

Clearinghouse Rule 17-032

PROPOSED ORDER OF DEPARTMENT OF HEALTH SERVICES TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services proposes an order to **repeal** DHS 68.02 (3) and DHS 68.05 (2); to **amend** DHS 68.01 (1) and (2), DHS 68.02 (1), (4), (6), (8), (10), (13), (15) and (16), DHS 68.04 (2) through (4), (5) (Intro), (5) (a), (5) (b), (5) (c) (Intro), (5) (c) 4., DHS 68.05 (1) (Title), (1) (a) (Intro), (1) (a) 5., (1) (a) 9., (1) (b), (1) (c), DHS 68.06 (1) (Intro), (1) (a), (1) (c) and (d), DHS 68.07, DHS 68.09 (1), (3), and (4), and DHS 68.10 (1) (a), (1) (b), (1) (f); to **repeal and recreate** DHS 68.03, DHS 68.04 (1), DHS 68.06 (2) (b) and DHS 68.08; and to **create** DHS 68.02 (6m), (8m), (17) and (18), and DHS 68.04 (3m), DHS 68.06 (4), relating to Support for Persons with Alzheimer's Disease and their Caregivers.

RULE SUMMARY

Statute interpreted

Sections 46.87 (2), 46.87 (3) (b), 227.11 (2) (a), Stats..

Statutory authority

Sections 46.87 (2), 46.87 (3) (b), 227.11 (2) (a), Stats..

Explanation of agency authority

The Department's authority to promulgate rules establishing criteria for participation in the Alzheimer's Family and Caregiver Support Program, and to allocate funds for administering and implementing the program, are provided by the Wisconsin State Legislature in the following statutes:

Section 46.87 (2), Stats., reads:

From the appropriations under s. 20.435 (7) (b) and (o), the department shall allocate funds to agencies designated under sub. (3) (c) or (d), to be used for the administration and implementation of an Alzheimer's family and caregiver support program for persons with Alzheimer's disease and their caregivers. The department shall allocate at least \$1,000,000 in each fiscal year toward respite care.

Section 46.87 (3) (b), Stats., reads:

The department shall select counties and tribes or bands to participate in the program on the basis of criteria promulgated by rule.

Section 227.11 (2) (a), Stats., reads:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Related statutes or rules

See the "Statutes interpreted" and "Statutory authority" sections.

Plain language analysis

2015 Wisconsin Act 273 amended eligibility requirements, increased appropriation levels and included tribes or bands as local administrators for the Wisconsin Alzheimer's Family Caregiver Support Program (AFCSP). Revisions to ch. DHS 68 conform the rule to 2015 Act 273. Revisions also correct outdated terminology, update the range of caregiver support services that can be provided by the program, reconsider the program's cost-share requirement, and establish a funding formula that includes tribes or bands as entities contracted to administer the AFCSP at the local level.

Summary of, and comparison with, existing or proposed federal regulations

There appears to be no existing or proposed federal regulations that address these activities to be regulated by the proposed rules.

Comparison with rules in adjacent states

Illinois

Illinois does not have a state-funded Alzheimer's Family and Caregiver Support Program.

Iowa

Iowa does not have a state-funded Alzheimer's Family and Caregiver Support Program.

Michigan

Michigan does not have a state-funded Alzheimer's Family and Caregiver Support Program.

Minnesota

Minnesota does not have a state-funded Alzheimer's Family and Caregiver Support Program.

Summary of factual data and analytical methodologies

The department established an advisory committee formed of interested persons or representatives of the public to advise it with respect to proposed revisions to the rule. In addition, the department solicited comments from the public through its website and through the Wisconsin State Legislature's administrative rules website. No additional factual data was relied upon by the department because revisions conform the rule to statute.

Analysis and supporting documents used to determine effect on small business

The rule is being promulgated to conform an existing rule to statute. The rule is anticipated to have little to no economic impact if it is promulgated.

Effect on small business

The proposed rule is anticipated to have little to no effect on small business if it is promulgated.

Agency contact person

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Statement on quality of agency data

The department complied with s. 227.14 (2m), Stats., for any data used to draft the rules and analyses.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

RULE TEXT

SECTION 1. DHS 68.01 (1) and (2) are amended to read:

DHS 68.01 (1) ~~AUTHORITY AND PURPOSE.~~ This chapter is promulgated pursuant to ss. 46.87 and 227.11 (2) (a), Stats., ~~and section 3023 (28m) of 1985 Wis. Act 29 and 2015 Act 273~~ to establish procedures and criteria for distributing funds to county boards and private nonprofit organizations for the provision of service payments, goods and services to persons with ~~Alzheimer's disease~~ dementia and to their caregivers. The payments, goods and services provided in accordance with this chapter are intended to help make available a diverse array of community services directed at preventing or delaying institutionalization of persons who have ~~Alzheimer's disease~~ dementia and enhancing the quality of their lives, and to provide assistance to family members and others who take care of persons with ~~Alzheimer's disease~~ dementia without compensation.

DHS 68.01 (2) ~~TO WHOM THE CHAPTER APPLIES.~~ The chapter applies to the department, county boards, administering agencies designated by county boards under s. 46.87 (3) (c), Stats., federally-recognized Indian Tribes and private nonprofit organizations selected by the department under s. DHS 68.04 (3).

SECTION 2. DHS 68.02 (1) is amended to read:

DHS 68.02 (1) "Administering agency" means a county agency, federally-recognized tribal government or the private nonprofit organization selected by the department under s. DHS 68.04 (3) to receive and administer program funds.

SECTION 3. DHS 68.02 (3) is repealed.

SECTION 4. DHS 68.02 (4) and (6) are amended to read:

DHS 68.02 (4) "Caregiver" ~~has the meaning prescribed in s. 46.87 (1) (b), Stats., namely, means~~ any person other than a paid provider who provides care for a person with Alzheimer's disease or other dementia.

DHS 68.02 (6) "County agency" means an agency designated by a county board under s. 46.87 (3) (c), Stats., to administer the program, namely, a county department of social services created under s. 46.215 or 46.22, Stats., ~~a county department of community programs created under s. 51.42, Stats., a county department of developmental disabilities services created under s. 51.437, Stats., a county department of human services created under s. 46.23, Stats., or a county aging unit, or an Aging and Disability Resource Center.~~

SECTION 5. DHS 68.02 (6m) is created to read:

DHS 68.02 (6m) "Dementia" means a degenerative disease of the central nervous system characterized especially by premature cognitive deterioration. This includes ~~Alzheimer's disease~~ and related diagnoses which are similarly marked by irreversible deterioration of intellectual faculties with concomitant emotional disturbance resulting from organic brain disorder such as:

- (a) Chronic Traumatic Encephalopathy;
- (b) Creutzfeldt-Jakob Syndrome;
- (c) Frontotemporal dementias;
- (d) Huntington's disease;
- (e) Korsakoff's Syndrome;

- (f) Lewy-body disease;
- (g) Parkinson's disease;
- (h) Progressive supranuclear palsy;
- (i) Vascular dementia;
- (j) Any other condition resulting in irreversible dementia.

SECTION 6. DHS 68.02 (8) is amended to read:

DHS 68.02 (8) "Expand services" means to expand, ~~after January 1, 1986,~~ the staffing, size of physical plant or programming for an existing service offered by a service provider and included in a category listed under s. DHS 68.06 (2) (b) in order to increase by at least 10% over the number served prior to expansion the number of persons with Alzheimer's disease dementia or their caregivers who are served by the provider, or to significantly improve, in the judgment of the administering agency contracting with the provider, the quality of services or service delivery for persons with Alzheimer's disease dementia or for their caregivers. A service is no longer defined as "expanded" 3 years after the starting date of its expansion.

SECTION 7. DHS 68.02 (8m) is created to read:

DHS 68.02 (8m) "Tribe" means any federally-recognized Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act 43 USCS §§ 1601 et seq., that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act 25 U.S.C. 450 et seq..

SECTION 8. DHS 68.02 (10), (13), (15) and (16) are amended to read:

DHS 68.02 (10) "Household" means a person with Alzheimer's disease dementia living alone or a person with Alzheimer's disease dementia and the caregiver or caregivers with whom he or she lives, except that for purposes of determining financial eligibility under s. DHS 68.07 (3) and for purposes of determining ability to pay for the cost of program goods and services under s. DHS 68.08 (1) (c), "household" means only the person with Alzheimer's disease dementia and spouse.

DHS 68.02 (13) "New program" means any goods or services under one or more of the categories listed under s. DHS 68.06 (2) developed or offered for the first time ~~on or after January 1, 1986,~~ by a service provider under contract with an administering agency, to clients or beneficiaries, at least half of whom are persons with Alzheimer's disease dementia or their caregivers. A program is no longer defined as "new" 3 years after its starting date.

DHS 68.02 (15) "Program" means, unless otherwise qualified, the Alzheimer's and Dementia caregiver support program under s. 46.87, Stats.

DHS 68.02 (16) "Residential facility" means an adult family home or a community-based ~~residential~~ facility.

SECTION 9. DHS 68.02 (17) and (18) are created to read:

DHS 68.02 (17) "Respite" means any service that provides caregivers with temporary relief from caregiving responsibilities. The goal of respite is to enhance the health and well-being of the caregiver and maintain the person with dementia as a member of the household.

DHS 68.02 (18) “Respite Services” means any service that temporarily relieves the primary caregiver from his or her caregiving responsibilities. Respite services are usually provided at home in the form of visiting services, help with household chores, or assistance with providing personal care, medication management or wound care for the person with dementia. Respite may also be provided by an adult day center or short-term in an institutional setting. Respite may include expenses related to caregivers attending support groups, receiving individual counseling, activities related to maintaining the caregiver’s physical or psychological well-being, or other services approved by the administering agency.

SECTION 10. DHS 68.03 is repealed and recreated to read:

DHS 68.03 **Allocation of funds.** The department shall allocate funds available under s. 20.435 (7) (b) and (o), Stats., for the program to each county and tribe by using a funding formula consistent with the department’s formula for distributing Older Americans Act funding. No county or tribe may be allocated less than \$5,000 in any calendar year.

SECTION 11. DHS 68.04 (1) is repealed and recreated to read:

DHS 68.04 (1) **PROGRAM ADMINISTRATION.** The program shall be administered by a county or tribal agency or, if the county or tribal governing board chooses not to participate in the program, by an agency selected by the department under sub. (3).

SECTION 12. DHS 68.04 (2) and (3) are amended to read:

DHS 68.04 (2) **COUNTY AND TRIBAL AGENCIES.** A county board or federally-recognized tribal government that wishes to participate in the program shall submit to the department a an initial letter of intent to participate and an annual budget, except that a county board which submitted a letter of intent prior to the effective date of this chapter and which continues to participate in the program each year is not required to submit an additional letter. If the county board or tribal government terminates participation in the program and in a subsequent year wishes to renew participation, it shall submit to the department ~~another~~ a letter of intent to participate. The letter of intent shall include a statement signed by the county board chairperson or the tribal chairperson or president indicating ~~the county’s~~ intent to participate in the program, identifying the county or tribal agency, naming that agency’s responsible contact person, estimating the number of households and residents of residential facilities to be enrolled and served in the next calendar year, identifying the maximum amount payable in a calendar year to or on behalf of any participating person with ~~Alzheimer’s disease~~ dementia, describing the goods and services related to Alzheimer’s disease or dementia, describing the goods and services related to Alzheimer’s disease or dementia which the county or tribe intends to develop or expand, and stating the policy which the county or tribe intends to use in placing applicants on and taking them off a waiting list. The categories of information required in the letter of intent shall constitute the criteria for the approval of a county or tribal governing board’s proposed program pursuant to s. 46.87 (3) (b) and (4), Stats. The department may reject a county’s or tribe’s participation in the program if it determines that the information provided by the county board or tribal government in the letter of intent is insufficient or inconsistent with the purposes and procedures of the program as defined in s. 46.87, Stats., and this chapter.

DHS 68.04 (3) ~~PRIVATE NONPROFIT ORGANIZATION. OTHER ELIGIBLE ADMINISTRATIVE AGENCIES.~~ If a county board or tribal government does not submit a letter of intent or if it notifies the department of its decision to terminate participation in the program, the department shall:

(a) Solicit applications from private nonprofit organizations to administer the program in the county or tribal service area for the calendar year; and

(b) Select from the application or applications submitted under par. (a) a private nonprofit organization to be the administering agency for the county or tribe based on the adequacy of the organization's program budget submitted under s. DHS 68.05 (2), the organization's demonstrated knowledge of Alzheimer's disease and other dementias, the organization's demonstrated ability to manage supportive service programs and the organization's experience in assessing and meeting the needs of persons with Alzheimer's disease dementia and their caregivers.

SECTION 13. DHS 68.04 (3m) is created to read:

DHS 68.04 **(3m)** TRIBAL AGENCIES. If a tribal government which became eligible to participate in the program beginning July 1, 2016 notifies the department of its decision to terminate participation or reinstitute participation after a period of non-participation, the department shall:

(a) Solicit applications from either a county responsible for serving tribal members who are residents of the county; or a private nonprofit organization to administer the program to tribal members for the calendar year; and

(b) Select from the application or applications submitted under par. (a) a county or private nonprofit organization to be the administering agency for the tribe based on the adequacy of the organization's program budget submitted under s. DHS 68.05 (2), the agency's or organization's demonstrated knowledge of Alzheimer's disease and other dementias, the agency's or organization's demonstrated ability to manage supportive service programs and the agency's or organization's experience in assessing and meeting the needs of persons with Alzheimer's disease and their caregivers.

SECTION 14. DHS 68.04 (4), (5) (Intro), (5) (a), (5) (b), (5) (c) (Intro), and (5) (c) 4. are amended to read:

DHS 68.04 **(4)** CHANGE OF ADMINISTERING AGENCY. If a county board or tribe that is not participating in the program submits a letter of intent to participate under sub.(2), the ~~private nonprofit~~ organization selected by the department to administer the program under sub.(3) shall continue as the administering agency for the remainder of the calendar year.

DHS 68.04 **(5)** NOTIFICATION TO THE DEPARTMENT OF CHANGES. Pursuant to s. 46.87 (7), Stats., the county board, tribe or the private nonprofit organization selected under sub.(3) to administer the program shall notify the department in writing within 15 working days after any of the following occurs:

DHS 68.04 **(5)** (a) The county board or tribe designates a new ~~county~~ agency;

DHS 68.04 **(5)** (b) The county board, tribal government or private nonprofit organization selected under sub.(3) to administer the program decides to terminate participation in the program; or

DHS 68.04 **(5)** (c) The county board, tribal government or private nonprofit organization selected under sub.(3) to administer the program decides to make a change in the program or services which would result in a substantial difference from the description of the county's program and services contained in the letter of intent or budget most recently submitted ~~by a county board or in the application most recently submitted by the private nonprofit organization to the department~~. The county board, tribal government or ~~private~~ nonprofit organization selected under sub.(3) shall notify the department when it decides to:

DHS 68.04 **(5)** (c) 4. Establish a maximum payment of less than \$4,000 in a calendar year for each person with Alzheimer's disease dementia who is participating in the program; or

SECTION 15. DHS 68.05 (1) (Title), (1) (a) (Intro), (1) (a) 5., (1) (a) 9., (1) (b), and (1) (c) are amended to read:

DHS 68.05 (1) COUNTY, TRIBAL OR NON-PROFIT AGENCY.

DHS 68.05 (1) (a) A county, tribal or non-profit agency shall annually prepare a distinct budget for this program and shall submit the budget to the department each year by ~~September 30~~ November 30. This distinct budget shall be part of either the proposed budget required under s. 46.031, Stats., or the plan for older people required by the department and prepared by the county or tribal aging unit under s. 46.87 (3) (c) 4., Stats. The budget shall include at least the following information:

DHS 68.05 (1) (a) 5. The maximum amount payable in a calendar year to or on behalf of any participating person with ~~Alzheimer's disease, dementia,~~ Alzheimer's disease, dementia, if that amount is less than \$4,000;

DHS 68.05 (1) (a) 9. The name and phone number of the principal contact person at the county, tribal or non-profit agency for the program.

DHS 68.05 (1) (b) The department may terminate a ~~county's~~ participation in the program if it determines that the information provided by ~~a county~~ the administering agency in the distinct budget is insufficient or inconsistent with the purposes and procedures of the program as defined in s. 46.87, Stats., and this chapter, or the ~~county~~ agency does not submit the distinct budget by ~~September 30~~ November 30.

DHS 68.05 (1) (c) The county's, tribe's or non-profit agency's contract with the department under s. 46.031 (2g) (a), Stats., shall include the name of the ~~county~~ agency and the amount of the allocation for the contract year.

SECTION 16. DHS 68.05 (2) is repealed.

SECTION 17. DHS 68.06 (1) (Intro), (1) (a), (1) (c), and (1) (d) are amended to read:

DHS 68.06 (1) PURPOSES. As permitted by s. 46.87 (5), Stats., the administering agency ~~in~~ of each county or tribe may use allocated funds for the following purposes:

DHS 68.06 (1) (a) To pay for the cost of goods and services provided to or purchased for or by households; and for ~~or by~~ limited transportation and supplemental services for caregivers of persons living in residential facilities who are found eligible to participate in the program under s. DHS 68.07; The program may not be used to pay fees associated with the cost of permanent placement in an assisted living facility or other living arrangement that is not a CBRF or adult family home as defined under DHS 68.02.

DHS 68.06 (1) (c) To provide outreach, that is, to search out persons in need of support by the program, or to provide activities designed to develop or enhance public awareness of Alzheimer's disease and other dementias;

DHS 68.06 (1) (d) To develop or assist support groups for persons with Alzheimer's disease ~~or their,~~ other dementias and caregivers; or

SECTION 18. DHS 68.06 (2) (b) is repealed and recreated to read:

DHS 68.06 (2) (b) The administering agency at the time of need determination under s. DHS 68.08 (1) (a) shall enumerate to households and individuals participating in the program the goods or

services that may be purchased or provided to accomplish the purposes listed under sub. (1), which shall be limited to goods and services that can be provided under the following categories:

1. Adaptive equipment;
2. Adult day center services;
3. Advocacy and legal assistance;
4. Caregiver counseling and therapeutic resources;
5. Case management and service coordination;
6. Companion services
7. Crisis intervention;
8. Daily living skills training;
9. Emergency housing and energy assistance;
10. Employment –related support services;
11. Health screening and accessibility;
12. Home-delivered meals for people with dementia and caregivers that are not Title III-C2 eligible;
13. Household chores;
14. In-home personal care;
15. Inpatient treatments not covered by the person’s primary health insurance;
16. Intake and assessment;
17. Interpreter services;
18. Outreach to individuals, groups or the community;
19. Protective placement or guardianship;
20. Recreation and social activities, including Memory Cafés and social events;
21. Respite, including short-term respite in a residential facility;
22. Support groups
23. Transportation and;
24. Any other goods and services necessary to maintain the person with Alzheimer’s disease as a member of the household.

SECTION 19. DHS 68.06 (4) is created to read:

DHS 68.06 (4) NON SUPPLANTING. Program funds may not be used to purchase goods and services that are otherwise covered by a person’s private health or long term care insurance, or be spent in place of other federal, state or local programs that would, in the absence of the Alzheimer’s and Dementia Family Caregiver Program, be available to the family.

SECTION 20. DHS 68.07 is amended to read:

DHS 68.07 Client eligibility. In accordance with s. 46.87 (5), Stats., the administering agency ~~in~~ of each county or tribe shall determine the eligibility of each household ~~or person living in a residential facility in that county who~~ that applies to participate in that county’s or tribe’s program by establishing that the household or person meets all of the following conditions:

(1) DIAGNOSIS OF CONDITION. At least one member of the household or the person who lives in a residential facility has received a final, tentative or preliminary ~~written~~ documented diagnosis of Alzheimer’s disease or other form of dementia from a physician or other qualified medical provider;

(2) ~~COUNTY OF RESIDENCY.~~ (a) The person in the household who has Alzheimer’s disease or other dementia, or that person’s caregiver resides in the county or tribal service area; or

(b) The person with Alzheimer’s disease or other dementia lives in a residential facility located in the county or tribal service area; and

(3) HOUSEHOLD INCOME. The person with ~~Alzheimer's disease~~ dementia and that person's spouse are expected to have a joint income of no more than ~~\$40,000~~ \$48,000 for the 12-month period immediately following application for the program, except that in determining the income of a household with a joint gross income of more than ~~\$40,000~~ \$48,000, the administering agency shall subtract any expenses attributable to the ~~Alzheimer's-related~~ dementia-related needs of the person with ~~Alzheimer's disease~~ a dementia diagnosis or of the person's caregiver. If the net income determined by subtracting ~~Alzheimer's-related~~ dementia-related expenses for a household is ~~\$40,000~~ \$48,000 or less, the household shall be considered as having met the household income eligibility condition.

SECTION 21. DHS 68.08 is repealed and recreated to read:

DHS 68.08 Determination of need. The amount paid or expended for each person diagnosed with dementia may not exceed \$4,000 in any calendar year. For the purpose of calculating the funds to be paid to or expended for a household or individual participating in the program, the administering agency shall conduct a needs assessment to determine:

- (1) The goods and services needed by the household to enable it to maintain the person with dementia as a member of the household, or;
- (2) The goods and services reasonably needed by a person with dementia living in a residential facility that are not included in residential fees paid to the facility;
- (3) The cost of each good and service that is needed.

SECTION 22. DHS 68.09 (1), (3) and (4) are amended to read:

DHS 68.09 (1) Payment made to a service provider on behalf of the person with ~~Alzheimer's disease~~ dementia or the person's caregiver;

DHS 68.09 (3) Payment made to the household of a person with ~~Alzheimer's disease~~ dementia pursuant to accounting requirements set forth by the administering agency; or

DHS 68.09 (4) Payment made to ~~the manager of~~ a residential facility in which a person with Alzheimer's disease or dementia resides for the purchase of goods or services, or both, pursuant to accounting requirements set forth by the administering agency. Payments may not be made to cover the cost of goods or services that the residential facility is responsible by contract or rule to provide to residents as part of residential fees.

SECTION 23. DHS 68.10 (1) (a), (1) (b), and (1) (f) are amended to read:

DHS 68.10 (1) (a) Denial of an application to participate in a county's or tribe's program;

DHS 68.10 (1) (b) The calculation of funds to be paid to or expended for a household or a person with ~~Alzheimer's disease~~ dementia living in a residential facility and participating in the program;

DHS 68.10 (1) (f) Change of the maximum amount payable in a calendar year to or on behalf of any participating person with ~~Alzheimer's disease~~ dementia.

SECTION 24. 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.