HFS 90.12 (5) because the Department now appoints the hearing officer;

- HFS 90.08 (3) (b) 3. in Section 5 to reflect the fact that occupational therapists are now licensed instead of certified;
- HFS 90.08 (3) (b) 11. in Section 5 to amend references from “educators” to “teachers;”
- HFS 90.10 (2) (b) (intro) in Section 6 to change the reference from an “eligible” child to simply a “child” because at that point in the provision, a child has not yet been found eligible;
- HFS 90.11 (1) (b) 7. in Section 7 to correct an erroneous cross reference;
- HFS 90.11 (3) (b) in Section 7 to change what a third party may be billed for from “early intervention core services” to “evaluation and assessment activities” because the core services in s. HFS 90.11 (3) (a) include services that are not billed to third parties or do not require consent to bill;
- HFS 90.11 (6) (a) 4. in Section 7 to reflect the fact that occupational therapists are now licensed instead of certified;
- HFS 90.11 (6) (a) 10. in Section 7 to remove the requirement that RNs have a bachelor’s degree within 5 years after July 1, 1992;
- HFS 90.11 (6) (a) 11. in Section 7 to remove reference to rehabilitation counselors employed by the Department’s division of vocational rehabilitation because such positions no longer exist in the Department;
- HFS 90.11 (6) (a) 14. in Section 7 to amend references from “educators” to “teachers” and from “licensed under ch. 115, Stats., and ch. PI 3” to “licensed through the department of public instruction;”
- HFS 90.12 (6) (e) in Section 8 to remove the reference to the inapplicability of sections 227.52 to 227.58, Stats., to actions under par. (e) and create a new paragraph that states such inapplicability to actions under the entire section of HFS 90.12 so the language parallels that used by the Department of Public Instruction and recommended by the Division of Hearings and Appeals;
- HFS 101.03 (49) [Medicaid Introduction and Definitions] in Section 9 to amend the definition of the term “Drug index” to exclude medical supplies because the drug index is a list of covered legend and non-legend drugs covered by the Department and it does not include a list of supplies;
- HFS 105.01 (3) (intro) [Medicaid Provider Certification] in Section 10 to promote truthful and accurate reporting of information;
- HFS 105.39 (4) (b) 2. and 3. in Sections 11 and 12 to delete an outdated grandfather clause;
- HFS 105.41 (title) and (intro) in Section 13 to update requirements to reflect current terminology and eliminate ambiguities, to reflect a changed statutory cross reference, and to recognize certification of hearing specialists;
- HFS 105.52 (1) (L) and 105.52 (2) (a) 1., 6., 7. and 8. in Section 14 to update language to reflect current terminology and to correct errors;
- HFS 105.53 (3) (a) 3. and 4., (c) 1. and (6) (b) in Section 15 to update language to reflect current terminology and changes in interpretation of law by the federal Centers for Medicare and Medicaid Services;
- HFS 107.02 (2m) (a) 10. in Section 16, 107.10 (1) and (Note) [Medicaid Covered Services] in Section 17, 107.11 (6) (b) 5. in Section 22 and 107.12 (1) (e) in Section 23 to recognize the legal status of advanced practice nurse prescribers;
- HFS 107.02 (2m) (c) in Section 16 to clarify the intent of the provision that prescriptions for recipients not declared legally blind or permanently disabled must specify the length of time specialized transportation is required and to provide a useful cross reference.
- HFS 107.10 (2) (a) in Section 18 to eliminate an outdated reference to schedule II stimulant drugs;
- HFS 107.10 (2) (d) in section 19 to clarify the Department's ability to decide which drugs require prior authorization;

- HFS 107.10 (3) (b) to (d) in section 19 to clarify the terms "legend" and "generic" drugs and the 34-day supply requirement;
- HFS 107.10 (3) (h) (intro) in Section 19 and 107.10 (3) (h) 8. in Section 20 to clarify requirements for nursing homes to provide drugs and when non-legend drugs may be covered;
- HFS 107.10 (3) (i), (4) (L) and (5) (a) in Section 21 to clarify the meaning and use of the term "innovator multiple source drug;"
- HFS 107.24 (2) (a), (3) (h) 1. (intro) and 2. and (5) (j) in Section 24 to change terminology from "hearing aid dealer" to "hearing instrument specialist;"
- HFS 107.36 (1) (a) 4., (b) to (i), (2) (a) and (b) 2. in Section 25 to delete the use of the abbreviation "IFSP," to change requirements for physician prescription for therapy services, change requirements for licensing of providers to accurately cross reference the appropriate Wisconsin requirements, to clarify and update a provision related to transportation services, clarify when durable medical equipment is a covered service under school-based services, and to clarify the age range of eligible recipients;
- HFS 111.03 (36) [Licensing of Emergency Medical Technicians-Intermediate and Approval of Emergency Medical Technician-Intermediate Operational Plans] in Section 26 to correct (and extend) the date after which temporary licenses will no longer be issued;
- HFS 120.02 [Health Care Information] in Section 27 to correct a spelling error;
- HFS 120.03 (7) (Note) in Section 28 to correct the web address;
- HFS 120.03 (13) in Section 28 and 120.12 (6) (a) in Section 35 to change the reference from the federal "health care financing administration" to "centers for medicare and medicaid;"
- HFS 120.03 (20) in Section 28 to update the reference pertaining to billing forms to reflect that the Department's collection of physician office visit data is consistent with electronic data exchange standards required for the federal Health Insurance Portability and Accountability Act, effective in the fall, 2003;
- HFS 120.03 (34) in Section 28 to correct the language to reflect the fact that the Department is not a party to the contract in a trading partner agreement;
- HFS 120.05 (2) in Section 29 and 120.11 (3) (c) in Section 30 to allow electronic communications in a format specified by the Department;
- HFS 120.11 (3) (d) 1. in Section 30 to reduce the time within which facilities must verify data and add appropriate cross references to reflect the fact that the provision should also apply to hospital ambulatory surgery and freestanding ambulatory surgery center data;
- HFS 120.11 (3) (f) in Section 31 to correct an original error insofar as the requirement should only apply to physician office visit data collection; not to hospital and freestanding ambulatory surgery center data;
- HFS 120.11 (4) (e) in Section 32 to clarify terminology and the process for disputing data;
- HFS 120.12 (2) (b) 1. in Section 36 to update the national standard for reporting data to the Department;
- HFS 120.12 (3) (b) 11. and (c) 1. in Section 33 to update the basis upon which hospitals report data;
- HFS 120.12 (5) (b) 2. in Section 33, 120.12 (5m) (b) 2. and (6) (c) 2. in Section 35 and 120.13 (2) (a) in Section 36 to conform to the existing Department practice giving entities 45 rather than 30 days to submit pertinent data;
- HFS 120.12 (5m) (a) 30. and 31. in Section 34 to add patient race and ethnicity to the list of data hospital emergency departments report to the Department, thereby making it consistent with the Department's collection of other hospital data under section HFS 120.12 (5) (a);
- HFS 120.12 (5m) (b) 5. a. in Section 35 to eliminate the requirement that hospitals using qualified vendors notarize the data submitted to the Department;
- HFS 120.14 (1) (b) 1. in Section 37 to give the Department more flexibility in specifying data transmission requirements;

- HFS 120.14 (b) 2. in Section 40 to recognize the fact that data are currently reported quarterly and give the data submitter more flexibility with the timing of their submission;
- HFS 120.14 (1) (b) 4. b. in Section 37 to extend to delegated representatives of physicians accountability for failure to submit and edit data;
- HFS 120.14 (1) (b) 5. in Section 37 to correct a typographical error;
- HFS 120.14 (1) (b) 6. in Section 37 to extend to qualified vendors the prohibition of submitting data to the Department that uses specified information as patient account numbers;
- HFS 120.14 (1) (c) 2. (intro) in Section 37 to increase program operating efficiencies by allowing the Department to delete the data it receives rather than returning it to the sender;
- HFS 120.14 (1) (c) 3. and 4. in Sections 38 and 39 to put the provisions in a more appropriate order, to extend applicability of the provision to qualified vendors, and to clarify the requirements under subdivision paragraph 4. b.;
- HFS 120.14 (1) (c) 4. c. in Section 40 to eliminate a provision no longer needed after the order of section HFS 120.14 (1) (c) 3. and 4. is reversed;
- HFS 120.14 (1) (c) 5. in Section 41 to extend applicability of the provision to persons delegated by the physician to review and verify data;
- HFS 120.14 (1) (e) 1. in Section 41 to require physicians who submit electronic claims data after 1998 to also submit their data to the Department electronically;
- HFS 120.14 (1) (e) 4. in Section 41 to correct a naming error;
- HFS 120.20 (3) (b) in Section 42 to expand applicability of open record exemptions to data covered under section HFS 120.11 because the section contains a substantial amount of confidential communication between the physician and the Department;
- HFS 120.21 (1) (a) in Section 43 and 120.22 (1) (a) 1. in Section 44 to clarify the name of "annual hospital fiscal year survey" by adding the term "year;"
- HFS 124.05 (3) (h) [Hospitals] in Section 45 to include "in situ carcinoma of the cervix uteri" on the list of non-reportable cancers to reflect federal guidelines modified because the Centers for Disease Control determined that routine collection of such data is incomplete due to the inconsistent collection of other High Grade Neoplasia by cancer registries; moreover, the data are not comparable over time due to changing terminology and diagnostic criteria;
- HFS 132.42 (3) (a) [Nursing Homes] in Section 46, 132.42 (4) in Section 47, 132.51 (2) (b) 1. in Section 49 and 132.52 (2) (c) in Section 50 to conform with federal Americans with Disabilities Act requirements;
- HFS 132.44 (1) (b) in Section 48 to delete reference to training requirements because training requirements are specified in both federal regulations, s. 146.40 of the Wisconsin statutes and chapter HFS 129;
- HFS 132.66 (1) (d) in Section 51 to remove an outdated restriction against physician extenders giving orders for skilled care residents for blood, lab and radiology services and thereby make it consistent with federal regulations and Department policy as expressed in numbered memo *BQC-91-050*;
- HFS 133.03 (8) [Home Health Agencies] in Section 52 to make reference to the Department of Administration's Division of Hearings and Appeals more accurate;
- HFS 134 (title) [Facilities for the Developmentally Disabled] in Section 53, 134.11 in Section 54, 134.12 (1) in Section 55, 134.13 (7) and (note), (12), (13) and (39) (intro) in Section 56, 134.14 (1), (2) (a) (intro) and (5m) in Section 57, 134.815 (1) and (2) (a) in Section 58, and 134.82 (title) in Section 59 to revise a name to be "people with developmental disabilities;"
- HFS 134.12 (1) in Section 55 to clarify the applicability of chapter HFS 134;
- HFS 134.13 (10) (a) in Section 56 to update the provision with current practice by cross referencing the dietitian certification requirements under section 448.78 of the Wisconsin statutes;
- HFS 134.13 (17) in Section 56 to improve the definition of "interdisciplinary team;"

- HFS 144.03 (2) (b), (c) and (e) and Tables HFS 144.03-A footnotes 1. and 4. [Immunization of Students] in Section 60 to incorporate a new recommendation made by the federal Centers for Disease Control's Advisory Committee on Immunization Practices allowing a 4-day grace period for receipt of vaccines; the rule would apply only to date-specific vaccine requirements;
- HFS 145.05 (2), (3) and (4) (Note) [Control of Communicable Diseases] in Section 61 to update the applicable edition of the American Public Health Association's document "Control of Communicable Diseases Manual;"
- HFS 155 [Injury Prevention Grants] in Section 62 to repeal the a chapter concerning grants for injury prevention under section 146.56 (3) of the 1991. statutes that no longer exists in Wisconsin statutes;
- TCB 1.04 (1) (d) 1. b. [Tobacco Control Board] in Section 63 to modify the one of the Tobacco Control Board's performance -based standards; and
- TCB 1.07 (1) (a) in Section 64 to give the grant manager discretion to approve the use of grant award monies for the purchase of tobacco use cessation medications.

By the presentation of this list, the Department is not representing that the list constitutes all possible minor errors and technical changes needed in the Department's administrative code. The Department recognizes its administrative rules frequently need changing due to periodically changing statutes, rules, federal laws and societal change. Consequently, the Department intends to continually collect and propose for promulgation minor, technical rule changes as the Department learns of the need and justification for such changes.

The Department's authority to repeal and recreate these rules is found in ss. 48.67, 49.45 (10), 50.02 (2) (a), 50.36 (1), 50.95 (1), 51.44 (5) (a), 52.02 (4), 153.75, 227.11 (2) (a), 252.02 (4), 252.04 (1), (2) and (10), 252.07 (11), 254.51 (3) and 255.15 (1m) (c), Stats. The rules interpret ss. 48.62, 48.66, 48.68, 48.75, 49.43 to 49.497, 50.02 (2) (a) and (3), 50.035, 50.36 (1), 50.95 (1), 51.44, 153.05 (5) and (8), 153.45 (3), 153.75, 252.02 (4), 252.04 (1) to (7) and (10), 252.07 (11) and 255.15 (1m), Stats.

SECTION 1. HFS 56.02 (2) (a) 1. is amended to read:

HFS 56.02 (2) (a) 1. A licensing agency may grant an exception to any requirement in this chapter if the licensing agency determines that the exception will not jeopardize the health, safety or welfare of the foster children, except that the licensing agency may not grant an exception to any of the following requirements: s. HFS 56.04 (1), (2), (4) (a) 1., 2., ~~3., 4.,~~ 5., 8., or 9. or (b) 2., (6), (7) or (8); s. HFS 56.05 (1) (a), (b) 2., (c) 2., 3., 4., 5., 6., 7. or 9., (d), (f) or; (3) (a) ~~or (4) (a)~~; s. HFS 56.07 (3) (a), (4) (b), (c), ~~(d), (e),~~ (f), (g) or (h), (5) (a), (6) or (10) (a); s. HFS 56.08 (1), (2), (3), (4), (5), (6) (c) 1., 2., 3. or 4. a., (7) (a) 3., (8) (a) 1. or 2., or (c) or (10); s. HFS 56.09 (1), (2) (c), (3), (4) (c) or (d), (5), (9), (11) or (12) (a), (c) or (d); or s. HFS 56.11.

SECTION 2. HFS 83.05 (1) (c) is amended to read:

HFS 83.05 (1) (c) A CBRF for 21 ~~fer~~or more residents shall be licensed as a large CBRF.

SECTION 3. HFS 90.05 (4) (a) and (c) 1. are amended to read:

HFS 90.05 (4) PROCEDURES FOR RECEIVING AND RESOLVING COMPLAINTS ABOUT OPERATION OF THE PROGRAM. (a) 1. Any individual or organization having reason to believe that one or more requirements of this chapter or Part C and its implementing regulations, 34 CFR Pt. 303, are not being met by the department or a county administrative agency or by any other public agency or private provider involved in the early intervention system under agreement

with the county administrative agency may complain to the department. The complaint shall be in writing and be signed and shall consist of a statement setting forth the complaint and the facts upon which the complaint is based. The department shall develop procedures to inform parents and other interested individuals and organizations about their right to file a complaint and how to file a complaint.

2. Complaints under subd. 1. shall not concern events that occurred more than one year before the complaint is made, except if the complainant could not have reasonably known about the event any earlier.

(c) 1. Except as provided under subd. 2., within 60 days after receiving a complaint under this subsection the department shall prepare a written decision stating the reasons for the decision, ~~provide notice that the complainant or agency may request review of that decision by the secretary of the U.S. department of education,~~ and forward the decision to the affected agency or agencies with a copy to the complainant.

SECTION 4. HFS 90.06 (2) (m) is repealed.

SECTION 5. HFS 90.08 (3) (b) 3. and 11. are amended to read:

HFS 90.08 (3) (b) 3. Occupational therapists ~~certified~~licensed under ch. 448, Stats.;

11. ~~Special educators~~education teachers, including early childhood ~~exceptional~~special education needs (ECEEN) ~~educator~~teachers, vision ~~educator~~teachers and hearing ~~educator~~teachers, licensed under ch. 115, Stats., and ch. ~~PI 3~~through the department of public instruction;

SECTION 6. HFS 90.10 (2) (b) (intro) is amended to read:

HFS 90.10 (2) (b) *Provision of services before completing evaluation and assessment.* Provision of early intervention services to an ~~eligible~~eligible child and the child's family may be started before the evaluation and assessment are completed if there is a clear and obvious need that can be addressed without waiting for completion of the formal evaluation and assessment and if the following conditions are met:

SECTION 7. HFS 90.11 (1) (b) 7., (3) (b), (6) (a) 4., 10., 11. and 14. are amended to read:

HFS 90.11 (1) (b) 7. Facilitating the development of transition plans under s. HFS 90.10 (5) ~~(h)~~(f).

(3) (b) With parent consent a third party may be billed for ~~early intervention core services~~evaluation and assessment activities. The service coordinator shall ensure that the parent, prior to giving consent, is informed and understands that because of third party billing the parent may incur financial loss, including but not limited to a decrease in benefits or increase in premiums or discontinuation of the policy.

(6) (a) 4. Occupational therapists shall be ~~certified~~licensed under ~~s. 448.963 (2)~~ch. 448, Stats.; and occupational therapy assistants shall be ~~certified~~licensed under ~~s. 448.963 (3)~~ch. 448, Stats.;



10. Registered nurses shall be licensed under s. 441.06, Stats., and ~~within 5 years after July 1, 1992, shall have at least a bachelor's degree in nursing from an accredited institution of higher education, and licensed practical nurses shall be licensed under s. 441.10, Stats.;~~

11. ~~Rehabilitation counselors shall be employed by the department's division of vocational rehabilitation as coordinators of hearing impaired services and have at least a master's degree in rehabilitation counseling or a related field;~~

14. ~~Special educators~~education teachers, including early childhood ~~exceptional~~special education needs (ECEEN) ~~educator~~teachers, vision ~~educator~~teachers and hearing ~~educator~~teachers, shall be licensed under ch. 115, Stats., and ~~ch. PI-3 through the department of public instruction, within 5 years after the effective date of this chapter; and~~

SECTION 8. HFS 90.12 (6) (e) is amended to read:

HFS 90.12 (6) (e) *Civil action.* Either party aggrieved by the decision under par. (d) 4. d. may bring a civil action in state or federal court. An action filed in circuit court shall be commenced within 30 days after the date of the written decision. Pursuant to 20 USC 1439 (a) (1) and s. 51.44 (1m) and (5) (a) 4., Stats., the court shall receive the record of the administrative hearing, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of evidence, shall grant whatever relief the court determines is appropriate. Sections 227.52 to 227.58, Stats., do not apply to actions under this paragraph~~section~~.

SECTION 9. HFS 101.03 (49) is amended to read:

HFS 101.03 (49) "Drug index" means the list of covered legend and nonlegend drugs and ~~medical supplies maintained and updated by the department.~~

SECTION 10. HFS 105.01 (3) (intro) is amended to read:

HFS 105.01 (3) GENERAL CONDITIONS FOR PARTICIPATION. In order to be certified by the department to provide specified services for a reasonable period of time as specified by the department, a provider shall truthfully, accurately, completely and in a timely manner do all of the following:

SECTION 11. HFS 105.39 (4) (b) 2. is repealed.

SECTION 12. HFS 105.39 (4) (b) 3. is renumbered HFS 105.39 (4) (b) 2.

SECTION 13. HFS 105.41 (title) and (intro) are amended to read:

**HFS 105.41 ~~Hearing aid dealers~~Certification of hearing instrument specialists.** For MA certification, ~~hearing aid dealers~~instrument specialists shall be licensed pursuant to ss. ~~459.05459.01 to 459.14, Stats.~~

SECTION 14. HFS 105.52 (1) (L) and (2) (a) (intro), 1., 6., 7. and 8. are amended to read:

HFS 105.52 (1) (L) A ~~certified~~registered nurse or nurse practitioner;

(2) (a) *Definition.* In this subsection, "qualified professional" means ~~and is limited to any of the following:~~

1. A nurse practitioner licensed as a ~~certified~~registered nurse pursuant to s. 441.06, Stats., and currently certified by the American nurses' association, the national board of pediatric nurse practitioners and associates or the nurses' association of the American college of obstetricians and gynecologists' certification corporation;

6. A ~~dietician~~dietitian certified or eligible for registration by the commission on dietetic registration of the American dietetic association with at least 2 years of community health experience;

7. A ~~certified~~registered nurse with at least 2 years of experience in maternity nursing or community health services or a combination of maternity nursing and community health services;

8. A ~~social worker~~employee with at least a bachelor's degree and 2 years of experience in a health care or family services program; or

SECTION 15. HFS 105.53 (3) (a) 3. and 4., (c) 1. and (6) (b) are amended to read:

HFS 105.53 (3) (a) 3. Documentation used to develop the recipient's IEP ~~or IFSP~~ and to annually revise the IEP ~~or IFSP~~; and

4. Annual documentation of the individual's progress toward treatment goals identified in the IEP ~~or IFSP~~, changes in the individual's physical or mental status and changes in the treatment plan identified in the IEP ~~or IFSP~~.

(c) 1. For each service provided, a brief description of the recipient's response to the service and progress toward the treatment goals identified in the IEP ~~or IFSP~~; and

(6) (b) *Coordination with fee-for-service providers.* When a recipient receives similar services from both an MA fee-for-service provider and a school-based service provider, the school-based service provider shall document, at least annually, regular contacts with the MA fee-for-service provider, and provide the MA fee-for-service provider with copies of the recipient's IEP ~~or IFSP~~ and relevant components of the multidisciplinary team evaluation under s. 115.80 (3) and (5), Stats., upon request.

SECTION 16. HFS 107.02 (2m) (a) 10. and (c) are amended to read:

HFS 107.02 (2m) (a) 10. Drugs, except when prescribed by a nurse practitioner under s. HFS 107.122, ~~or a podiatrist under s. HFS 107.14~~ or an advanced practice nurse prescriber under s. HFS 107.10;

(c) A prescription for specialized transportation services ~~for a recipient not declared legally blind or not determined to be permanently disabled~~ shall include an explanation of the reason the recipient is unable to travel in a private automobile, or a taxicab, bus or other common carrier. ~~The~~A prescription for a recipient not declared legally blind or not determined to be indefinitely disabled, as defined under s. HFS 107.23 (1) (c) shall specify the length of time for which the recipient shall require the specialized transportation, which may not exceed 90 days.

SECTION 17. HFS 107.10 (1) and (note) are amended to read:

**HFS 107.10 Drugs. (1) COVERED SERVICES.** Drugs and drug products covered by MA include legend and non-legend drugs and supplies listed in the Wisconsin medicaid drug index which are prescribed by a physician licensed under s. 448.04, Stats., by a dentist licensed under

s. 447.05, Stats., by a podiatrist licensed under s. 448.04, Stats., or by an optometrist licensed under ch. 449, Stats., by an advanced practice nurse prescriber licensed under s. 441.16, Stats., or when a physician delegates ~~prescription~~ the prescribing of drugs to a nurse practitioner or to a physician's assistant certified under s. 448.04, Stats., and the requirements under s. N 6.03 for nurse practitioners and under s. Med 8.08 for physician assistants are met.

**Note:** The Wisconsin ~~MA~~ medicaid drug index is available from the State of Wisconsin Document Sales, P.O. Box 7840, Madison, WI 53707 Division of Health Care Financing, P.O. Box 309, Madison, WI 53701.

SECTION 18. HFS 107.10 (2) (a) is repealed.

SECTION 19. HFS 107.10 (2) (d), (3) (b) to (d) and (h) (intro) are amended to read:

HFS 107.10 (2) (d) ~~Drugs which have been demonstrated to the department has~~ determined entail substantial cost or utilization problems for the MA program, ~~including antibiotics which cost \$100 or more a day.~~ These drugs shall be noted in the Wisconsin medicaid drug index;

(3) (b) ~~Dispensing of non-scheduled legend drugs shall be limited to the original dispensing plus 11 refills, or 12 months from the date of the original prescription, whichever comes first.~~

(c) ~~Generically-written prescriptions for drugs listed in the federal food and drug administration approved drug products publication shall be filled with a generic drug included in that list. Prescription orders written for brand name drugs which have a lower cost generically commonly available generic drug equivalent shall be filled with the lower cost drug product equivalent, unless the prescribing provider under sub. (1) writes "brand medically necessary" on the face of the prescription.~~

(d) ~~Except as provided in par. (e), legend drugs shall be dispensed in the full amounts prescribed, not to exceed a 34-day supply.~~

(h) ~~To be included as a covered service, an over-the-counter non-legend drug shall be used in the treatment of a diagnosable medical condition and be a rational part of an accepted medical treatment plan. Only the~~ The following general categories of ~~over-the-counter non-legend~~ non-legend drugs are covered:

SECTION 20. HFS 107.10 (3) (h) 8. is created to read:

HFS 107.10 (3) (h) 8. Non-legend drugs not within one of the categories described under subs. 1. to 7. that previously had legend drug status and that the department has determined to be cost effective in treating the condition for which the drugs are prescribed.

SECTION 21. HFS 107.10 (3) (i), (4) (L) and (5) (a) are amended to read:

HFS 107.10 (3) (i) Any innovator multiple-source drug is a covered service only if the prescribing provider under sub. (1) certifies by writing the phrase "brand medically necessary" on the prescription to the pharmacist that a ~~specific~~ the innovator brand drug, rather than a generic drug, is medically necessary. The prescribing provider shall document in the patient's record the reason why the innovator brand drug is medically necessary ~~in the patient's record.~~ In this paragraph, "innovator The innovators of multiple source drug" means a multiple source drug that

~~was originally marketed under an original new drug application approved by the U.S. food and drug administration are identified in the Wisconsin medicaid drug index.~~

(4) (L) Drugs included in the medicaid negative drug list formulary maintained by the department; and

(5) (a) The pharmacist shall ~~provide for a review of~~ the drug therapy before each prescription is filled or delivered to an MA recipient. The review shall include screening for potential drug therapy problems ~~due to including~~ therapeutic duplication, drug-disease contraindications, drug-drug interactions, including serious interactions with ~~non-prescription or over-the-counter~~ non-legend drugs, incorrect drug dosage or duration of drug treatment, drug-allergy interactions and clinical abuse or misuse.

SECTION 22. HFS 107.11 (6) (b) 5. is amended to read:

HFS 107.11 (6) (b) 5. a. Except as provided in this subd. 5. b., Drugs ~~Drugs~~ and treatment shall be administered by the RN or LPN only as ordered by the recipient's physician or his or her designee. The nurse shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 working days.

b. Drugs may be administered by an advanced practice nurse prescriber as authorized under ss. N 8.06 and 8.10.

SECTION 23. HFS 107.12 (1) (e) is amended to read:

HFS 107.12 (1) (e) 1. Except as provided in subd. 2., Drugs ~~Drugs~~ and treatment shall be administered by the RN or LPN only as ordered by the recipient's physician or his or her designee. The nurse shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 working days.

2. Drugs may be administered by an advanced practice nurse prescriber as authorized under ss. N 8.06 and 8.10.

SECTION 24. HFS 107.24 (2) (a), (3) (h) 1. (intro) and 2. and (5) (j) are amended to read:

HFS 107.24 (2) COVERED SERVICES. (a) *Prescription and provision.* Durable medical equipment (DME) and medical supplies are covered services only when prescribed by a physician and when provided by a certified physician, clinic, hospital outpatient department, nursing home, pharmacy, home health agency, therapist, orthotist, prosthetist, hearing aid ~~dealer~~ instrument specialist or medical equipment vendor.

(3) (h) 1. A request for prior authorization of a hearing aid or other ALD shall be reviewed only if the request consists of an otological report from the recipient's physician and an audiological report from an audiologist or hearing aid ~~dealer~~ instrument specialist, is on forms designated by the department and contains all information requested by the department. A hearing aid ~~dealer~~ instrument specialist may perform an audiological evaluation and a hearing aid evaluation to be included in the audiological report if these evaluations are prescribed by a physician who determines that:

2. After a new or replacement hearing aid or other ALD has been worn for a 30-day trial period, the recipient shall obtain a performance check from a certified audiologist, a certified hearing aid ~~dealer~~ instrument specialist or at a certified speech and hearing center. The

department shall provide reimbursement for the cost of the hearing aid or other ALD after the performance check has shown the hearing aid or ALD to be satisfactory, or 45 days has elapsed with no response from the recipient;

(5) (j) All repairs of a hearing aid or other assistive listening device performed by a dealer within 12 months after the purchase of the hearing aid or other assistive listening device. These are included in the purchase payment and are not as separate services separately reimbursable;

SECTION 25. HFS 107.36 (1) (a) 4., (b) to (i) and (2) (a) and (b) 2. are amended to read:

HFS 107.36 (1) (a) 4. Consultation, case monitoring and coordination related to developmental testing under the individuals with disabilities education act, 20 USC 1400 to 1485, are included in the MA-covered services described in this subsection when an IEP ~~or IFSP~~ results from the testing. Consultation, case monitoring and coordination for IEP ~~or IFSP~~ services are also included in the covered services described in this subsection.

(b) *Speech, language, hearing and audiological services.* Speech, language, hearing and audiological services for a recipient with a speech, language or hearing disorder that adversely affects the individual's functioning are covered school-based services. These services include evaluation and testing to determine the individual's need for the service, recommendations for a course of treatment and treatment. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of a speech and language pathologist licensed by the department of public instruction under s. PI 3.35 or by an audiologist licensed by the department of public instruction under s. PI 3.355, and shall ~~have a physician referral and be identified in the recipient's IEP or IFSP.~~

(c) *Occupational therapy services.* Occupational therapy services which identify, treat, or compensate for medical problems that interfere with age-appropriate functional performance are covered school-based services. These services include evaluation to determine the individual's need for occupational therapy, recommendations for a course of treatment, and rehabilitative, active or restorative treatment services. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of an occupational therapist licensed by the department of public instruction under s. PI 3.36 and shall ~~be prescribed by a physician and identified in the recipient's IEP or IFSP.~~

(d) *Physical therapy services.* Physical therapy services which identify, treat, or compensate for medical problems are covered school-based services. These services include evaluation to determine the individual's need for physical therapy, recommendations for a course of treatment, and therapeutic exercises and rehabilitative procedures. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of a physical therapist licensed by the department of public instruction under s. PI 3.37 and shall be prescribed by a physician when required by the physical therapists affiliated credentialing board and identified in the recipient's IEP ~~or IFSP~~.

(e) *Nursing services.* Professional nursing services relevant to the recipient's medical needs are covered school-based services. These services include evaluation and management services, including screens and referrals for treatment of health needs; treatment; medication management; and explanations given of treatments, therapies and physical or mental conditions to family members or school district or CESA staff. The services shall be performed by a registered nurse licensed under s. 441.06, Stats., or a licensed practical nurse licensed under s. 441.10, Stats., or be delegated under nursing protocols pursuant to ch. N 6. The services shall be prescribed or referred by a physician or an advanced practice nurse as defined under s. N

8.02 (1) with prescribing authority granted under s. 441.16 (2), Stats., and shall be identified in the recipient's IEP or IFSP.

(f) *Psychological counseling and social work services.* Psychological counseling and social work services relevant to the recipient's mental health needs with the intent to reasonably improve the recipient's functioning are covered school-based services. These services include testing, assessment and evaluation that appraise cognitive, emotional and social functioning and self-concept; therapy or treatment that plans, manages and provides a program of psychological counseling or social work services to individuals with psychological or behavioral problems; and crisis intervention. The services may be delivered to an individual or to a group of 2 to 10 individuals. The services shall be performed by a school psychologist, school counselor or school social worker licensed by the department of public instruction under ch. PI 3. The services shall be prescribed or referred by a physician or a psychologist licensed under s. 455.04 (1), Stats., and shall be identified in the individual's IEP or IFSP.

(g) *Developmental testing and assessments under IDEA.* Developmental testing and assessments under the individuals with disabilities education act (IDEA), 20 USC 1400 to 1485, are covered school-based services when an IEP or IFSP results. These services include evaluations, tests and related activities that are performed to determine if motor, speech, language or psychological problems exist, or to detect developmental lags for the determination of eligibility under IDEA. The services shall be performed by a special education teacher, diagnostic teacher or other school district staff licensed by the department of public instruction under ch. PI 3. The services are also covered when performed by a therapist, psychologist, social worker, counselor or nurse licensed by the department of public instruction under ch. PI 3, as part of their respective duties.

(h) *Transportation.* Transportation services provided to individuals who require special transportation accommodations in vehicles equipped with a ramp or lift are covered school-based services if the recipient receives a school-based service other than transportation on the day transportation is provided. These services include transportation from the recipient's home to and from school on the same day if the school-based service is provided in the school, and transportation from school to a service site and back to school or home if the school-based service is provided at a non-school location, such as at a hospital. Transportation shall be performed by a school district, CESA or contracted provider using vehicles equipped with a ramp or lift. A prescription from a physician or advanced practice nurse, as defined under s. N 8.02 (1), with prescribing authority granted under s. 441.16 (2), Stats., is required to demonstrate the recipient's need for special transportation. The service shall be included in the IEP or IFSP. The covered service that the recipient is transported to and from shall meet MA requirements for that service under ch. HFS 105 and this chapter.

(i) *Durable medical equipment.* Durable medical equipment except equipment covered in s. HFS 107.24 is a covered service if the need for the equipment is identified in the recipient's IEP or IFSP, the equipment is recipient-specific, the equipment is not duplicative of equipment the recipient currently owns and the equipment is for the recipient's use at school and home. Only durable medical equipment related to speech-language pathology, physical therapy or occupational therapy will be covered under the school based services benefit. The recipient, not the school district or the CESA, shall own the equipment.

(2) LIMITATIONS. (a) *Age limit.* School-based services may only be provided to MA-eligible recipients under between 3 and 21 years of age, or for the school term during which an MA-eligible recipient becomes 21 years of age.

(b) 2. Are identified in an IEP or an IFSP;

SECTION 26. HFS 111.03 (36) is amended to read:

HFS 111.03 (36) "Provisional EMT-intermediate" means the title and temporary license level given to EMTs-intermediate licensed based on the 1989 or earlier version of the national standard curriculum as of February 1, 2002. The temporary licensing level will no longer be used after June 30, 20042006.

SECTION 27. HFS 120.02 is amended to read:

HFS 120.02 **Applicability.** This chapter applies to the department, the board on health care information, the independent review board, qualified vendors, health care plans, health care providers licensed in this state and persons requesting data from the department.

SECTION 28. HFS 120.03 (7) (note), (13), (20) and (34) are amended to read:

HFS 120.03 (7) **Note:** A copy of the data submission manual is provided to each data submitting entity. Copies of the manual are also available at <http://badger.state.wi.us/agencies/oci/ohci>~~http://www.dhfs.state.wi.us/healthcareinfo~~ or by writing to the Bureau of Health Information at P.O. Box 309, Madison, WI 53701-0309.

(13) "Freestanding ambulatory surgery center" or "center" means any distinct entity that is operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization, that has an agreement with the federal ~~health care financing administration~~ centers for medicare and medicaid services under 42 CFR 416.25 and 416.30 to participate as an ambulatory surgery center, and that meets the conditions set forth in 42 CFR 416.25 to 416.49.

(20) "Individual data elements" means items of information from or derived from a uniform patient billing form or derived from a uniform patient billing form an electronic transaction and code set standard for health care.

(34) "Trading partner agreement" means a signed, formal arrangement between a health care provider, ~~the department~~ and a qualified vendor providing the transfer of data under this chapter. The agreement specifies the acceptable data formats, the edit review and verification requirements, including procedures for processing confidential patient data and the authorized signatory for the affirmation statement.

SECTION 29. HFS 120.05 (2) is amended to read:

HFS 120.05 (2) **TIMING.** All written communications, including documents, reports and information required to be submitted to the department shall be submitted by 1st class or registered mail, ~~or by delivery in person~~ or in an electronic format specified by the department. The date of submission is the day~~date~~ the written communication is postmarked, ~~or delivered in person~~ the date delivery in person is made, or the date on the electronic communication.

SECTION 30. HFS 120.11 (3) (c) and (d) 1. are amended to read:

HFS 120.11 (3) (c) If the department determines data submitted by the facility to be questionable, and the department has determined that the data cannot be verified or corrected by



telephone or electronic means, the department may return the questionable data to the facility or the facility's qualified vendor with information for revision and resubmission.

(d) 1. Within ~~30~~20 calendar days from the required date for data submission as specified in ~~6-ss~~ HFS 120.12 (5) (b) 2., and (5m) (b) 2., and (6) (c) 2. and 120.13 (2) (a), the facility shall do all of the following:

SECTION 31. HFS 120.11 (3) (f) is repealed.

SECTION 32. HFS 120.11 (4) (e) 1. and 2. are amended to read:

HFS 120.11 (4) (e) 1. If a physician files a timely request to review data before release, the department shall make the data available to the physician as it is submitted to the department. The department's ~~transmittal report~~ shall contain a "permission to change" authorization form that may be duplicated in the event of multiple problems.

2. If the physician wants to dispute the data, the physician shall ~~describe on the form~~ describe on the format ~~test~~ to the problem associated with the data on the authorization form, and an authorized representative of the facility shall indicate on the form if the facility agrees to the change.

SECTION 33. HFS 120.12 (2) (b) 1., (3) (b) 11., (c) 1. and ~~(5) (b) 2.~~ are amended to read:

HFS 120.12 (2) (b) *Data to be collected.* 1. 'General hospital data.' Hospitals shall report all of the following financial data to the department in the format specified by the department, in accordance with this subsection and department instructions that are based on guidelines from the ~~July 1998 version~~ 2003 update of the ~~*Audits of Providers of Health Care Services*~~ *Health Care Organizations – AICPA Audit and Accounting Guide*, published by the American institute of certified public accountants, generally accepted accounting principles and the national annual survey of hospitals conducted by the American hospital association.

(3) (b) 11. Swing-bed utilization, if applicable, including average number of swing beds, ~~admissions~~ discharges and days of care.

(c) 1. A hospital shall submit to the department the data specified in par. ~~(a)~~ (b) according to a schedule specified by the department.

(5) (b) 2. Hospitals shall send the data to the department within ~~30~~45 calendar days of the last day of each calendar quarter using the department's electronic submission system. Calendar quarters shall begin on January 1, April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31.

SECTION 34. HFS 120.12 (5m) (a) 30. and 31. are created to read:

HFS 120.12 (5m) (a) 30. Patient race.

31. Patient ethnicity.

SECTION 35. HFS 120.12 (5m) (b) 2. and 5. a. and (6) (a) and (c) 2. are amended to read:

HFS 120.12 (5m) (b) 2. Within ~~30~~45 calendar days after the last day of each calendar quarter, each hospital shall submit to the department the data specified in par. (a) using the department's electronic data submission system. Calendar quarters shall begin on January 1,



April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31.

5. a. To ensure confidentiality, hospitals using qualified vendors to submit data shall provide an original trading partner agreement to the department that has been signed and notarized by the qualified vendor and the hospital.

(6) (a) *Definition.* In this subsection "hospital-affiliated ambulatory surgical center" means an entity that is owned by a hospital and is operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization, has an agreement with the federal health care financing administration centers for medicare and medicaid services under 42 CFR 416.25 and 416.30 to participate as an ambulatory surgery center, and meets the conditions set forth in 42 CFR 416.25 to 416.49.

(c) 2. Within ~~30~~45 calendar days after the end of each calendar quarter, each hospital shall submit to the department the surgical data specified in par. (a) for all ambulatory patient surgical procedures using the department's electronic submission system. The department's electronic submission system shall be described in the department's data submission manual. Calendar quarters shall begin on January 1, April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31.

SECTION 36. HFS 120.13 (2) (a) is amended to read:

HFS 120.13 (2) (a) Each freestanding ambulatory surgery center shall electronically submit to the department, as described in the department's data submission manual, all data elements specified in sub. (1) for all ambulatory patient surgical procedures within ~~30~~45 calendar days after the end of each calendar quarter. Calendar quarters shall begin on January 1, April 1, July 1 and October 1 and shall end on March 31, June 30, September 30 and December 31. The method of submission, data formats and coding specifications shall be defined in the department's data submission manual.

SECTION 37. HFS 120.14 (1) (b) 1. and (note), 2., 4. b., 5. and 6. (intro) and (c) 2. (intro) are amended to read:

HFS 120.14 (1) (b) *Data submission procedures.* 1. Non-exempt physicians shall submit claims information to the department in an electronic format using secure methods specified in a data submission manual provided by the department. ~~Physicians shall send the information using an internet browser technology, over a secure internet protocol, using authentication and encryption to assure the safe transmission of data to the department.~~ Physicians who submit data through a qualified vendor shall require their vendor to comply with the requirements specified in this paragraph. In addition, qualified vendors shall sign a trading partner agreement.

**Note:** Qualified vendors may be either internal to a clinic or medical group or an external organization. A copy of the data submission manual is provided to each data submitting entity. Copies of the manual are also available at <http://www.dhfs.state.wi.us/healthcareinfo> or by writing to the Bureau of Health Information at P.O. Box 309, Madison, WI 53701-0309.

2. Each physician shall submit his or her ~~monthly~~ data to the department within 30 calendar days following the close of the reporting period. The department shall provide instructions on submission in a data submission manual.

4. b. A physician or his or her delegated representative shall be accountable for ~~their~~his or her qualified vendor's failure to submit and edit data in the format required by the department.

5. A health care provider that is not a hospital or ambulatory surgery center shall, before submitting information required by the department under this chapter, convert any names of an insured's payer or other insured's payer to a payer category code as specified by the department in ~~its~~its data submission manual.

6. A health care provider or qualified vendor may not submit information that uses any of the following as a patient account number:

~~(c) 2. If the physician submits~~The department may not retain or release any of the following data elements, ~~the department shall immediately return the information to the physician, or, if the department subsequently discovers the data, the department shall permanently destroy, delete or make non-identifiable the data from its database~~ if the department receives the elements:

SECTION 38. HFS 120.14 (1) (c) 3. is renumbered 120.14(1) (c) 4m. and amended to read:

HFS 120.14 (1) (c) 4m. If the data submitted by a physician or qualified vendor passes the department's editing processes, the department shall send a data profile to the physician or their qualified vendor indicating what has been sent and an affirmation statement. The physician or their qualified vendor shall review the profile and verify the accuracy of the profile's data.

SECTION 39. HFS 120.14 (1) (c) 4. b. is amended to read:

HFS 120.14 (1) (c) 4. b. The physician or the physician's qualified vendor shall correct all data errors ~~resulting from checks performed under this paragraph~~identified by the department as requiring correction via either the department's, physician's or qualified vendor's data editing system and ~~complete resubmissions of the corrected~~shall return corrected data to the department within 15 calendar days after the physician's or the physician's qualified vendor's ~~receipt~~of received the data summary.

SECTION 40. HFS 120.14 (1) (c) 4. c. is repealed.

SECTION 41. HFS 120.14 (1) (c) 5. (intro) and b. and (e) 1. and 4. are amended to read:

HFS 120.14 (1) (c) 5. The physician or his or her delegated representative shall review the final data profile for accuracy and completeness and shall supply the department within 30 calendar days from the day the data is due to the bureau of health information ~~office~~ with the following:

b. A signed affirmation statement. ~~Physicians~~A physician or the physician's delegated representative submitting affirmation statements to the department electronically shall use a digital signature approved by the department and returned by the physician or the physician's delegated representative during the timeframes for data submission specified by the department. A physician's or the physician's delegated representative's signature on the electronic data affirmation statement represents the physician's or the physician's delegated representative's acknowledgment that the data is accurate and the data submitter may no longer submit revised data.

(e) 1. Physicians practicing anytime during calendar year 1998 and submitting claims data to the department electronically to any payer shall continue to submit their practice data to the department electronically.

4. The department shall report all exceptions granted by the department under subd. 3. to the board of health care information.

SECTION 42. HFS 120.20 (3) (b) is amended to read:

HFS 120.20 (3) (b) Data collected under ss. HFS ~~120.12~~120.11 to 120.16 shall not be subject to inspection, copying or receipt as specified in the open record provisions under s. 19.35 (1), Stats.

SECTION 43. HFS 120.21 (1) (a) is amended to read:

HFS 120.21 (1) (a) The annual hospital fiscal year survey.

SECTION 44. HFS 120.22 (1) (a) 1. is amended to read:

HFS 120.22 (1) (a) 1. The annual hospital fiscal year survey.

SECTION 45. HFS 124.05 (3) (h) is amended to read:

HFS 124.05 (3) (h) *Cancer reporting.* Every hospital shall report to the department all malignant neoplasms ~~that are diagnosed by the hospital~~ diagnoses and all malignant neoplasms diagnosed elsewhere if the individual is subsequently admitted to the hospital. The hospital shall report of each malignant neoplasm shall be made on a form prescribed or approved by the department prescribes or approves and shall be submitted submit the report to the department within 6 months after the diagnosis is made or within 6 months after the individual's first admission to the hospital if the neoplasm is diagnosed elsewhere, as appropriate. In this paragraph, "malignant neoplasm" means an in situ or invasive tumor of the human body, but does not include a squamous cell carcinoma or basal cell carcinoma arising in the skin or an in situ carcinoma of the cervix uteri.

SECTION 46. HFS 132.42 (3) (a) is amended to read:

HFS 132.42 (3) PHYSICAL HEALTH CERTIFICATIONS. (a) *New employees.* Every employee shall be certified in writing by a physician or physician extender as having been screened ~~for tuberculosis infection and being free from clinically apparent communicable disease within 90 days before beginning work~~ prior to employment, for evidence of infectious disease.

SECTION 47. HFS 132.42 (4) is repealed and recreated to read:

HFS 132.42 (4) DISEASE SURVEILLANCE AND CONTROL. When an employee or prospective employee has a contagious infection, he or she may not perform employment duties in the nursing home until the nursing home makes safe accommodations to prevent the infection's spread.

**Note:** The Americans with Disabilities Act and Rehabilitation Act of 1973 prohibits the termination or non-hiring of an employee based solely on an employee having an infectious disease, illness or condition.

SECTION 48. HFS 132.44 (1) (b) is repealed.

SECTION 49. HFS 132.51 (2) (b) 1. is repealed and recreated to read:

HFS 132.51 (2) (b) 1. 'Communicable disease management.' The nursing home shall have the ability to manage persons with communicable disease the nursing home admits or retains.

SECTION 50. HFS 132.52 (2) (c) is amended to read:

HFS 132.52 (2) (c) Receipt of certification in writing from a physician or physician extender that the person is free of airborne or other communicable ~~tuberculosis disease and clinically apparent communicable disease~~, or an order for procedures to treat and limit the spread of any communicable disease the person may be found to have.

SECTION 51. HFS 132.66 (1) (d) is repealed.

SECTION 52. HFS 133.03 (8) (b) is amended to read:

HFS 133.03 (8) (b) If a home health agency wants to contest a department action specified in par. (a), it shall file a written request for a hearing under s. 227.44, Stats., with the department of administration's division of hearings and appeals within 10 days of receipt of notice of the contested action.

SECTION 53. HFS 134 (title) is amended to read:

HFS 134 Facilities for the Developmentally Disabled ~~Serving People with Developmental Disabilities~~

SECTION 54. HFS 134.11 is amended to read:

**HFS 134.11 Authority and purpose.** This chapter is promulgated under the authority of s. 50.02 (2) and (3), Stats., to provide conditions of licensure for facilities that primarily serve ~~developmentally disabled persons~~ people with developmental disabilities who require active treatment. This chapter is intended to protect and promote the health, safety and well-being of residents of these facilities.

SECTION 55. HFS 134.12 (1) is amended to read:

**HFS 134.12 Scope. (1) APPLICABILITY.** ~~All facilities that provide care primarily for developmentally disabled persons who require active treatment, including facilities owned and operated by the state, a county, a municipality or another public body, are subject to this chapter. A facility that is regulated as a community-based residential facility defined in s. 50.01 (1), Stats., or a nursing home, defined in s. 50.01 (3), Stats., on July 1, 1988 is subject to this chapter rather than to ch. HFS 83 or 132 if it is a facility for the developmentally disabled~~ serving people with developmental disabilities.

SECTION 56. HFS 134.13 (7) and (note), (10) (a), (12), (13), (17) and (39) (intro) are amended to read:

HFS 134.13 (7) "Center for the developmentally disabled" means a department-operated residential institution for the care of developmentally disabled persons~~people with developmental disabilities~~.

**Note:** There are 3 state centers for developmentally disabled persons~~people with developmental disabilities~~ in Wisconsin: Central Center, Northern Center and Southern Center.

(10) (a) Eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982 and certified with the state of Wisconsin under s. 448.78, Stats.; or

(12) "Facility" means a facility for the developmentally disabled~~serving people with developmental disabilities~~.

(13) "FDD" or "facility for the developmentally disabled~~serving people with developmental disabilities~~" means a residential facility with a capacity of 3 or more residents in which nursing care is provided to any resident and which primarily serves residents who are developmentally disabled~~have developmental disabilities~~ and who require and receive active treatment.

(17) "Interdisciplinary team" means the persons employed by a facility or under contract to a facility who are responsible for planning the program and delivering the services relevant to a resident's care needs~~who possess the knowledge, skills and expertise necessary to accurately identify the comprehensive array of the client's needs and design a program that is responsive to those needs~~.

(39) (intro) "QMRP" or "qualified mental retardation professional" means a person who has specialized training in mental retardation or at least one year of experience in treating or working with mentally retarded persons~~people with mental retardation or other developmental disabilities~~, and is one of the following:

SECTION 57. HFS 134.14 (1), (2) (a) (intro) and (5m) are amended to read:

HFS 134.14 Licensure. (1) APPLICATION. Application for a license to operate a facility for the developmentally disabled~~an FDD~~ shall be made on a form provided by the department.

(2) (a) A new facility for the developmentally disabled~~FDD~~ may not have more than 16 residents, except that:

(5m) ANNUAL REPORT. Every 12 months, on a schedule determined by the department, a facility for the developmentally disabled~~an FDD~~ licensee shall submit a report to the department in the form and containing the information that the department requires, including payment of the fee required under s. 50.135 (2) (a), Stats. If a complete report is not timely filed, the department shall issue a warning to the licensee. If the licensee of a facility for the developmentally disabled~~an FDD~~ who has not filed a timely report fails to submit a complete report to the department within 60 days after the date established under the schedule determined by the department, the department may revoke the license.

SECTION 58. HFS 134.815 (1) and (2) (a) are amended to read:

HFS 134.815 Fees for plan reviews. (1) REQUIREMENT. Before the start of any construction or remodeling project for a facility for the developmentally disabled~~an FDD~~, the plans for the construction or remodeling shall be submitted to the department, pursuant to s. HFS

134.84 (1), for review and approval by the department. The fees established in this section shall be paid to the department for providing plan review services.

(2) FEE SCHEDULE. (a) *General*. The department shall charge a fee for the review under s. HFS 134.812 of plans for a facility for the developmentally disabled and an FDD capital construction or remodeling project. The fee shall be based in part on the dollar value of the project, according to the schedule under par. (b), and in part on the total gross floor area in the plans, in accordance with par. (c). The total fee for plan review is determined under par. (d). Fees for review of partial plans, for revision of plans, for extensions of plan approval, and for handling and copying, and provisions for the collection and refund of fees are found in par. (e).

SECTION 59. Table HFS 134.82 (title) is amended to read:

Table HFS 134.82 LIFE SAFETY CODE REQUIREMENTS FOR FACILITIES FOR THE DEVELOPMENTALLY DISABLED SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES

SECTION 60. HFS 144.03 (2) (b), (c) and (e) and footnotes 1. and 4. to Table 144.03-A are amended to read:

HFS 144.03 (2) (b) Immunization against measles, mumps and rubella shall have been received on or after the date of the first birthday. A dose received 4 days or less before the first birthday is acceptable.

(c) Exceptions may be made in requirements for the fourth dose of DTP/DT/DTaP/Td vaccine and the fourth dose of polio vaccine. Students who receive the third dose of either of these vaccines after their fourth birthday are not required to receive a fourth dose of that vaccine. A dose received 4 days or less before the 4<sup>th</sup> birthday is acceptable.

(e) Exceptions may be made in requirements for Hib vaccine. Students who began the Hib series at 12 to 14 months are only required to receive 2 doses at least 2 months apart. Students who received one dose of Hib at 15 months of age or after are not required to obtain additional doses. A dose received 4 days or less before 15 months of age is acceptable.

Table 144.03-A Footnote 1. For kindergarten only, at least one dose to be received after 4 years of age unless medically contraindicated. A dose received 4 days or less before the fourth birthday is acceptable.

4. At least one dose to be received after 12 months of age unless medically contraindicated. A dose received 4 days or less before the first birthday is acceptable.

SECTION 61. HFS 145.05 (2), (3) and (4) (note) are amended to read:

HFS 145.05 (2) Local health officers shall follow the methods of control set out in section 9 under each communicable disease listed in the ~~16<sup>th</sup>17th~~ edition ~~(1995)(2000)~~ of *Control of Communicable Diseases Manual*, edited by ~~Abram S. Benenson~~ James Chin, published by the American Public Health Association, unless specified otherwise by the state epidemiologist. Specific medical treatment shall be prescribed by a physician or an advanced practice nurse prescriber.

(3) Any person licensed under ch. 441 or 448, Stats., attending a person with a communicable disease shall instruct the person in the applicable methods of control contained in *Control of Communicable Diseases Manual*, ~~16<sup>th</sup>17th~~ edition ~~(1995)(2000)~~, edited by ~~Abram S.~~

Benenson James Chin, published by the American Public Health Association, unless specified otherwise by the state epidemiologist, and shall cooperate with the local health officer and the department in their investigation and control procedures.

(4) **Note:** The handbook, *Control of Communicable Diseases Manual*, 16<sup>th</sup>17<sup>th</sup> edition (1995)(2000), edited by Abram S. Benenson James Chin, is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 1015 Fifteenth St., NW, Washington, DC 20005.

SECTION 62. HFS 155 is repealed.

SECTION 63. TCB 1.04 (1) (d) 1. b. is amended to read:

~~TCB 1.04 (1) (b) 1. b. Create more adverse attitudes toward smoking among 15 percent of the target population within 6 months of initiating the campaign message~~ a 10 percent change in attitudes, beliefs and knowledge of identified tobacco-related issues. Issues may include secondhand smoke, the dangers of tobacco, tobacco addiction cessation and the roles of the tobacco industry.

SECTION 64. TCB 1.07 (1) (a) is amended to read:

TCB 1.07 (1) (a) Purchasing tobacco use cessation medications without written permission from the grant manager.

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

Wisconsin Department of Health and  
Family Services

Dated:

By: \_\_\_\_\_

Helene Nelson  
Secretary

SEAL:

## **AGENCY REPORT TO THE LEGISLATURE ON CLEARINGHOUSE RULE 03-033**

### **Need for Rules**

This proposed rulemaking order contains a variety of minor revisions to the Department's administrative rules. These revisions have little substantive effect on those regulated by the rules. The Department is issuing these changes in a single order to conserve limited agency resources while making necessary updates and improvements in the Department's body of administrative code.

The Department is not representing that the changes in this order constitute all possible minor errors and technical changes needed in the Department's administrative code. The Department recognizes its administrative rules frequently need changing due to periodically changing statutes, rules, federal laws and societal change. Consequently, the Department intends to continually collect and propose for promulgation minor, technical rule changes as the Department learns of the need and justification for such changes.

### **Responses to Clearinghouse Recommendations**

The Department accepted all of the Legislative Council's Rules Clearinghouse suggestions and comments. One Clearinghouse comment, pertaining to statutory authority, correctly pointed out that section 153.07 (3), Stats., requires the Board on Health Care Information to approve certain administrative rule changes. Consequently, on August 5, 2003, the Board reviewed and approved all of the proposed changes to ch. HFS 120.

### **Final Regulatory Flexibility Analysis**

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

### **Public Review**

Pursuant to s. 227.16 (2) (e), Stats., the Department published the proposed rule and fiscal estimate in the notice section of the Wisconsin Administrative Register, No. 569 on May 15, 2003. The notice stated that the proposed rule would be promulgated without a public hearing unless the Department received a petition to do so within 30 days after publication of the notice. On June 11<sup>th</sup>, the Department received requests from the Wisconsin Hospital Association (WHA) and the Wisconsin Medical Society (WMS) to hold a hearing on the proposed rulemaking order. Consequently, the Department scheduled a hearing for July 21, 2003. Prior to the hearing, the Department received communications from the WHA and WMS indicating specific areas of concern with respect to some of the proposed changes to chs. HFS 106 and 120. In addition, Ron Hermes of the Wisconsin Physical Therapy Association communicated concerns to the Department about proposed changes to s. HFS 107.36 (1) (d). Prior to the hearing, the Department addressed all of the concerns to the extent that the immediate concerns of the preceding parties were resolved to their satisfaction. In several areas, resolution of these concerns involved deleting or modifying the language of selected changes. The Department made all of the proposed changes in a draft that the Department made available at the public hearing.

In addition, as described above, the proposed changes to ch. HFS 120 were reviewed and approved by the Board on Health Care Information at the Board's August meeting.



## Summary of Public Hearings and Written Comments on DHFS Omnibus Order

A public hearing was held in Madison on July 21, 2003. Larry Hartzke of the Department's Office of Legal Counsel served as the hearing officer and Judith Nugent of the Department's Bureau of Health Information served as the resource person.

The hearing record remained open through July 23, 2003 for receipt of written comments. Hearing participation is indicated below.

- |    |   |  |
|----|---|--|
| 1. | Ron Hermes<br>Wisconsin Physical Therapy Assn.          | Observed   |
| 2. | Laura Leitch<br>Wisconsin Hospital Assn.                | Provided oral testimony supporting rulemaking order as amended |
| 3. | Louie Schubert<br>Wisconsin Assn. of Health Plans       | Observed   |
| 4. | Elizabeth A. Schumacher<br>Wisconsin Medical Society    | Provided oral and written testimony                            |
| 5. | Richard Chao<br>DHFS, Division of Health Care Financing | Observed   |

**Summary of Public Comments on  
Proposed Omnibus Order and Department Responses**

<b>Rule Reference</b>	<b>Comment</b>	<b>Departmental Response</b>
General	The Society appreciates the fact that DHFS removed several provisions from the rulemaking order after considering our concerns. We appreciate DHFS' willingness to take a closer look at several provisions of the order through another outside track. <b>4</b>	As discussed subsequently in this table, the Department deleted several provisions from the rulemaking order, and will revisit issues associated with those provisions at a later date.
HFS 106.03(2)(c)	Refer the issue of how accuracy is defined and judged to the (Department's) Medicaid Division for further consideration. The Society recommends that more specific criteria for "truthfulness, completeness, timeliness and accuracy" be considered. <b>4</b>	The Department deleted the amendment of HFS 106.03(2)(c) from the rulemaking order, and will revisit issues associated with modifying this paragraph at a later date.
HFS 106.06(8)	Please clarify whether DHFS plans any further action or activity on HFS 106.06(8). The Society would greatly appreciate the opportunity to be involved in any rulemaking changes that affect physician billing and compliance criteria. <b>4</b>	The Department deleted the proposed amendment of HFS 106.06(8) from the rulemaking order, and will involve the Society when the Department revisits the issues associated with this provision at a later date.
HFS 120.03(28)	Refer the issue of how public use data is defined, and who it pertains to, to the Board on Health Care Information for further discussion. <b>4</b>	The Department deleted the amendment of HFS 120.03(28) from the rulemaking order, and will revisit issues associated with defining "public use data" at a later date.
HFS 120.11(3)(c)	Please clarify how "questionable" data is defined. <b>4</b>	The Department will involve the Society when the Department examines the issue of clarifying the term "questionable" data.
HFS 120.12(1)(b)2. 120.12(1)(c)2.a. 120.12(1)(c)3. 120.12(5)(b)4.	Refer the issue of how "adequate justification" is defined, and how extensions of submission are provided, to the Board on Health Care Information for further	The Department deleted the amendment of the pertinent provisions from the rulemaking order, and will revisit issues associated with those provisions at a later date.

- 120.12(5m)(b)4.
- 120.12(6)(c)3.
- 120.13(2)(b)
- 120.14(1)(b)3.
- 120.14(1)(c)9.
- 120.14(3)(b)2.
- 120.15(3)(b)

consideration. Current statute seems overly restrictive for data submitters who may need an extension due to reasons outside of their control. For this reason, we urge DHFS to ask the Board on Health Care Information to further consider this policy. **4**

**Fiscal Estimate – 2001 Session**

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number Various

**Subject**  
 Minor and technical changes to a variety of Wisc. Admin. Code chapters administered by the Department of Health and Family Services.

**Fiscal Effect**  
 State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or effects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs – May be possible to absorb within agency's budget. <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local:  No Local Government Costs

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

<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Chapter 20 Appropriations</b>
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Assumptions Used in Arriving at Fiscal Estimate

The Department believes that the changes proposed in the associated rulemaking order will not have a fiscal effect.

Long Range Fiscal Implications

Prepared By: Larry Hartzke	Telephone Number 267-2943	Agency Office of Legal Counsel DHFS
Authorized Signature <i>Diane M. Welsh</i>	Telephone Number 266-4672	Date (mm/dd/ccyy) 3/12/2003