

State of Wisconsin \ Department of Commerce

Germane Modification

**RULES in FINAL
DRAFT FORM**

Rule No.: Chapters Comm 122 and 128

Relating to: Health Care Loan Assistance

Clearinghouse Rule No.: 01-157

COM-10535 (N.03/97)

The Department of Commerce proposes an order to renumber ss. Comm 122.02 (1) to (4), and Comm 128.02 (1) to (8); to amend ch. Comm 122 (title), ss. Comm 122.01 (intro.) and (3), Comm 122.02 (3), Comm 122.03, Comm 122.04 (intro.), (1) to (5) and (7), Comm 122.05 (1) (a), Comm 122.06 (1) (intro.), Comm 122.06 (2) (intro.) and (h), Comm 122.07 to 122.09, Comm 128.03 (1), (2) (intro.), (a) and (f), Comm 128.04 (1) (a) and (b), Comm 128.05 (2) (h), and Comm 128.06 (2) and (3); and to create ss. Comm 122.02 (1), Comm 122.035, Comm 122.04 (9), Comm 122.06 (1) (g), Comm 128.02 (1) and (2), Comm 128.025, Comm 128.03 (2) (h), and Comm 128.05 (1) (g), relating to health care loan assistance.

Analysis of Proposed Rules

Statutory Authority: Sections 560.02 (4), 560.183 and 560.184, Stats.

Statutes Interpreted: Sections 560.02 (4), 560.183 and 560.184, Stats.

The current rules for health care loan assistance in chapters Comm 122 and 128 apply to physicians and health care providers such as physician assistants. 2001 Wisconsin Act 16 requires the Department of Commerce to also provide loan assistance to dentists and dental hygienists.

The proposed rules add dentists and dental hygienists to the health care loan assistance program administered by the Department. The proposed rules closely follow the current rules for providing loan assistance to physicians and health care providers. However, because dental practice has distinct differences from medical practice, the proposed rules specify practice requirements for dentists and dental hygienists regarding volume of medical assistance and Badger Care patients. The proposed rules also include qualifications for loans and criteria for repayment of loans.

SECTION 1. Chapter Comm 122 (title) is amended to read:

Chapter Comm 122
PHYSICIAN AND DENTIST LOAN ASSISTANCE PROGRAM

SECTION 2. Comm 122.01 (intro.) and (3) are amended to read:

Comm 122.01 Purpose. The purpose of this chapter is to establish provisions necessary for the administration of those aspects of the physician and dentist loan assistance program and the expanded loan assistance program which relate to the following:

(3) The procedures under which physicians and dentists may apply for assistance under this chapter and the procedures under which the department may make determinations in regard to physician and dentist applications.

SECTION 3. Comm 122.02 (1) to (4) are renumbered (2) to (5).

SECTION 4. Comm 122.02 (1) is created to read:

Comm 122.02 (1) “Dental health shortage area” has the meaning contained in s. 560.183 (1) (ad), Stats.

SECTION 5. Comm 122.02 (3), as renumbered, is amended to read:

Comm 122.02 (3) “Educational loan” means a health education assistance loan, a plus loan, a national direct student loan, a stafford loan, a health professions students loan, a supplemental loan for students, a guaranteed student loan from a state education financial aid office, a university sponsored student loan, a trust fund loan, a scholastic loan, a foundation loan or any other loan that the department determines is exclusively for educational purposes, and that was obtained by the physician or dentist from a public or private lending institution for education in an accredited school of medicine, an accredited school of dentistry, or for post graduate medical or dental training.

SECTION 6. Comm 122.03 is amended to read:

Comm 122.03 Mental health shortage area. (1) The department shall identify as a mental health shortage area any geographic area that conforms to the definition in s. Comm 122.02 (4) (5).

(2) In addition to conforming to s. Comm 122.02 ~~(4)~~ (5), a written agreement between the department and a physician specializing in psychiatry shall require that the physician enter into an agreement with the board or boards created under s. 51.42, Stats., which operate in the mental health shortage area, to provide at least 8 hours of psychiatric care per week to clients of the

board or boards. The department may waive this requirement on a year-to-year basis upon a showing in writing by the physician that additional psychiatric services are not required by the county in the mental health shortage area, that the s. 51.42, Stats., board is not able to provide for such services at their reasonable and customary rate, or for other reasons approved by the department.

SECTION 7. Comm 122.035 is created to read:

Comm 122.035 Dental health shortage area. (1) The department shall identify as a dental health shortage area any geographic area that conforms to the definition in s. Comm 122.02 (1).

(2) In addition to conforming to s. Comm 122.02 (1), the dentist shall agree to the following:

(a) In year 1 of the dentist's agreement with the department, the dentist shall provide dental services to at least 50 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$8,000 in claims paid.

(b) In year 2 of the dentist's agreement with the department, the dentist shall provide dental services to at least 70 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$11,000 in claims paid.

(c) In year 3 of the dentist's agreement with the department, the dentist shall provide dental services to at least 90 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$15,000 in claims paid.

(3) In this section, "unduplicated" means that a recipient may only be counted once for the year regardless of the number of visits during the year.

(4) The department may waive the requirements of sub. (2) on a case-by-case and year-to-year basis upon an administrative review that shows the dentist made a significant effort to achieve the targets contained in sub. (2) and that the dentist has credible plans, as determined by the department, to meet the following year's targets, if applicable.

SECTION 8. Comm 122.04 (intro.), (1) to (5) and (7) are amended to read:

Comm 122.04 Priorities among eligible applicants. If the cost of repaying the educational loans of all eligible applicants, when added to the cost of educational loan repayments scheduled under existing agreements, exceeds the total amount in the appropriations under s. 20.143 (1) ~~(f)~~, ~~(e)~~, and ~~(jm)~~ (jc), (jm) and (kr), Stats., the department shall establish priorities among eligible applicants based on the following considerations:

(1) **EXTREMELY HIGH NEED FOR MEDICAL OR DENTAL CARE.** The degree to which there is an extremely high need for medical or dental care in the eligible practice area in which the physician or dentist proposes to practice.

(2) PHYSICIAN AND DENTIST RETENTION. The likelihood of long term retention of the physician or dentist.

(3) PER CAPITA INCOME. The average per capita income in the eligible practice area in which the physician or dentist plans to practice.

(4) FINANCIAL SUPPORT FOR PHYSICIAN OR DENTIST RECRUITMENT AND RETENTION. The extent of local financial support provided to recruit or retain the physician or dentist for the eligible practice area.

(5) LENGTH OF SERVICE. The degree to which the physician or dentist is new to the eligible practice area.

(7) GEOGRAPHIC DISTRIBUTION. The geographical distribution of physicians and dentists with whom the department has existing agreements and the geographical distribution of eligible applicants.

SECTION 9. Comm 122.04 (9) is created to read:

Comm 122.04 (9) PROVISION OF MEDICAL ASSISTANCE AND BADGER CARE SERVICES. If already in practice, the degree to which a dentist provides medical assistance and badger care services in the dental practice.

SECTION 10. Comm 122.05 (1) (a) is amended to read:

Comm 122.05 (1) (a) Evidence pertaining to dates of accredited medical or dental school attendance and graduation.

SECTION 11. Comm 122.06 (1) (intro.) is amended to read:

Comm 122.06 Breach of agreement. (1) The following actions, if taken by a physician or dentist who has entered into an agreement with the department under the state physician and dentist loan repayment program for repayment of loans entirely from state funds, after July 1, 1998, shall constitute a breach of that agreement:

SECTION 12. Comm 122.06 (1) (g) is created to read:

Comm 122.06 (1) (g) Failing to meet the additional requirements outlined for psychiatrists in s. Comm 122.03 and dentists in s. Comm 122.035.

SECTION 13. Comm 122.06 (2) (intro.) and (h) are amended to read:

Comm 122.06 (2) (intro.) The following actions, if taken by a physician or dentist who has entered into an agreement with the department under the expanded loan assistance program under s. 560.183 (9), Stats., shall constitute a breach of that agreement:

(h) Failing to use a sliding fee scale or comparable method of determining payment arrangements for patients who are not eligible for medicare or medical assistance and who are unable to pay the customary fee for the physician's or dentist's services. Sliding fee scales may vary from clinic to clinic but, at a minimum, ~~should~~ shall address persons with incomes below 200% of the federal poverty level.

SECTION 14. Comm 122.07 to 122.09 are amended to read:

Comm 122.07 Penalties for breach of agreement. (1) A physician or dentist who breaches an agreement with the department in the first year of the physician's or dentist's obligation shall repay to the department the amount already received plus an amount equal to the total months of obligation multiplied by \$1,000.

(2) A physician or dentist who breaches an agreement with the department in the second year of the physician's or dentist's obligation shall repay to the department the amount already received plus an amount equal to the number of ~~unserved~~ months remaining in the agreement multiplied by \$1,000.

(3) A physician or dentist who breaches an agreement with the department in the third year of the physician's or dentist's obligation shall repay to the department the amount already received for ~~unserved~~ the months remaining in the agreement plus an amount equal to the number of ~~unserved~~ months remaining in the agreement multiplied by \$1,000.

Comm 122.08 Waiver of penalties. The department may waive any penalty for breach of agreement if the physician or dentist is unable to serve or repay due to a permanent physical or mental impairment that prevents the physician or dentist from working in the physician's or dentist's profession. The physician or dentist shall provide verification of his or her condition from an appropriate board certified specialist or specialists that will reasonably convince the department that the physician or dentist will be unable to continue working in the physician's or dentist's profession.

Comm 122.09 Suspension. A physician's or dentist's contract may be suspended by the department, without penalty, for a period of time agreed upon by the physician and the department for certain hardships, including an extended illness or family leave that exceeds the maximum of 7 weeks allotted each year, or termination of employment that requires the physician or dentist to seek employment in another eligible practice area.

SECTION 15. Comm 128.02 (1) to (8) are renumbered (3) to (10).

SECTION 16. Comm 128.02 (1) and (2) are created to read:

Comm 128.02 (1) “Dental health shortage area” has the meaning contained in s. 560.184 (1) (ag), Stats.

(2) “Dental hygienist” has the meaning contained in s. 560.184 (1) (aj), Stats.

SECTION 17. Comm 128.025 is created to read:

Comm 128.025 Medical assistance and badger care requirements for dental hygienists.

(1) In addition to conforming to s. Comm 128.02(1), the dental hygienist's employer shall agree to the following:

(a) In year 1 of the dental hygienist's agreement with the department, his or her employer shall provide dental services to at least 50 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$8,000 in claims paid.

(b) In year 2 of the dental hygienist's agreement with the department, his or her employer shall provide dental services to at least 70 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$11,000 in claims paid.

(c) In year 3 of the dental hygienist's agreement with the department, his or her employer shall provide dental services to at least 90 unduplicated medical assistance or badger care recipients, not to fall below a minimum of \$15,000 in claims paid.

(2) In this section, "unduplicated" means that a recipient may only be counted once for the year regardless of the number of visits during the year.

(3) The department may waive the requirements of sub. (1) on a case-by-case and year-to-year basis upon an administrative review that shows the employer for whom the dental hygienist works made a significant effort to achieve the targets contained in sub. (1) and that the employer has credible plans, as determined by the department, to meet the following year's targets, if applicable. If, in the opinion of the department, the employer did not make a significant effort nor has credible plans to meet future targets as established in sub. (1), the dental hygienist may be required to repay any monies paid to the hygienist by the department without additional penalties and may not receive additional loan assistance for subsequent periods.

SECTION 18. Comm 128.03 (1), (2) (intro.), (a) and (f) are amended to read:

Comm 128.03 (1) Any health care provider who practices in an eligible practice area and who provides primary or dental care is eligible for loan repayment as provided in s. 560.184 (4), Stats.

(2) If the cost of repaying the educational loans of all eligible applicants, when added to the cost of educational loan repayments scheduled under existing agreements, exceeds the total amount in the appropriations under s. 20.143 (1) ~~(f), (e), and (j)~~ (j), (jL) and (kr), Stats., the department shall establish priorities among eligible applicants based upon the following considerations:

(a) *Extremely high need for medical or dental care.* The degree to which there is an extremely high need for medical or dental care in the eligible practice area in which the eligible applicant proposes to practice.

(f) *Length of service.* The degree to which the medical or dental ~~service~~ provider is new to the eligible practice area.

SECTION 19. Comm 128.03 (2) (h) is created to read:

Comm 128.03 (2) (h) *Provision of medical assistance and badger care services.* If already in practice, the degree to which the dental hygienist provides medical assistance and badger care services in the dental practice.

SECTION 20. Comm 128.04 (1) (a) and (b) are amended to read:

Comm 128.04 (1) (a) Evidence of health or dental care professional educational program attendance.

(b) Evidence of licensure or certification as a nurse-midwife, nurse practitioner, dental hygienist or physician assistant.

SECTION 21. Comm 128.05 (1) (g) is created to read:

Comm 128.05 (1) (g) Failing to meet the additional requirements outlined for dental hygienists in s. Comm 128.025.

SECTION 22. Comm 128.05 (2) (h) is amended to read:

Comm 128.05 (2) (h) Failing to use a sliding fee scale or comparable method of determining payment arrangements for patients who are not eligible for medicare or medical assistance and who are unable to pay the customary fee for the health care provider's services. Sliding fee scales may vary from clinic to clinic but, at a minimum, ~~should~~ shall address persons with incomes below 200% of the federal poverty level.

SECTION 23. Comm 128.06 (2) and (3) are amended to read:

Comm 128.06 (2) A provider who breaches an agreement with the department in the second year of the provider's obligation shall repay to the department the amount already received plus an amount equal to the number of ~~unserved~~ months remaining in the agreement multiplied by \$500.

(3) A provider who breaches an agreement with the department in the third year of the provider's obligation shall repay to the department the amount already received for ~~unserved~~ the months remaining in the agreement plus an amount equal to the number of ~~unserved~~ months remaining in the agreement multiplied by \$500.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
