

**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 68.05 (2); to **amend** DHS 68 (title), 68.01 (1) and (2), 68.02 (4), (6), (8), (10) and (13), 68.04 (4), (5) (intro.), (a), (b), (c) (intro.), (c) 1. through 4., 68.05 (1) (title) and (1), 68.06 (1) (intro.) and (a) through (d), (3) (a), 68.07, 68.09 (1) through (4), and 68.10 (1) (a) through (e); to **repeal and recreate** DHS 68.02 (1), 68.03, 68.04 (1) and (3), 68.06 (2) (b), and 68.08; and to **create** DHS 68.02 (6m), (17) through (21), and, 68.06 (4), relating to Support for Persons with Alzheimer’s Disease and their Caregivers.

RULE SUMMARY

Statutes interpreted

Section 46.87, Stats..

Statutory authority

Sections 46.87 (3) (b), (4), (5) (c), (5m) and (7) (c) and s. 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, for contracting with service providers to develop new programs or expand services, and to allocate funds for administering and implementing the program, are provided by the Wisconsin State Legislature in various statutes listed in “Statutory authority.”

Related statutes or rules

None.

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 Revisions also correct outdated terminology, update the range of caregiver support services that can be provided by the program, reconsider the program’s cost-share requirement, and establish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. Specific revisions in terminology include a shift from use of the term “Alzheimer’s disease” to the more general term “dementia.” The statutory provision defines “Alzheimer’s disease” to include other irreversible deteriorations of intellectual faculties. The terminology in the proposed rule is accordingly being updated to use the broader term “dementia” to include both Alzheimer’s disease and other forms of neurocognitive disorder.

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 notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. Chapter DHS 68 (title) is amended to read:

SUPPORT FOR PERSONS WITH ~~ALZHEIMER'S DISEASE~~ DEMENTIA AND THEIR CAREGIVERS

SECTION 2. 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 Wis. 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., tribes, and private nonprofit organizations selected by the department under s. DHS 68.04.

SECTION 3. DHS 68.02 (1) is repealed and recreated to read:

DHS 68.02 (1) "Administering agency" means any of the following:

- (a) The county agency selected by the county board under s. ~~46.87 (3) (c)~~, Stats..
- (b) The agency selected by a tribal government under s. ~~46.87(3)(d)~~, Stats..
- (c) A private nonprofit organization selected by the department under s. DHS 68.04.

SECTION 4. DHS 68.02 (3) is repealed.

SECTION 5. 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~~ 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 a resource center authorized under s. 46.283, stats., and DHS 10.~~

SECTION 6. 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 neurocognitive brain disorder that results in the irreversible deterioration of intellectual faculties.

SECTION 7. 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 8. DHS 68.02 (10) and (13) 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.

SECTION 9. DHS 68.02 (17) through (21) are created to read:

DHS 68.02 (17) "Respite" means temporary relief from caregiving responsibilities.

DHS 68.02 (18) "Respite Services" means any service granting respite, which is provided at home, such as assisting services, help with household chores, assistance with providing personal care, medication management or wound care for the person with dementia, or provided by an adult day center or short-term in an institutional setting. Respite services may also 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.

DHS 68.02 (19) "Tribal government" means a governing body of a tribe.

DHS 68.02 (20) “Tribal service area” means the geographic area designated by a tribe, and approved by the U.S. Bureau of Indian Affairs or Indian Health Service, in which a tribal government provides services to its members.

DHS 68.02 (21) “Tribe” has the meaning given in s. 46.87 (1) (c), Stats..

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

DHS 68.03 **Allocation of funds.** Each administering agency shall receive no less than \$5,000 per year in funds available under s. 20.435 (7) (b) and (o), Stats..

SECTION 11. DHS 68.04 (1) to (3) are repealed and recreated to read:

DHS 68.04 (1) ADMINISTRATION BY COUNTY AGENCY OR TRIBE. (a) *Letter of intent.* A county board or tribal government may apply to serve as the administering agency by submitting to the department an initial letter of intent that includes all of the following:

1. A signed statement indicating intent to administer the program.
2. The name and contact information for the responsible contact person.
3. A description of the program and services related to dementia that will be provided.
4. A description and contact information for any service provider contracted with to provide the program and services described in subd. 3..
5. An estimate of the number of households and residents of residential facilities to be served over the next calendar year.
6. The maximum amount payable in a calendar year to or on behalf of any person participating in the program and services described in subd. 3..
7. A description of the waiting list policy.
8. Any other information relating to the program’s knowledge of dementia, ability to manage supportive service programs, and its experience in assessing and meeting the needs of persons with dementia and their caregivers.

(b) *Exemption.* The following are not required to submit letters of intent under par. (a):

1. A county board or tribal government that submitted a letter of intent prior to the effective date of this chapter and that served as the administering agency each year following approval by the department.
2. A county board, tribal government, or private nonprofit organization that submits an initial letter of intent to the department, receives approval by the department to serve as the administering agency, and continues to serve as the administering agency each year following approval.

(2) ADMINISTRATION BY PRIVATE NONPROFIT ORGANIZATION. (a) The department shall solicit letters of intent from private nonprofit organizations, and may approve one or more private nonprofit organizations to administer the program for the following calendar year, if any of the following occur:

1. Neither a county agency nor a tribal government submits a letter of intent under sub. (1).
2. Both the county agency and tribal government notify the department that they do not intend to administer the program for the following calendar year.
3. The department denies approval to administer the program for the following calendar year to the county agency and tribal government that submitted letters of intent under sub. (1) par. (a) or were exempt from submitting a letter of intent under sub. (1) par. (b).

(b) A private nonprofit organization may apply to administer the program under par. (a) by submitting to the department an initial letter of intent, as provide in sub.(1) par.(a)..

(3) DEPARTMENT SELECTION AND APPROVAL. (a) The department may approve county board, tribal government, or private nonprofit organization to serve as the administering agency as provided in

this section, if it determines that the county board, tribal government, or private nonprofit organization is able to administer the program as required under this chapter.

(b) The department may deny approval of a county board, tribal government, or private nonprofit organization to serve as the administering agency for the following calendar year if it determines that the information provided in the letter of intent is incomplete or inaccurate, or the county board, tribal government, or private nonprofit organization is unable to adequately administer the program as provided under this chapter.

SECTION 12. DHS 68.04 (4), (5) (intro.), (a), (b),(c) (intro.), and (c) 1. through 4. are amended to read:

DHS 68.04 (4) CHANGE OF ADMINISTERING AGENCY. If a county board or tribal government that is not participating in serving as the administering agency for the program submits a letter of intent to participate under sub.(2) this section, the private nonprofit organization selected by the department to administer the program under sub.(3) shall continue to serve 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, tribal government or the private nonprofit organization selected under sub.(3) to administer serve as the administering agency for the program shall notify the department in writing within 15 working days after any of the following occurs:

(a) The county board or tribal government designates a new county agency;

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

(c) The county board, tribal government or private nonprofit organization selected under sub.(3) to administer the program administering agency 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 or private nonprofit organization selected under sub.(3) administering agency shall notify the department when it decides to does any of the following:

1. Contract with a service provider to develop a new program or expand services;

2. Discontinue providing, purchasing, or making payments for goods and services under one or more categories listed in s. [DHS 68.06 \(2\) \(b\)](#);

3. Change its waiting list policy;

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 13. DHS 68.05 (1) (title) and (1) are amended to read:

DHS 68.05 (1) COUNTY, TRIBAL OR NONPROFIT AGENCY.

(a) A county agency An administering agency shall annually prepare a distinct budget for this the 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, all the following information:

1. The total amount of allocated funds anticipated for the program for the calendar year;₂
2. The number of households anticipated to be enrolled and served for the calendar year;₂
3. The planned distribution of allocated funds by purpose under s. DHS 68.06 (1);₂
4. The method or methods for paying for goods and services under s. DHS 68.09;₂
5. The maximum amount payable in a calendar year to or on behalf of any participating person with ~~Alzheimer's disease, dementia,~~ if that amount is less than \$4,000;₂
6. A brief description of any limitations on goods and services that are to be provided, purchased or contracted for;₂
7. Brief descriptions of any new programs or expanded services;₂
8. A summary of the waiting list policy; ~~and,~~
9. The name and phone number of the principal contact person at the county, tribal or nonprofit agency for the program.

(b) The department may terminate ~~a county's~~ an administering agency'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.

(c) The ~~county's~~ administering 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 14. DHS 68.05 (2) is repealed.

SECTION 15. DHS 68.06 (1) (intro.), and (a) through (d) are amended to read:

DHS 68.06 (1) (intro.) PURPOSES. As permitted by s. 46.87 (5), Stats., the administering agency ~~in of each county or tribe~~ may use allocated funds for any of 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 persons~~ limited transportation and supplemental services for a caregiver of a person living in a residential-facilities facility who are is found eligible to participate in the program under s. DHS 68.07;₂. 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 s. DHS 68.02.

(b) To contract with service providers to develop new programs or expand services;₂

(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 dementia;~~

(d) To develop or assist support groups for persons with ~~Alzheimer's disease or their~~ dementia and caregivers; ~~or,~~

SECTION 16. 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 any of 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 dementia as a member of the household.

SECTION 17. DHS 68.06 (3) (a) is amended to read:

DHS 68.06 (3) (a) Training and development; ~~or.~~

SECTION 18. 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 19. 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~~ county 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~~ dementia from a physician; or other qualified medical provider.

(2) ~~COUNTY OF RESIDENCE~~ RESIDENCY. The person in the household who has dementia, or that person's caregiver, meets one of the following conditions:

(a) ~~The person in the household who has Alzheimer's disease or that person's caregiver resides~~ Resides in the county; or tribal service area.

(b) ~~The person with Alzheimer's disease~~ dementia lives in a residential facility located in the county or tribal service area.

(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 20. 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 all of the following:

(1) The goods and services needed by the household to enable it to maintain the person with dementia as a member of the household.

(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 21. DHS 68.09 (1) through (4) are amended to read:

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

(2) Payment made to a service provider under contract with the administering agency to develop new programs or to expand services; ~~;~~

(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.~~

(4) Payment made to ~~the manager of~~ a residential facility in which a person with ~~Alzheimer's disease~~ 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 a residential facility is required to provide under a program, other than the Alzheimer's family and caregiver support program

SECTION 22. DHS 68.10 (1) (a) through (e) are amended to read:

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

(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;_

(c) Reduction, suspension, limitation or termination of goods and services provided under this chapter;_

(d) Change of provider of goods and services provided under this chapter;_

(e) Change of method of payment for goods and services provided under this chapter; ~~and~~_

(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 23. 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.