

Report From Agency

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 21-087

Ch. DHS 129, relating to nurse aide training program requirements.

Basis and Purpose of Proposed Rule

The purpose of the rulemaking is to revise portions of ch. DHS 129 to comply with 2019 Wis. Act 185 (“Act 185”), which amended s. 146.40 (3), Stats., regarding length of instructional hours for nurse aide training programs. Act 185 provides that “[t]he department may not require an instructional program to exceed the federally required minimum total training hours or minimum hours of supervised practical training under 42 CFR 483.152 (a).” 42 CFR 483.152 (a) provides that “[f]or a nurse aide training and competency evaluation to be approved by the State, it must, at a minimum . . . [c]onsist of no less than 75 clock hours of training.” At least 16 hours of those 75 hours must be supervised practical training.

Rules previously promulgated by the department under s. 146.40 (3), Stats., require that, before a nurse aide can be employed in Wisconsin, they must complete 120 hours of instruction, including 32 clinical hours, through a department-approved program. See ss. DHS 129.03 (30m) (a) and 129.07 (2) (b). An individual who has completed nurse aide training in another state may be approved if they complete an instructional program—referred by rule as the “45-hour training program in DHS 129.03 (30m) (b)—which, combined with the instruction received in the other state, amounts to receiving substantially the same instruction as Wisconsin’s 120-hour training program.

The department proposes to revise portions of ch. DHS 129 in order to make the required minimum number of training hours consistent with the federally required minimum total training hours under 42 CFR 483.152 (a). Further, the department proposes to eliminate the references to the 45-hour training program in ch. DHS 129, as the 45-hour training program is no longer needed to bridge the gap between the 120 hours of instruction and the 75-hour federal minimum since Wisconsin has adopted the federal 75-hour minimum.

Department Response to Legislative Council Rules Clearinghouse Recommendations

No recommendations were made by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

The proposed rule will not affect small businesses.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

Not applicable - the proposed rule will not affect small businesses.

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

Not applicable - the proposed rule will not affect small businesses.

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

Not applicable - the proposed rule will not affect small businesses.

The reason for including or not including in the proposed rule any of the following methods for reducing the rule’s impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule’s impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

Not applicable - the proposed rule will not affect small businesses.

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

No changes were made to the rule's analysis section.

Fiscal Estimate/Economic Impact Analysis

No changes were made to the rule's fiscal estimate/economic impact analysis.

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on December 20, 2021. A public hearing was held on January 14, 2022, in a Zoom virtual public hearing. Public comments on the proposed rule were accepted until end of business on January 14, 2022.

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
No person appeared or registered for or against the proposed rule at the public hearing.	

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		X	
Department response to Rules Clearinghouse recommendations	X		
Final Regulatory Flexibility Analysis	X		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			X
Public Hearing Summary	X		
List of Public Hearing Attendees and Commenters	X		
Summary of Public Comments and Department Responses	X		
Fiscal Estimate/Economic Impact Analysis		X	
Revised Fiscal Estimate/Economic Impact Analysis			X
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			X
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			X
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			X
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			X