

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter DHS 107	
4. Subject Repealing Medicaid exclusion provisions that were deemed unconstitutional and unenforceable by a federal court in <i>Flack v. Wis. Dep't of Health Servs.</i> , 395 F. Supp. 3d 1001 (W.D. Wis. 2019)	
5. Fund Sources Affected <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	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule In <i>Flack v. Wis. Dep't of Health Servs.</i> , 395 F. Supp. 3d 1001 (W.D. Wis. 2019), the United States District Court for the Western District of Wisconsin concluded that ss. DHS 107.03 (23) and (24) and 107.10 (4) (p)--which, collectively, exclude Medicaid coverage for "[d]rugs, including hormone therapy, associated with transsexual surgery or medically unnecessary alteration of sexual anatomy or characteristics" and "transsexual surgery"--violated the federal Medicaid Act and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The court permanently enjoined the Department from enforcing these provisions.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. None.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule repeals are not anticipated to have an economic or fiscal impact.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule No reasonable policy alternatives exist to promulgating the proposed rules.	
16. Long Range Implications of Implementing the Rule The proposed rule repeals are not anticipated to have a long-term economic or fiscal impact.	
17. Compare With Approaches Being Used by Federal Government There are no existing or proposed federal regulations that directly address activities to be regulated under Medicaid laws. However, 42 USC s. 18116 makes it unlawful for any health program or activity that receives funding from the federal	

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government to refuse to treat an individual, or otherwise discriminate against the individual, on the basis of race, color, national origin, sex, age, or disability

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Not applicable - the proposed rule repeals are specific to a federal court order specific to Wisconsin administrative rules.

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19. Contact Name

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Attorney  
DHS Office of Legal Counsel

20. Contact Phone Number

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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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