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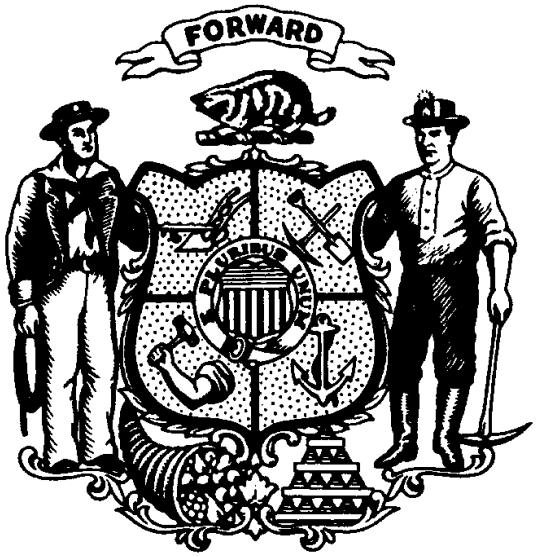

Publication Date: October 14, 2000
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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule–making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule–making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (3)

Administration

1. Rules adopted creating **ch. Adm 43,** relating to public benefits fees.

Exemption From Finding of Emergency

(See section 9101 (1zu) (a) of 1999 Wis. Act 9)

Analysis Prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1), 16.957(2)(c) 4. and 5., and (4)(b), Stats.

Statute interpreted: s. 16.957(2)(c) 4. and 5., and (4), Stats.

1999 Wis. Act 9 included major provisions relating to aspects of electric utility regulation, commonly referred to as "Reliability 2000." That legislation created a new statutory framework within which public benefit programs relating to low–income energy assistance and energy conservation and renewable energy are continued and expanded. Under ss. 16.957(2)(c) and (4)(b), Stats., the Department of Administration is directed to promulgate rules setting fees to be collected by utilities from their customers, and establishing requirements and procedures related to those low–income and energy conservation programs. This rule provides mechanisms for setting, collecting, and reporting the fees, and related matters.

Publication Date: **August 22, 2000**
Effective Date: **August 22, 2000**
Expiration Date: **January 19, 2001**

2. Rule adopted creating **ch. Adm 44**, relating to energy conservation and efficiency and renewable resource programs.

Exemption From Finding of Emergency

(See section 9101 (1zu) (am) of 1999 Wis. Act 9)

Analysis Prepared by the Department of Administration:

Statutory authority: ss. 16.004(1) and 16.957(2)(c), 2., 2m. and 2n., Stats.

Statute interpreted: s. 16.957(2)(b) and (3)(b), Stats.

Under s. 16.957(2)(c)2, 2m., and 2n., Stats., the Department of Administration is required to promulgate rules for energy conservation and efficiency and renewable resource public benefits programs. The rule establishes requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the Department for energy programs established under s. 16.957(2)(b), Stats.

The Department believes it is neither wise nor practical to include specific detail in this rule to cover programs that are not yet in existence. These programs will be developed over a longer period of time, with a wide range of input from the Council on Utility Public Benefits, potential program providers, and recipient citizens. They will develop as the needs of the energy efficiency and conservation market becomes clearer and our collective knowledge is increased.

Examples of the variety of programs to be created under s. 16.957 (2) (b) 1., Stats., run the gamut from a simple rebate of a few cents for the purchase of energy efficient products or services to programs requiring complete engineering audits of industrial plants, arrangement of financing, performance contracting and multi–year performance monitoring. The requirements, procedures and related selection criteria necessary to implement these varying programs cannot be specified with detail in this rule. Rather, the rule is designed to allow flexibility for development of policies and procedures through detailed policy and procedure manuals for each program, consistent with Department practice for low–income assistance programs now in effect under ss. 16.385 and 16.39, Stats.

Publication Date: **August 22, 2000**
Effective Date: **August 22, 2000**
Expiration Date: **January 19, 2001**

3. Rules adopted creating **ch. Adm 45**, relating to low–income assistance public benefits.

Exemption From Finding of Emergency

(See section 9101 (1zu) (am) of 1999 Wis. Act 9)

Analysis Prepared by the Department of Administration:

Statutory authority: ss. 16.004(1) and 16.957(2) (c) 2., Stats.

Statute interpreted: s. 16.957(2) (a), Stats.

Under s. 16.957(2)(c), Stats., the Department of Administration is required to promulgate rules for low–income public benefits programs. The proposed rule establishes eligibility and application requirements and procedures for assistance under a low–income public benefits program established under s. 16.957(2)(a), Stats.

It is the Department's understanding that the Legislature's intent for this rule was to build upon and transition from the Low–Income Home Energy Assistance Program (LIHEAP) and the Low–Income Weatherization Assistance Program (LIWAP) currently administered by the Department under ss. 16.385 and 16.39, Stats., respectively. The Department presently utilizes extensive, detailed policy and procedure manuals under which those programs operate. Annual plans are also prepared for each of these programs which are submitted to the federal government as required by the U.S.

Department of Housing and Urban Development after extensive opportunities for public input, including public hearings. Because these programs, and the public benefits programs yet to be developed in concert with them under s. 16.957(2)(a), Stats., must be implemented during the heating season, they must be able to react to significant fluctuations of weather, energy costs and energy shortages in a relatively short period of time. For these reasons, this proposed rule is intentionally succinct, yet flexible in order to account for the specific needs of low–income assistance programs envisioned.

Publication Date: **August 22, 2000**
Effective Date: **August 22, 2000**
Expiration Date: **January 19, 2001**

EMERGENCY RULES NOW IN EFFECT (5)

Agriculture, Trade & Consumer Protection

1. Rules adopted revising **s. ATCP 11.20 and creating ss. ATCP 11.01 (11m) and 11.73,** relating to swine import and required tests.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (department) finds that an emergency exists and that an emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

• Pseudorabies is a highly contagious disease of swine and other livestock. Wisconsin initiated its pseudorabies program in 1976. Since that time, the department has worked diligently, pork producers have sacrificed significantly and the state has paid substantial costs to eradicate the disease. In 1997, the National Pseudorabies Control Board recognized Wisconsin as a pseudorabies stage IV state. If there are no incidents of pseudorabies in the state before October, 2000, the state will be classified as a pseudorabies stage V state (free of the disease) at that time. Classification as a pseudorabies stage IV or V state creates significant benefits in the swine export market.

• There has been a significant increase in pseudorabies cases reported in several pseudorabies stage II and III states. In the past, Wisconsin pork producers have imported many swine from the pseudorabies stage II and III states which are now experiencing an increase in pseudorabies.

• If pseudorabies spreads to Wisconsin, the Wisconsin pork industry will be hampered in its ability to produce and export swine and pork products.

• The increased prevalence of pseudorabies in states from which Wisconsin import shipments originate creates a substantial threat to the pork industry in Wisconsin. The department finds that an emergency rule is needed to minimize the threat of pseudorabies.

Publication Date: **May 25, 2000**
Effective Date: **May 25, 2000**
Expiration Date: **October 22, 2000**
Hearing Date: **June 29, 2000**
Extension Through: **December 20, 2000**

2. Rule adopted amending **s. ATCP 74.08 (1),** relating to fees required of agent cities and counties that license and inspect retail food establishments.

Finding of Emergency

The Department of Agriculture, Trade and Consumer Protection ("department") finds that an emergency rule is necessary to promote the public welfare, and prevent unnecessary economic hardship on cities and counties that license and inspect retail food establishments for the department. The facts constituting the emergency are as follows:

(1) The department licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., the department may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments for the department. The department monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay the department an annual fee to cover the department's costs. The department sets the fee by rule.

(2) By rule, the department establishes license fees for retail food establishments that it licenses directly. An agent city or county may charge a license fee that differs from the state license fee established by the department.

(3) Under current rules, an agent city or county must pay the department an annual fee, for each retail food establishment, that is equal to 20% of the license fee that the department would charge if it licensed the establishment directly.

(4) Effective February 1, 1998; the department increased license fees for retail food establishments that it licenses. The fee increase was caused, in part, by a legislative budget change that required the department to recover 60% (rather than 50%) of its program costs from license fees. The fee change approximately doubled the department's license fees, increasing the maximum retail food license fee from $210 to $450 and the minimum fee from $42 to $90.

(5) The department's 1998 license fee increase incidentally increased the annual fees that agent cities were required to pay to the department, beginning with the license year ending June 30, 1999. As a result of the department's license fee increase, agent cities and counties were required to pay the department 20% of the increased license fee amounts. This change effectively doubled city and county fee payments to the department and imposed a serious financial burden on those city and county governments. The increased fee payments also exceeded the amounts needed to cover the department's costs under agent city and agent county agreements.

(6) In order to reduce the financial burden on local governments and eliminate the department's surplus receipts, it is necessary to reduce the agent city and county percentage fee payment from 20% to 10% beginning with the license year that ends June 30, 2000. The public welfare necessitates that the department make this rule change by June 30, 2000. However, it is not possible to make this rule change by June 30 using normal rulemaking procedures. The department is, therefore, adopting this rule change by emergency rule, pending adoption by normal rulemaking procedures.

Publication Date: **June 30, 2000**
Effective Date: **July 1, 2000**
Expiration Date: **November 29, 2000**

3. Rules adopted creating **ss. ATCP 10.21 (1m) and 10.63 (1m)**, relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's disease).

Finding of Emergency

(1) Paratuberculosis, also known as Johne's disease, is an infectious and communicable disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

(2) 1989 Wis. Act 277 established a Johne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, s. 95.195, Stats., a seller implicitly warrants to a buyer that cattle and goats are free of Johne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne's disease at the time of sale, and the seller has *not* complied with applicable testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

(3) The "implied warranty" law protects buyers of cattle and goats, and gives sellers an incentive to test their animals for Johne's disease. A seller may avoid the "implied warranty" by testing and

disclosing. Testing is important for the ultimate control of this serious disease.

(4) 1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized the department of agriculture, trade and consumer protection ("DATCP") to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" no longer applies to *any* animals or diseases (including Johne's disease) unless DATCP identifies those animals and diseases by rule.

(5) DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne's disease in cattle and goats. The Legislature, in a related action, appropriated $100,000 in grant funds to help herd owners pay for Johne's disease testing in FY 2000–2001. DATCP has also adopted new Johne's disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. The new rules, contained in ss. 10.21 and 10.63, Wis. Adm. Code, clearly indicate DATCP's understanding and intent that the new law would apply to Johne's disease in cattle and goats. However, the new rules are technically flawed, in that they fail to state *explicitly* that the new law applies to Johne's disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of "permanent" remedial rules.

(6) This emergency rule is needed to resolve any possible challenge or uncertainty related to the coverage of the new "implied warranty" law. This emergency rule clarifies that the "implied warranty" law applies to Johne's disease in cattle and goats. This emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease of cattle and goats, will protect buyers of cattle and goats, will promote certainty in commercial transactions, and will prevent unnecessary litigation related to the applicability of the "implied warranty" law.

Publication Date: **June 30, 2000**
Effective Date: **July 1, 2000**
Expiration Date: **November 29, 2000**
Hearing Date: **July 27, 2000**

4. Rule adopted repealing **s. ATCP 134.06 (3) (c) note and creating s. ATCP 134.06 (3) (d)**, relating to residential rental practices.

Exemption From Finding of Emergency

On June 21, 2000, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) found that the "note" to s. ATCP 134.06 (3) (c) is actually a rule and directed DATCP to adopt the "note" as an emergency rule. According to s. 227.26 (2) (b), Stats., DATCP must promulgate the emergency rule under s. 227.24 (1) (a), Stats., within 30 days after the JCRAR directs DATCP to do so. Because the JCRAR has directed DATCP to adopt this emergency rule, DATCP is not required to make any other finding of emergency.

Analysis prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state landlord–tenant rules contained in ch. ATCP 134, Wis. Adm. Code. These rules affect over 1.5 million Wisconsin residents.

This emergency rule modifies current residential rental practices rules related to security deposit withholding. Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A "note" to s. ATCP 134.06 (3) (c) also states that a landlord may not withhold from a tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

Publication Date: **July 20, 2000**
Effective Date: **July 20, 2000**
Expiration Date: **December 18, 2000**

5. Rules adopted creating **ch. ATCP 16,** relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non–modified accredited" state.

Finding of Emergency

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis (M. bovis)*. It affects cattle, bison, deer, elk, goats and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts. Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

(2) Wisconsin is currently classified by the United States Department of Agriculture (USDA) as "accredited–free" for tuberculosis.

(3) The USDA recently reclassified Michigan from "accredited–free" to "non–modified accredited," reflecting a higher risk of bovine tuberculosis.

(4) A significant number of bovine animals, goats and cervids are imported to Wisconsin from Michigan each year.

(5) The last known case of bovine tuberculosis in cattle in Wisconsin was confirmed in an animal imported from Michigan.

(6) If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in this state.

(7) An emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin–raised animals.

Publication Date: **August 11, 2000**
Effective Date: **August 11, 2000**
Expiration Date: **January 8, 2001**
Hearing Date: **September 19, 2000**

EMERGENCY RULES NOW IN EFFECT (2)

Commerce

(PECFA – Chs. Comm 46–47)

1. Rules adopted creating **ch. Comm 46**, relating to "Petroleum Environmental Cleanup Fund Interagency Responsibilities," and relating to site contaminated with petroleum products from petroleum storage tanks.

Exemption From Finding of Emergency (*See section 9110 (3yu) 1999 Wis. Act 9)*

Analysis prepared by the Department of Commerce

Statutory authority: ss. 227.11 (2)(a) and 227.24 and s. 9110 (3yu)(b) of 1999 Wis. Act 9.

Statutes interpreted: ss. 101.143, 101.144, 292.11, and 292.31 and ch. 160

The proposed ch. Comm 46 is identical to ch. NR 746 that is being promulgated by the Department of Natural Resources.

Chapter Comm 46 provides that the Department of Natural Resources has authority for "high–risk sites" and that the Department of Commerce has authority for "low and medium risk sites." The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a "high–risk site" or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter Comm 46 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.

2. Determining when sites may close.

3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum–contaminated site.

4.Tracking the achievement of remediation progress and success.

5. Reporting of program activities.

Publication Date: **May 17, 2000**
Effective Date: **May 18, 2000**
Expiration Date: **September 1, 2000**
Hearing Dates: **June 15, July 10 & 12, 2000**
Extension Through: **October 30, 2000**

2. Rules adopted amending **s. Comm 47.53**, relating to appeals of decisions issued under the Petroleum Environmental Cleanup Act (PECFA) program.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department is receiving funds from a bonding initiative to enable it to issue approximately 3,500 decisions on applications for PECFA funding which had been awaiting the availability of funding. Because these decisions will be issued over a very short time frame, parties receiving decisions and law firms representing them, will be required to review and analyze a large volume of decisions to determine whether they wish to appeal specific departmental decisions. Given the large number of decisions and the normal rate of appeals, it is reasonable to expect that the public will be required to prepare and file a large volume of appeals within a short time period. Attorneys, lenders and consultants representing multiple claimants have expressed concern about the workload associated with having to review decisions and draft appeals on the higher volume of decisions issued by the department within the current 30 day window. The emergency rule temporarily expands the filing period from 30 days to 90 days to provide additional time to evaluate decisions and determine whether an appeal should be filed. The rule covers the time period when the highest volume of decisions are to be issued.

Publication Date: **February 15, 2000**
Effective Date: **February 15, 2000**
Expiration Date: **July 14, 2000**
Hearing Date: **March, 27, 2000**
Extension Through: **October 11, 2000**

EMERGENCY RULES NOW IN EFFECT

Health & Family Services
(Management, Technology, etc., Chs. HFS 1–)

Rules adopted creating **ch. HFS 10**, relating to family care.

Exemption From Finding of Emergency

The Legislature in s. 9123 (1) of 1999 Wis. Act 9 directed the Department to promulgate rules required under ss. 46.286 (4) to (7), 46.288 (1) to (3) and 50.02 (2) (d), Stats., as created by 1999 Wis. Act 9, but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

Analysis Prepared by the Department of Health and Family Services

Legislation establishing a flexible Family Care benefit to help arrange or finance long–term care services to older people and adults with physical or developmental disabilities was enacted as part of 1999 Wis. Act 9. The benefit is an entitlement for those who meet established criteria. It may be accessed only through enrollment in Care Management Organizations (CMOs) that meet requirements specified in the legislation.

The Act also authorizes the Department of Health and Family Services to contract with Aging and Disability Resource Centers to provide broad information and assistance services, long–term care counseling, determinations of functional and financial eligibility for the Family Care benefit, assistance in enrolling in a Care Management Organization if the person chooses to do so, and eligibility determination for certain other benefits, including Medicaid, and other services.

Until July 1, 2001, the Department of Health and Family Services is authorized to contract with CMOs and Resource Centers in pilot counties to serve up to 29% of the state's eligible population. Further expansion is possible only with the explicit authorization of the Governor and the Legislature.

When Aging and Disability Resource Centers become available in a county, the legislation requires nursing homes, community–based residential facilities, adult family homes and residential care apartment complexes to provide certain information to prospective residents and to refer them to the Resource Center. Penalties are provided for non–compliance.

These proposed rules interpret this new legislation, the main body of which is in newly enacted ss. 46.2805 to 46.2895, Stats. The Department of Health and Family Services is specifically directed to promulgate rules by ss. 46.286 (4) to (7), 46.288 (1) to (3), 50.02 (2) (d) and 50.36 (2) (c), Stats. Non–statutory provisions in section 9123 of 1999 Wis. Act 9 require that the rules are to be promulgated using emergency rulemaking procedures and exempts the Department from the requirements under s. 227.24 (1) (a), (2) (b) and (3) of the Stats., to make a finding of emergency. These are the rules required under the provisions cited above, together with related rules intended to clarify and implement other provisions of the Family Care legislation that are within the scope of the Department's authority. The rules address the following:

• Contracting procedures and performance standards for Aging and Disability Resource Centers.

• Application procedures and eligibility and entitlement criteria for the Family Care benefit.

• Description of the Family Care benefit that provides a wide range of long–term care services.

• Certification and contracting procedures for Care Management Organizations.

• Certification and performance standards and operational requirements for CMOs.

• Protection of client rights, including notification and due process requirements, complaint, grievance, Department review, and fair hearing processes.

• Recovery of incorrectly and correctly paid benefits.

• Requirements of hospitals, long–term care facilities and Resource Centers related to referral and counseling about long–term care options.

Publication Date: **February 1, 2000**
Effective Date: **February 1, 2000**
Expiration Date: **June 30, 2000**
Hearing Dates: **April 25, & 27, May 2, 4 & 8, 2000**
Extension Through: **October 27, 2000**

EMERGENCY RULES NOW IN EFFECT

Health & Family Services
(Community Services, Chs. HFS 30–)

Rules were adopted creating **ch. HFS 79,** relating to state supplemental security income payments.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of $140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department's need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and pricing information between the federal Social Security Administration and the Department and are not due to the Department's error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. The Department's inability to recover payments made in error will cost the Department about $10,000 per month. Developing and promulgating permanent administrative rules to address the Court's decision will require at least 7 months, thereby costing the Department approximately another $70,000. The Department deems this unanticipated expense a threat to the public welfare insofar as Wisconsin and federal taxpayers should not be called upon to shoulder the burden of these unanticipated and undeserved expenses. Therefore, the Department is promulgating this emergency rule until the Department can promulgate a similar permanent rule.

This emergency rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to again effectively administer both state and federal public welfare funding. By issuing this rule, the Department will effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

Publication Date: **September 5, 2000**
Effective Date: **September 5, 2000**
Expiration Date: **February 2, 2001**

EMERGENCY RULES NOW IN EFFECT

Health & Family Services
(Medical Assistance, Chs. HFS 101–108)

Rules adopted revising **chs. HFS 102, 103 and 108,** relating to the medicaid purchase plan.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This order creates rules that specify the manner in which a new program called the Medicaid Purchase Plan, established under s. 49.472, Stats., as created by 1999 Wis. Act 9, will operate. Under the Medicaid Purchase Plan, working adults with disabilities whose family net income is less than 250% of the poverty line are eligible to purchase Medical Assistance, the name given to Medicaid in Wisconsin, on a sliding–fee scale. The order incorporates the rules for operation of the Medicaid Purchase Plan into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the Medical Assistance program.

The Medicaid Purchase Plan is projected to provide health care coverage to 1,200 Wisconsin residents with disabilities by the end of Fiscal Year 2001.

Health care coverage under the Medicaid Purchase Plan is identical to the comprehensive package of services provided by Medical Assistance. Individuals enrolled in the Medicaid Purchase Plan would also be eligible for Wisconsin's home and community–based waivers under s. 46.27, Stats., provided they meet the functional criteria for these waivers.

Department rules for the operation of the Medicaid Purchase Plan must be in effect before the Medicaid Purchase Plan may begin. The program statute, s. 49.472, Stats., as created by Act 9, effective October 27, 1999, states that the Department is to implement the Medical Assistance eligibility expansion under this section not later than January 1, 2000, or 3 months after full federal approval, whichever is later. Full federal approval was received on January 7, 2000. The Department is publishing the rules by emergency order with an effective date of March 15, 2000 to meet the expected program implementation date and the legislative intent in order to provide health care coverage as quickly as possible to working people with disabilities.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate the Medicaid Purchase Plan and in the process provide more specificity than s. 49.472, Stats., as created by Act 9, regarding the non–financial and financial conditions of eligibility for individuals under the Medicaid Purchase Plan; define whose income is used when determining eligibility and the monthly premium amount; explain statutory conditions for continuing eligibility; explain how the monthly premium amount is calculated; describe the processes associated with the independence account; and set forth how the Department, in addition to providing Medical Assistance coverage, is to purchase group health coverage offered by the employer of an eligible individual or an ineligible family member of an eligible member for the Medicaid Purchase

Plan if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

Publication Date: **March 15, 2000**
Effective Date: **March 15, 2000**
Expiration Date: **August 12, 2000**
Hearing Dates: **June 15, 16, 19 & 20, 2000**
Extension Through: **November 27, 2000**

EMERGENCY RULES NOW IN EFFECT

Health & Family Services

(Health, Chs. HFS 110–)

Rules adopted revising **ch. HFS 119,** relating to the Health Insurance Risk–Sharing Plan (HIRSP).

Exemption From Finding of Emergency

Section 149.143 (4), Stats., permits the Department to promulgate rules required under s. 149.143 (2) and (3), Stats., by using emergency rulemaking procedures, except that the Department is specifically exempted from the requirement under s. 227.24 (1) and (3), Stats., that it make a finding of emergency. Department staff consulted with the Health Insurance Risk–Sharing Plan (HIRSP) Board of Governors on April 26, 2000 on the rules, as required by s. 149.20, Stats.

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP offers different types of medical care coverage plans for residents.

One type of medical coverage provided by HIRSP is the Major Medical Plan. This type of coverage is called Plan 1. Eighty–four percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 1 type. Plan 1 has Option A ($1,000 deductible) or Option B ($2,500 deductible). The rate increases for Plan 1 contained in this rulemaking order increase an average of 12.4%. Rate increases for specific policyholders range from 3.5% to 15.0%, depending on a policyholder's age, gender, household income, deductible and zone of residence within Wisconsin. This increase reflects industry–wide premium increases and takes into account the increase in costs associated with Plan 1 claims. According to state law, HIRSP premiums cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market. The average 12.4% rate increase for Plan 1 is the minimum increase necessary to maintain premiums at the lowest level permitted by law.

A second type of medical coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This type of coverage is called Plan 2. Plan 2 has a $500 deductible. Sixteen percent of the 8,427 HIRSP policies in effect in March 2000, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 18.2%. Rate increases for specific policyholders range from 7.5% to 21%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry–wide cost increases and adjust premiums to a level that more accurately reflects actual claim costs for Plan 2 policyholders.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP premium rates in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule. HIRSP premium rates must be calculated in accordance with generally accepted actuarial principles. Policyholders are to pay 60% of the costs of HIRSP.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2) (a) 3. and 4., Stats. With the approval of the HIRSP Board of Governors and as required by statute, the Department reconciled total costs for the HIRSP program for calendar year 1999. The Board of Governors approved a methodology that reconciles the most recent calendar year actual HIRSP program costs, policyholder premiums, insurance assessments and health care provider contributions collected with the statutorily required funding formula.

By statute, the adjustments for the calendar year are to be applied to the next plan year budget beginning July 1, 2000. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is $10,119,482. The total annual contribution to the HIRSP budget provided by an assessment on insurers is $9,898,358. On April 26, 2000, the HIRSP Board of Governors approved the calendar year 1999 reconciliation process and the HIRSP budget for the plan year July 1, 2000 through June 30, 2001.

Publication Date: **June 30, 2000**
Effective Date: **July 1, 2000**
Expiration Date: **November 29, 2000**

EMERGENCY RULES NOW IN EFFECT (3)

Natural Resources

(Fish, Game, etc., Chs. NR 1–)

1. Rules adopted revising **ch. NR 10,** relating to deer hunting in certain deer management units.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. This emergency rule is needed to control deer populations that are significantly over goal levels in order to prevent substantial deer damage to agricultural lands and forest resources, and to minimize deer nuisance problems, thereby protecting the public peace, health, safety and welfare. Normal rule–making procedures will not allow the establishment of these changes by August 1. Failure to modify the rules will result in excessively high deer populations well above established goal levels, causing substantial deer damage to agricultural lands and forest resources, and potential for disease.

Publication Date: **May 15, 2000**
Effective Date: **August 4, 2000**
Expiration Date: **January 1, 2001**

2. Rules adopted revising **ch. NR 10,** relating to the 2000 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule–making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule–making procedures will not allow the establishment of these changes by September 1. Failure to modify the rules will result in the failure to

provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date:	**September 1, 2000**
Effective Date:	**September 1, 2000**
Expiration Date:	**January 29, 2001**
Hearing Date:	**October 16, 2000**

3. Rules adopted creating **s. NR 1.445** and revising **ch. NR 51**, relating to the stewardship program.

Exemption From Finding of Emergency

Emergency rules are necessary for the department to act as authorized under s. 23.0917, Stats., as created by 1999 Wis. Act 9. According to section 9136(10g) of this Act, the department is not required to make a finding of emergency or provide evidence that promulgating this emergency rule is necessary for the preservation of public peace, health, safety or welfare. In addition, the emergency rules promulgated under this authority remain in effect until June 30, 2001, or until the date on which the corresponding permanent rules take effect, whichever is sooner.

Analysis Prepared by the Department of Natural Resources:

Statutory authority: ss. 227.11(2), 227.24, Stats, and s. 9136 (10g), 1999 Wis. Act 9

Statutes interpreted: ss. 23.09(19), (20) and (20m), 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23.175, 23.197, 23.27, 23.29, 23.295, 30.24 and 30.277, Stats.

The emergency rule:

• Implements a statutory change that requires the department to obtain county approval for acquisitions in counties where greater than 66% of the land is publicly owned.

• Moves three stewardship grant programs (local park aids, urban green space, and urban rivers) from ch. NR 50 to ch. NR 51. Improves grant administration by combining all stewardship grant programs into one chapter.

• Revises and expands program definitions, including definitions for nature–based outdoor recreation and middle kettle moraine, to clarify terms, reflect statutory changes and improve grant administration.

• Implements a statutory change that expands grant eligibility to include non 501(c)(3) organizations.

• Reorganizes the structure of chapter 51 to incorporate new programs and local government programs.

• Implements statutory changes that identify priorities and expand the purposes for which nonprofit conservation organizations can receive grants. Makes minor revisions to improve grant administration.

• Makes minor revisions to bring the natural areas program in line with statutory changes.

• Establishes the administrative framework for the new bluff protection program. Defines "bluff" and sets program priorities.

• Makes minor revisions in the habitat areas and fisheries program to bring the program in line with statutory changes and improve grant administration.

• Establishes the administrative framework for acquisition of property by the department and nonprofit conservation organizations to preserve wild lakes. Defines "wild lake."

• Makes minor revisions to the stream bank program to bring the program in line with statutory changes.

• Makes minor revisions to the state trails program to improve grant administration.

• Implements a statutory change that makes nonprofit conservation organizations eligible for grants for state property development. Revises grant priorities and makes minor revisions to improve administration of the state property development grant program.

• Establishes the administrative framework and sets priorities for the new Baraboo Hills subprogram.

• Clarifies and streamlines the administration of local assistance grants to governmental units.

• Clarifies and streamlines the administration of the local park aids, urban green space, and urban rivers grant programs which provide grant funds for governmental units and nonprofit conservation organizations. Implements statutory changes that require that all grants issued under these programs be for nature–based outdoor recreation. Lists eligible nature–based projects and sets grant priorities. Also implements a statutory change that allows "shoreline enhancements" to be funded under the urban rivers program and provides a list of typical shorelines enhancements that will qualify for the program.

• Establishes the administrative framework for the new acquisition of development rights program that provides grant funds to local governments and nonprofit conservation organizations. Sets priorities and identifies other factors that will be considered in awarding grants.

• Makes minor revisions to improve administration of the Heritage state park and forest trust program.

Publication Date:	**September 1, 2000**
Effective Date:	**September 1, 2000**
Expiration Date:	**See section 9136 (10g), 1999 Wis. Act 9**
Hearing Dates:	**November 1 & 2, 2000**

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection – General, Chs. NR 100–)

Rules adopted creating **ch. NR 168**, relating to the brownfield site assessment grant program administration.

Finding of Emergency

This rule implements the brownfield site assessment grant program. Created in the 1999–2000 biennial state budget bill (1999 Wisconsin Act 9), the brownfield site assessment grant program provides grants to eligible local governments to cover the costs of brownfield site assessment activities such as: investigating environmental contamination of an eligible site or facility; demolishing structures located on an eligible site; removing certain abandoned containers; abating asbestos as part of demolition activities; removing underground hazardous substance storage tank systems; and removing underground petroleum product storage tank systems. Eligible local governments include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. The legislature appropriated $1.45 million for the 99–01 biennium for these grants. Local governments are required to contribute matching funds as cash or in–kind, or both, equal to 20% of the grant. This rule limits the amount of funds that may be awarded for eligible activities. The rule specifies that 70% of available funds are to be allocated to "small" grants (i.e. a grant award between $2,000 and $30,000); and 30% of available funds are to be allocated to "large" grants (i.e. a grant award of more than $30,000 but not more than $100,000). Act

9 required that the department promulgate these rules as necessary to administer the program, and directed the department to promulgate them as emergency rules.

Publication Date: July 10, 2000
Effective Date: July 10, 2000
Expiration Date: December 8, 2000

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection–Investigation and Remediation, Chs. NR 700–)

Rules adopted revising **chs. NR 700, 716, 720, 722, 726 and creating ch. NR 746**, relating to site contaminated with petroleum products discharged from petroleum storage tanks.

Exemption From Finding of Emergency *(See section 9110 (3yu) 1999 Wis. Act 9)*

The proposed ch. NR 746 is identical to ch. Comm 46 that is being promulgated by the Department of Commerce.

Chapter NR 746 provides that the Department of Natural Resources has authority for "high–risk sites" and that the Department of Commerce has authority for "low and medium risk sites." The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a "high–risk site" or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter NR 746 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.

2. Determining when sites may close.

3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum–contaminated site.

4. Tracking the achievement of remediation progress and success.

5. Reporting of program activities.

The amendments and new provisions that are proposed to be added to chs. NR 700, 716, 720, 722 and 726, as part of this rule package, consist of cross–references to ch. NR 746 that are proposed to be inserted in chs. NR 700, 716 and 726, and exemptions from the requirements in chs. NR 720 and 722 that would conflict with the requirements in ch. NR 746: that is, an exemption from the soil cleanup standards in ch. NR 720 and the remedial action option evaluation requirements in ch. NR 722 for those sites contaminated with petroleum products discharged from petroleum storage tanks that satisfy the risk criteria in s. NR 746.06 and are eligible for closure under s. NR 746.07.

Publication Date: May 17, 2000
Effective Date: May 18, 2000
Expiration Date: September 1, 2000
Hearing Dates: June 15, July 10 & 12, 2000
Extension Through: October 30, 2000

EMERGENCY RULES NOW IN EFFECT

Public Service Commission

Rules adopted amending **s. PSC 116.03(4) and creating s. PSC 116.04(6),** relating to the definition of fuel and permissible fuel costs.

Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend ch. PSC 116 Wis. Adm. Code. Amending the definition of "fuel" in s. PSC 116.03(4) and creating s. PSC 116.04(6) would allow investor–owned utilities the ability to incorporate the cost of voluntary curtailment into the cost of fuel to increase the reliability of electric service in Wisconsin for the summer of 2000 and beyond. This change would assist in implementing the requirement of 1999 Wis. Act 9, s. 196.192(2)(a), Stats.

Publication Date: June 5, 2000
Effective Date: June 5, 2000
Expiration Date: November 2, 2000

EMERGENCY RULES NOW IN EFFECT

Regulation and Licensing

Rules adopted revising **chs. RL 90 to 92**, relating to educational and examination requirements for massage therapists and bodyworkers.

Exemption From Finding of Emergency

Section 2 of 1999 Wis. Act 98 states that the department is not required to make a finding of emergency and that the department need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules.

Analysis Prepared by the Department of Regulation and Licensing:

Statutory authority: s. 227.11 (2), Stats., and s. 440.982 (1) (b), Stats., as amended by 1999 Wis. Act 98.

Statutes interpreted: ss. 440.03 (1) and 440.982 (1) (a) and (b), Stats.

The emergency rule revision to chs. RL 90, 91 and 92 is necessary to implement 1999 Wis. Act 98, relating to educational and examination requirements for massage therapists and bodyworkers. The rules redefine an approved course of instruction to state that a course of instruction may now be approved by the department in addition to being offered by a school approved by the Educational Approval Board under s. 45.54, Stats. Prior to 1999 Wis. Act 98, an approved course of instruction could only be offered by a school approved by the Educational Approval Board.

The rules provide that a course of instruction approved by the department is either: (1) an associate degree program, or a vocational diploma program in massage therapy or bodywork offered by a technical college, or (2) a course of instruction in massage therapy or bodywork offered by a school accredited by an accrediting agency recognized by the U.S. Department of Education, or the Commission on Massage Training Accreditation.

An approved course of instruction must also meet the minimum requirements set forth in s. RL 92.02 (5), consisting of 600 classroom hours satisfying the subject area requirements listed in that section. Additional amendments renumber those remaining sections where affected.

SECTIONS 2, 4 and 6 create definitions of accrediting agency, associate degree program and vocational diploma program.

SECTION 3 renumbers and amends a provision to allow the department to approve a course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 7 amends the introduction to s. RL 91.01, removing a reference to a section that is deleted.

SECTION 8 repeals a provision relating to a registration that is no longer offered.

SECTION 9 renumbers and amends a provision relating to an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 11 renumbers and amends provisions relating to successful completion of examinations required for registration.

SECTION 13 amends a provision relating to the submitted proof pertaining to completion of an approved course of instruction authorized by s. 440.982 (1) (b), Stats.

SECTION 14 repeals a reference to a formerly approved course of instruction and creates a provision that a course of instruction from a school that is not approved by the educational approval board be from a school that is either a technical college or accredited by an accrediting agency.

SECTION 15 amends provisions to require evidence that the applicant completed a course in adult cardiopulmonary resuscitation.

Publication Date: **September 3, 2000**
Effective Date: **September 3, 2000**
Expiration Date: **January 30, 2001**
Hearing Date: **October 3, 2000**

EMERGENCY RULES NOW IN EFFECT (2)

Revenue

1. Rules were adopted revising **ch. WGC 61,** relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections 565.02 (4)(g) and 565.10 (14)(b)3m., Stats., as created by 1999 Wis. Act 9, provide for the implementation of a retailer performance program, effective January 1, 2000. The program may be implemented only by the promulgation of rules.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. The retailer performance program is being implemented retroactively to January 1, 2000, pursuant to Section 9443 (1) of 1999 Wis. Act 9.

Publication Date: **March 3, 2000**
Effective Date: **March 3, 2000**
Expiration Date: **July, 31, 2000**
Hearing Date: **May 31, 2000**
Extension Through: **October 31, 2000**

2. Rules were adopted creating **s. Tax 9.69,** relating to the Master Settlement Agreement between the state of Wisconsin and tobacco product manufacturers.

Exemption From Finding of Emergency

Under a nonstatutory provision in 1999 Wis. Act 122, the Department of Revenue is authorized to promulgate an emergency rule. The emergency rule is for the purpose of setting forth the requirements and methods to be used to ascertain the amount of Wisconsin excise tax paid each year on cigarettes of each tobacco product manufacturer that elects to place funds in a qualified escrow fund or, if the department deems it appropriate, is a participating manufacturer under the Master Settlement Agreement between the state and tobacco product manufacturers. The emergency rule shall cover the period from the effective date of 1999 Wis. Act 122, May 23, 2000, to the date a permanent rule becomes effective. (Note: The department is required under s. 895.10 (4), Stats., as created by 1999 Wis. Act 122, to promulgate a rule and is required under a nonstatutory provision to submit a proposed permanent rule to the Legislative Council by September 1, 2000.)

A nonstatutory provision in 1999 Wis. Act 122 provides that the department is not required to provide a finding of emergency or to provide evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare.

The rule is therefore promulgated as an emergency rule without a finding of emergency and without evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The rule shall take effect upon publication in the official state newspaper and shall apply retroactively to sales of cigarettes on or after May 23, 2000, as provided in s. 895.10 (2) (intro.), Stats., as created by 1999 Wis. Act 122. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

Publication Date: **August 17, 2000**
Effective Date: **August 17, 2000**
Expiration Date: **January 14, 2001**
Hearing Date: **September 18, 2000**

EMERGENCY RULES NOW IN EFFECT

Workforce Development
(Economic Support, Chs. DWD 11–59)

Rules adopted creating **s. DWD 12.28**, relating to Wisconsin works disregard of year 2000 census income.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to establish additional eligibility criteria and specify how eligibility criteria are to be administered for the Wisconsin Works (W–2) program. The department is promulgating a rule to exclude income earned from temporary employment with the U.S. Census Bureau in determining W–2 and child care eligibility and child care copayments. The rule will contribute to the welfare of the people of Wisconsin by broadening the pool of available workers to help ensure an accurate Census count, particularly in low–income neighborhoods. The rule must be effective immediately because temporary Census employment is expected to begin April 2000 and last two to six months. DWD will not be seeking a permanent rule on this issue.

Publication Date: **April 9, 2000**
Effective Date: **April 9, 2000**
Expiration Date: **September 6, 2000**
Hearing Date: **May 15, 2000**
Extension Through: **November 4, 2000**

STATEMENTS OF SCOPE OF PROPOSED RULES

Health and Family Services (Health, Chs. HFS 110––)

Subject:

Ch. HFS 133 – Relating to licensing of home health agencies.

Description of policy issues:

Description of objectives:

The objectives of the proposed rules are to:

1. Modify the existing license fee methodology to ensure an adequate and stable funding source to support the home health licensing program;

2. Update the rule with policies already implemented in statewide variances via bureau memos BQC–94–046 regarding who can perform employee tuberculosis screening, DSL–BQA–99–028 regarding timelines for getting a countersignature on oral physician's orders, and BQC–94–071 regarding contracted nursing services;

3. Specify the Department's requirements for home health agencies regarding discharge of patients; and

4. Update the rule with a license requirement similar to the Health Care Financing Administration (HCFA) requirement that states a home health agency must serve a minimum number of skilled care patients in order to be eligible for initial Medicare certification.

Description of policies – relevant existing policies, proposed new policies and policy alternatives considered:

Existing policies. 1. *Fees.* The contributing factors to the Department's inability to maintain a stable and equitable funding source for home health licensure are the methodology for assessing license fees and the allocation of cost for survey and certification. The current method for license fee assessment relies on self–reported net income statements from home health agencies. This method allows a home health agency to make deductions from gross patient revenue that are difficult for the Department to administer and monitor. As a result of this method, the majority of licensed home health agencies pay the $500 minimum for license renewal, even though some have gross revenue of $5,000,000 or more.

The second factor contributing to the unstable funding relates to the cost of survey and certification. Under this program, the cost of surveying and certifying Medicare–participating home health agencies is allocated 82 percent to Medicare and 18 percent to Appropriation 625, the state home health licensure revenue appropriation. The Department must bear 18 percent of the cost to certify a Medicare–participating home health agency because the Health Care Financing Administration (HCFA) prohibits states from allocating home health–related costs to Medicaid. Other costs allocated to Appropriation 625 are those associated with the 30 non–Medicare home health agencies whose licensing and survey costs are funded completely by Appropriation 625.

2. *Incorporation of statewide variances.* a. 'Employee tuberculosis screening.' In the current rule, every employee who will have direct patient contact shall be screened and found free from tuberculosis within 90 days of beginning work. In addition, only a physician or physician's assistant shall certify the employee was screened. The language in current rule does not allow the home health agency to obtain certification from a registered nurse, which is a common and acceptable practice. The language in current rule also limits when the screening may occur and does not take into account those employees who transitioned from a position where there was no direct patient contact to one where there is direct patient contact. On June 28, 1994, the Bureau of Quality Assurance issued BQC–94–046 "Statewide variance of s. HSS 133.06 (4) (d) 1" that allows a registered nurse to perform the tuberculosis screening, read the screening results and certify that the employee has been screened for tuberculosis.

b. 'Physician's orders.' In the current s. HFS 133.20 (4), it states, "The nurse or therapist shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 days." On May 10, 1999, the bureau granted a statewide variance of this rule that allowed home health agencies to obtain this signature within 20 calendar days rather than 10 days. Before issuing DSL–BQA–99–028, the industry indicated that 10 days was not sufficient time to obtain this signature.

c. 'Contracted nursing services.' Current language in s. HFS 133.10 (1) states the home health agency shall directly provide at least part time or intermittent nursing services, but does not allow the agency to arrange for these services through another source. On November 25, 1994, the Department issued a statewide variance for s. HSS 133.10 (1) via bureau memo BQC–94–071 that allows the home health agency to contract for nursing services. The variance does stipulate that a contracted nurse may not be utilized in supervisory nursing assignments.

3. *Discharge requirements.* The requirements for discharging a patient from a home health agency's care can be found in s. HFS 133.09 (3). The current language gives the circumstances in which a patient can be discharged, but does not specify the agency's responsibilities at the time of discharge. This portion of the rule has raised many provider questions and has required repeated clarification of Department expectations that are not specified in this rule.

4. *Minimum skilled services patients.* In 1998, HCFA began requiring that home health agencies serve a minimum of 10 skilled care patients for initial Medicare certification. In addition, HCFA began requiring that a home health agency serve at least 7 active skilled care patients at the time of the on–site survey to allow surveyors to assess the quality of care being provided. When first implemented, this requirement was communicated by the Department to all home health agencies in this state in Bureau of Quality Assurance memos 98–008 and subsequently in DSL–BQA–99–029. Chapter HFS 133 needs to incorporate a similar requirement in our state's administrative code.

Proposed new policies. 1. *Fees.* The Department proposes updating terminology from "annual net income" to "patient fee revenue" to reduce the confusion created with the use of the term net income and proposes modifying its methodology for determining a license fee for a home health agency. The new method for determining a license fee would allow fewer deductions from gross patient revenue. This would create a methodology that would:

a) Be easier to administer and monitor;

b) Establish an adequate and stable funding source for this program; and

c) Create an equitable basis for assessing licensing fees.

2. *Incorporation of statewide variances.* A. 'Employee tuberculosis screening.' The Department proposes incorporating the statewide variance issued in BQC–94–046 "Statewide variance of s. HSS 133.06 (4) (d) 1." that allows a registered nurse to perform employee tuberculosis screening, read the screening results and certify that the employee has been screened for tuberculosis. In addition, s. HFS 133.06 (4) (d) 1. will remove the requirement that the screening be performed "within 90 days before beginning work" and replace it with "no more than 90 days prior to direct patient contact." This change provides greater flexibility for the entity regarding employee health screening and takes into consideration those employees who transition from a position with no direct patient contact to one with direct patient contact.

b. 'Physician's orders.' The Department proposes incorporating DSL–BQA–99–028 "Statewide variance of HSS 133.20 (4) Physician's Orders" issued on May 10, 1999. This variance allows a home health agency to obtain a physician's countersignature on oral orders within 20 calendar days rather than 10 days as currently stated in s. HFS 133.20 (4).

c. 'Contracted nursing services.' The Department proposes incorporating BQC–94–071 regarding contracted nursing services issued on November 25, 1994. This statewide variance of "HFS 133.10 (1) Required service" allows the home health agency to contract for nursing services, but does not allow a contracted nurse to be utilized in supervisory nursing assignments. In addition, proposed language will require contracted nurses to follow requirements for contracting, health screening, orientation and training already prescribed in ss. HFS 133.19 and 133.06 (4) (a), (d) and (e) and will specify that a contracted nurse only be assigned duties for which he or she is licensed and trained.

3. *Discharge requirements.* The Department proposes new language in s. HFS 133.09 (3) that would specify what the Department expects of a home health agency whenever a patient is discharged. Specifically, language will be drafted that requires agencies to give advanced notice of the discharge, except in specific circumstances and notify patients of their right to appeal a discharge decision.

4. *Minimum skilled services patients.* The Department will incorporate a requirement similar to that established by HCFA that states a home health agency must serve a minimum number of patients who need skilled services in order to be eligible for initial Medicare certification and licensure as a home health agency in this state. A minimum patient requirement should facilitate surveyor decision–making for initial licensure by giving the entity sufficient opportunity to demonstrate operational capability to influence positive patient outcomes and quality of care.

Alternative policies considered. 1. *Fees.* The Department has explored alternative funding sources for this program to no avail. The Department of Administration does not support additional GPR to fund this program. The Department has also considered eliminating the survey and certification of the 30 non–Medicare home health agencies in this state, but this would not significantly reduce the costs to this program and may jeopardize the health, safety and welfare of patients. This leaves increasing program revenue as the only alternative to adequately fund this program.

2. *Incorporation of statewide variances.* The Department has not considered any further alternatives to the statewide variances issued in BQC–94–046, DSL–BQA–99–028, or BQC–94–071. These variances were originally granted because the industry and Department had reevaluated these rules and found them impractical. The requirements granted in these variances have proven worthy of incorporating into the rule. More specifically, the variance for contracted nursing services takes into consideration that HCFA only requires a home health agency to provide one skilled service directly in its entirety and the difficulties agencies are experiencing due to the shortage of nurses.

3. *Discharge requirements.* The Department has not considered other alternatives to the proposed discharge requirements. One of the Department's ongoing objectives is to establish consistent requirements when possible. Language will be proposed that is similar to that used in other Department rules for licensure and certification and therefore meets the Department's objective for consistency. In addition, the home health industry supports clarification of our expectations in rule to protect agencies' liability and consumer rights.

4. *Minimum skilled services patients.* The Department has not considered alternative policies, since requiring agencies to demonstrate the operational capacity to provide positive patient outcomes and quality of care to patients needing skilled care before being licensed is a useful means of facilitating surveyor decision–making for initial licensure.

Statutory authority:

The Wisconsin Department of Health and Family Services is given authority to revise these rules in s. 50.49 (2) (a) and (b), Stats. The language in s. 50.49 (2) (a), Stats., states, "The department may develop, establish and enforce standards for the care, treatment, health, safety, welfare and comfort of patients by home health agencies and for the maintenance and operation of home health agencies which, in light of advancing knowledge, will promote safe and adequate care and treatment of such patients by home health agencies."

The language in s. 50.49 (2) (b), Stats., states, "The department shall, by rule, set a license fee to be paid by home health agencies."

Estimates of staff time and other resources needed to develop the rules:

The Department estimates it will take 15–20 hours of staff time to draft and review language in preparation for Department review.

Contact information:

If you have specific questions or comments regarding the proposed rule–making, please contact:

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Insurance, Commissioner of

Subject:

Ch. Ins 19 – Relating to privacy of consumer financial and health information.

Description of policy issues:

A statement of the objective of the proposed rule:

The objective of the proposed rule is to promulgate standards governing the treatment of nonpublic personal financial and health information by licensees.

A description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Section 610.70, Stats., concerns the disclosure of personal medical information; however, recent federal legislation requires state insurance regulators to modify and expand some privacy protections. This rule will preserve Wisconsin's current privacy protections and expand them as made necessary by recent developments. This rule will not take effect until **July 1, 2001**.

A statement of the statutory authority for the rule:

Sections 601.41 (3) and 628.34 (12), Stats.

An estimate of the amount of time state employees will spend to develop the rule and a description of other resources necessary to develop the rule:

100 hours.

Contact information:

For additional information, please contact:

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Public Service Commission

Subject:

PSC Code – Relating to rules governing confidential handling of records [Docket No. 1–AC–201].

Description of policy issues:

Subject:

The proposed rule would establish policies and procedures for handling requests that the Commission keep designated records confidential, as provided for in the exemptions in the Public Records Law. Relevant statutes include ss. 19.31, 16.955, 19.36 (4) and (5), 23.27 (3) (b), 44.02 (23), 44.48 (1) (c), 157.70 (2) (e), 196.025 (3), 196.14, 196.72 (1) (b), and 196.795 (9), Stats., and 18 USC s. 1832.

Description of objective and policy issues:

Under the Public Records Law, all "records" as defined in s. 19.32 (2), Stats., are presumptively open for public inspection. The Public Records Law, along with other statutes, however, exempt disclosure under certain circumstances. The objective of this proceeding is to promulgate rules for confidential handling of records claimed to be exempt by the filer.

Under current Commission guidelines, documents and other records may be confidentially filed with a request for confidential handling. When a person makes a request for such records, the Commission allows the filer to justify withholding public access.

In this proceeding, the Commission will consider rules governing when a record should be exempt from disclosure under the Public Records Law and other statutes. The rules may also codify a process for requesting and justifying confidential handling within the Commission, and procedures and standards for evaluating claimed exemption from disclosure.

Statutory authority:

Sections 196.02 (1) and (3) and 227.11, Stats.

Estimate of time and resources needed to develop the rules:

The Commission estimates that approximately 500 hours of employee time will be required to develop the rules. No additional resources are likely to be needed in order to complete this project.

Contact information:

If you have any questions, please contact:

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or

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SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Corrections

Rule Submittal Date

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on September 25, 2000, the Department of Corrections submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule–making order affects ch. DOC 302, relating to classification, to assessment and evaluation, and to program review of inmates.

Agency Procedure for Promulgation

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The agency organizational unit primarily responsible for the promulgation of the proposed rule is the Division of Adult Institutions.

Contact Information

If you have questions, please contact:

Julie Kane
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Professional Geologists, Hydrologists and Soil Scientists Examining Board

Rule Submittal Date

On September 19, 2000, the Examining Board of Professional Geologists, Hydrologists and Soil Scientists submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b), 15.405 (2m) and 227.11 (2), Stats.

The proposed rule–making order affects s. GHSS 1.07, relating to authorizing the Board to form a rules committee.

Agency Procedure for Promulgation

A public hearing is required and will be held on Tuesday, October 31, 2000 at 9:45 a.m. in Room 180 at 1400 East Washington Ave., Madison, Wisconsin.

Contact Information

If you have questions, please contact:

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NOTICE SECTION

Notice of Hearings

Corrections

[CR 00–79]

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 302.07, 302.08, 302.11 (2) and 302.04, Stats., the Department of Corrections proposes a revision to ch. DOC 306, relating to security.

Hearing Information

The public hearings will be held as follows:

Date & Time	Location
November 6, 2000 Monday 10:00 a.m.	**Conference Room 129 State Office Building 141 N. W. Barstow St. WAUKESHA, WI**
November 7, 2000 Tuesday 12:00 p.m. (noon)	**Room 041, GEF #3 State Office Building 125 South Webster St. MADISON, WI**
November 8, 2000 Wednesday 11:00 a.m.	**Room 136 State Office Building 1681 2nd Avenue South WISCONSIN RAPIDS, WI**

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

Some provisions of the Department of Corrections administrative rule relating to security have not been updated since the rule was created in 1980. With over 20 years of experience working with the rule, the Department proposes to update the rule.

BACKGROUND

Chapter DOC 306 governs security standards and practices at state correctional institutions. As technology, science, population and government evolve over time, security standards and practices must adapt to those changes. We ultimately grow wiser and more efficient based on new knowledge and procedures. What was thought routine, necessary or even effective correctional practice in 1980 may not be accurate today.

For example, the Wisconsin prison population has grown from 1,930 in 1976 to more than 18,000 in 2000, and has a projected population of more than 27,000 in the year 2001. This enormous increase in prisoners, along with their increased level of sophistication, has placed a greater burden on correctional staff and has created the possibility for a more hazardous environment. In many ways, wardens and staff no longer enjoy the luxury of time that once afforded them the ability to maneuver bureaucratic requirements. Correctional staff must now make urgent decisions regarding the best way to ensure staff, inmate and visitor safety and security. These situations and decisions are infinitely different from those of 20 years ago when the current rule was promulgated. The changes in this rule make it possible for inmate rights and needs to be protected without compromising institution security.

DEFINITIONS

• Removes the definitions for "Director of the bureau of correctional health services," "Administrator of the division of program services," "Division of program services," "CN chloroacetophenone and CS–o–chlorobenzyl malononitrile."

• Adds definition of "Authority," and "Issuance of firearms," adds "X–ray" to definition of "body cavity search," and adds "hair, fingernails, saliva, or semen" to definition of "body contents search".

• Changes the terms "Voluntary Confinement" to "Protective Confinement," "chemical agent" to "incapacitating agent," and changes the definition of "Superintendent" to "Warden".

REPORTS/RECORDS/PLANS

Throughout this rule change, requirements regarding keeping reports, records, and plans are maintained, while the enumerated contents are eliminated. The Department's Internal Management Procedures will dictate what information is necessary and these documents will continue to be kept in a consistent manner. The following is a list of the changes in this rule:

• Maintains requirement for an incident report, but removes language dictating the contents of the report.

• Maintains requirement for a report regarding escape, but removes language detailing information required to be included in the report.

• Maintains requirement for staff to provide report on a visitor search, but deletes enumerated requirements of the report.

• Maintains requirement that the institution keep a record of the use of restraints, but removes language listing what information the record must contain.

• Maintains requirement that a record of search be kept, but deletes language specifying material that must be included in the report.

• Maintains requirement for institution plans regarding escape, but removes requirement that the plans are filed with the administrator and removes language specifying the contents of the plan.

• Maintains requirement for emergency preparedness and disturbance plans, but deletes language detailing the contents.

PROTECTIVE CONFINEMENT

By removing the requirements that an inmate remain in protective confinement for at least 72 hours unless security director approves prior release and that the inmate be released automatically after the 72 hours, this rule clarifies that determining the length of stay in protective confinement is the security director's role. In order to facilitate protection of inmates at risk, this rule removes the artificial figure of 72 hours and grants the security director the ability to regulate protective placement as long as the inmate remains at risk.

ISSUANCE AND USE OF FIREARMS

This rule allows an authority other than the Warden to issue firearms to staff and recognizes that circumstances arise within the institution where the warden may be unavailable at a time when firearms must be issued in order to maintain security. This rule change provides a process whereby designated staff may have authority to act in the warden's absence. DOC Security Internal Management Procedures and Emergency Preparedness Manual will specify the line of succession and circumstances under which firearms authorization may occur.

This rule requires that staff actions prior to discharging a firearm are consistent with mandated comprehensive and uniform training requirements.

INCAPACITATING AGENTS

Science changes so rapidly and now provides us with a wider variety of incapacitating agents that are often times safer and more effective in controlling inmates. Department Security Internal Management Procedures will provide a wider variety of situation–appropriate alternatives in a graduated force option

continuum. DOC is no longer limited to the narrow selection of "chemicals" enumerated in the current rule and it is futile, given science's speedy advances, to attempt to continue enumerating incapacitating agents within the rule.

To ensure safety and proper application, this rule requires that only trained staff use incapacitating agents and grants general authority for their use under certain circumstances. The current rule reads so as to allow any staff member, even those not trained in the use of these agents, to use an incapacitating agent so long as it is done in the presence of a trained staff member. This rule ensures that the staff member actually administering or using the agent is properly trained, thereby ensuring greater safety to those involved in the situation.

This rule requires that the Division of Adult Institutions provide incapacitating agent training which includes safe handling, legal use, division policies and procedures, fundamentals of using and when incapacitating agents may and shall be used. In light of this requirement, the language dictating the procedure for using incapacitating agents is unnecessary and is removed.

The rule adds the following as situations for which staff may use incapacitating agents:

a. To apprehend an inmate who has escaped;

b. To change the location of an inmate;

c. To control a disruptive inmate;

d. To prevent unlawful damage to property; or

e. To enforce a departmental rule, policy or procedure or an order of a staff member.

MECHANICAL RESTRAINTS

This rule permits use of mechanical restraints to immobilize inmates for the protection of property. Occasionally, highly destructive inmates do considerable damage to state and personal property. For example, inmates already in segregation manage to destroy light fixtures, plumbing, electrical boxes, windows, etc. This type of destruction is not only costly, but obviously jeopardizes the welfare of staff and inmates. Such inmates also use this behavior to create weapons and escape confinement.

Recognizing a need in today's changing institutions, this rule permits Wardens the discretion in determining if security warrants use of mechanical restraints for movement within the institution. Situations in which the mechanical restraints are necessary for movement within the institution are too numerous and various to attempt listing in the rule. To do so would unnecessarily and unduly limit the ability of the Warden to ensure safety and security within the institution by responding to individual circumstances with the appropriate security measures. For example, mechanical restraints may be necessary during institution lock–downs, inclement weather such as severe fog, electrical blackouts, etc. There are a number of situations that may be unanticipated and due to circumstances beyond the Department's control. The Warden must have the ability to react in these situations.

ESCAPES

To ensure staff safety and limit liability, staff may no longer be authorized to use their own cars to pursue escapees.

SEARCH

This rule changes institution searches from permissive to mandatory and establishes the Department's clear intention to periodically search entire institutions.

The effectiveness and validity of this type of search is dependent upon eliminating the requirement that inmates be given advance notice. Searches are considered a regular and necessary part of maintaining institution security and this rule removes the administratively burdensome requirement for housing unit supervisors or shift supervisors to authorize searches of inmate living quarters.

The current rules allow inmates to conceal contraband under the guise of "legal material" by forbidding staff to read and review this alleged legal material. This rule will allow staff, during a living quarters search, to examine legal materials to the extent necessary to determine that the item is, in fact, legal material and does not contain contraband.

This rule enumerates circumstances under which a strip search may be conducted and expands the reasons for conducting a body contents search.

This rule adds "biological specimen analysis" as a type of search in response to new laws allowing and/or requiring certain testing such as DNA.

This rule maintains the requirement that staff have reasonable grounds to search an inmate, but eliminates listed factors for staff to consider in deciding if reasonable grounds exist. Such factors will continue to be the subject of staff training and detailed in the Department's internal policies and procedures.

This rule deletes the arbitrary recommendations for consideration in determining whether or not to conduct a search. This determination is best left to the Department's policies and procedures due to the changing circumstances and the variety of situations correctional staff encounter in today's institutions.

This rule also deletes the requirement that the security director of each correctional institution submit monthly reports to the administrator regarding seized contraband. These reports continue to be maintained at institutions and the Administrator has access to these reports on demand. To continue keeping records at DOC Central Office, in addition to the institutions, would be redundant and an unnecessary use of time and resources.

VISITORS

Allows institutions the option to store visitors' personal property that may not be carried into the institution. There may be instances when visitors have too much personal property to be securely stored given minimal space and resources available.

This rule requires Warden approval for strip searches or personal searches of visitors.

PERSONS UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES

Occasionally, visitors are found with drugs, or become disruptive due to apparent influence of intoxicating substances. The Warden currently has statutory authority to arrest and detain under s. 301.29(2) Wis. Stats. In practice, the Department does not have arresting protocols and therefore handles these procedures through law enforcement. This rule allows the Warden to deny a visit and to detain a visitor and inform law enforcement if the visitor appears to be under the influence of an intoxicating substance. This rule also allows the Warden to detain staff members, and to notify law enforcement, who appear to be under the influence of an intoxicating substance.

Text of Rule

SECTION 1. Chapter DOC 306 is repealed and recreated to read:

Chapter DOC 306

SECURITY

DOC 306.01 Applicability and purpose. Pursuant to authority vested in the department by ss. 301.02, 301.03 (2), 302.07 and 227.11 (2), Stats., the department adopts this chapter for purposes of establishing security standards and practices at state correctional institutions.

DOC 306.02 Definitions. In this chapter:

(1) "Administrator" means the administrator of the division or designee.

(2) "Authority" means the highest–ranking individual available in the institution, based on the written institution line of succession.

(3) "Bodily injury" means physical injury, illness, or any impairment of physical condition.

(4) "Deadly force" means force which the user reasonably believes will create a substantial risk of causing death or great bodily injury to another.

(5) "Department" means the department of corrections.

(6) "Disciplinary hearing" means a hearing authorized under ch. DOC 303 for the disciplining of inmates for misconduct.

(7) "Disturbance" means any of the following:

(a) An assault on any person by 2 or more inmates.

(b) The taking of a hostage by an inmate.

(c) The destruction of state property or the property of another by 2 or more inmates.

(d) The refusal by 2 or more inmates, acting in concert, to comply with an order.

(e) Any words or acts which incite or encourage inmates to do any of the above.

(8) "Division" means the division of adult institutions, department of corrections.

(9) "Emergency" means an immediate threat to the safety of the public, staff or inmates of an institution, other than a disturbance. An emergency may include, but is not limited to the following:

(a) A public health threat.

(b) A utility malfunction.

(c) A fire.

(d) A bomb threat or explosion.

(e) An employee job action.

(f) Any natural disaster.

(g) A civil disturbance.

(h) Inmate escape.

(10) "Force" means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way.

(11) "Great bodily injury" means bodily injury which creates a high probability of death, serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(12) "Mechanical restraint" means a commercially manufactured device approved by the department and applied to impede free movement of the inmate.

(13) "Non–deadly force" means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.

(14) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable.

(15) "Secretary" means the secretary of the department of corrections, or designee.

(16) "Security director" means the security director at an institution, or designee.

(17) "Warden" means the warden at an institution, or designee.

DOC 306.03 Security policy. Primary security objectives of the department are to protect the public, staff, and inmates and to afford inmates the opportunity to participate in correctional activities in a safe setting.

DOC 306.04 Responsibility of employes. Every employe of the department is responsible for the safe custody of the inmates confined in the institutions.

DOC 306.05 Protective confinement. (1) The security director may place an inmate in protective confinement if one of the following exist:

(a) The inmate requests the placement in writing.

(b) The security director is satisfied that the placement is necessary for the safety and welfare of the inmate.

(2) An inmate shall remain in protective confinement unless the security director determines that the conditions which warranted protective confinement no longer exist and approves release.

(3) The department shall consider an inmate in protective confinement to be in maximum custody as defined in s. DOC 302.

(4) Inmates in protective confinement shall haveprivileges and property at least equivalent to privileges and property allowed to inmates in temporary lock–up under s. DOC 303.11.

(a) Additional privileges and property as determined by what is ordinarily allowed inmates by the rules governing the location of the unit in which the inmate is protectively confined.

(5) The security director shall review placements in protective confinement at least every 90 days.

DOC 306.06 Inmate count. Each warden shall establish and maintain a system to accurately account for all inmates in the warden's custody at all times. The institution shall make a count of all inmates at least 4 times each day. The institution shall space these counts to minimize interference with school, work, program, and recreational activities.

DOC 306.07 Use of force.

(1) Corporal punishment of inmates is forbidden.

(2) Staff may use non–deadly force against inmates only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

(a) To prevent death or bodily injury to oneself or another.

(b) To regain control of an institution or part of an institution.

(c) To prevent escape or apprehend an escapee.

(d) To change the location of an inmate.

(e) To control a disruptive inmate.

(f) To prevent unlawful damage to property.

(g) To enforce a departmental rule, a policy or procedure or an order of a staff member.

(3) The use of an incapacitating agent is a form of non–deadly force and is regulated by s. DOC 306.09.

(4) Staff may use deadly force only if the user of force reasonably believes it is immediately necessary for the purpose of stopping the action in any of the following situations:

(a) To prevent death or bodily injury to oneself or another.

(b) To prevent unlawful damage to property that may result in death or bodily injury to oneself or another.

(c) To regain control of an institution or part of an institution.

(d) To prevent escape or apprehend an escapee.

(5) Staff may not use deadly force if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using such force is greater than the danger created by using it.

DOC 306.08 Use of firearms. (1) In this section, "Issuance of firearms" means the deployment of firearms to authorized individuals, as determined by the warden, beyond designated armed posts in response to an emergency or disturbance.

(2) Only the warden or authority who is available may issue firearms to staff.

(3) Except in disturbances or emergencies, only staff assigned to posts requiring the use of firearms shall be armed.

(4) Staff may only use firearms approved by the department and only after successfully completing the training program in sub. (5).

(5) The division shall provide an annual firearms training and qualification program which shall include instruction on the following:

(a) Safe handling of firearms while on duty.

(b) Legal use of firearms and the use of deadly force.

(c) Division policies and procedures regarding firearms.

(d) Fundamentals of firearms use, including range firing.

(e) When firearms may and shall be used, including the use of verbal warnings and warning shots.

(6) If a staff member discharges a firearm pursuant to s. DOC 306.07 (4), either accidentally or intentionally, staff shall do the following:

(a) The staff member who discharged the firearm shall notify the staff member's supervisor as soon as possible.

(b) As soon as possible following the use of an incapacitating agent, all staff present during the incident shall write and submit an incident report.

(c) A supervisor shall investigate the incident and submit a report to the warden. The supervisor shall state in the report all facts relevant to the discharge of the firearm and shall include the supervisor's opinion as to whether the discharge was justified and occurred in accordance with this chapter. The warden shall send the reports required by par. (b) and this paragraph and the warden's conclusions as to the justification for the discharge and whether it was in accordance with these rules to the administrator.

(d) If a person is injured or killed by the discharge of a firearm, the department shall convene a firearm review panel to investigate the incident. The panel shall consist of 5 persons selected as follows:

1. Two members designated by the secretary, one of whom shall be a member of the public and one of whom shall be a member of the department staff who shall serve as chairperson.

2. Two members designated by the administrator, one of whom shall be a member of the central office staff and one of whom shall be a member of the public.

3. One member designated by the warden of the institution where the incident occurred, who is a member of the institution staff.

(e) The panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to the use of force.

(7) Only staff authorized by the warden may carry firearms off the grounds of the institution.

DOC 306.09 Use of incapacitating agents. (1) DEFINITION. In this section "incapacitating agent" means any agent or device commercially manufactured and approved by the department for the purpose of temporary control of an inmate or area.

(2) REGULATION. The use of an incapacitating agent is a form of non–deadly force and is regulated by this section.

(3) AUTHORIZATION. Staff may use incapacitating agents in any of the following situations:

(a) To prevent death or bodily injury to oneself or another.

(b) To regain control of an institution or part of an institution.

(c) To prevent escape or apprehend an escapee.

(d) To change the location of an inmate.

(e) To control a disruptive inmate.

(f) To prevent unlawful damage to property.

(g) To enforce a departmental rule, policy or procedure or an order of a staff member.

(4) APPLICATION. Only a staff member trained under sub. (5) may use an incapacitating agent.

(5) TRAINING. The division shall provide an incapacitating agent training program that shall include instruction on the following:

(a) Safe handling of incapacitating agents while on duty.

(b) Legal use of incapacitating agents.

(c) Division policies and procedures regarding incapacitating agents.

(d) Fundamentals of use of incapacitating agents.

(e) When incapacitating agents may and shall be used.

(6) MEDICAL ATTENTION AND CLEAN–UP. As soon as possible after an incapacitating agent has been used, staff shall provide exposed inmates an opportunity for any necessary hygienic needs and shall consult with medical staff who shall provide any appropriate medical care.

(7) INCIDENT REPORT. As soon as possible following the use of an incapacitating agent, all staff present during the incident shall write and submit an incident report.

DOC 306.10 Mechanical restraints for transportation of inmates. (1) AUTHORIZATION. Staff members may use mechanical restraints if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution.

(2) MOVEMENT WITHIN INSTITUTION. Staff may use mechanical restraints in the following situations if the warden determines that the use of mechanical restraints is necessary to protect the public, staff or other inmates or to maintain the security of the institution:

(a) In transporting an inmate from within the institution to outside the institution.

(b) In transporting an inmate to segregation or temporary lock–up status.

(c) For an inmate who is in segregation or temporary lock–up status, while the inmate is outside his or her cell.

(d) For other security reasons as determined by the warden.

(3) MOVEMENT OUTSIDE INSTITUTION. Staff may use mechanical restraints in transporting an inmate outside an institution, in accordance with s. DOC 302.12.

DOC 306.11 Use of mechanical restraints to immobilize inmates. (1) Staff may use mechanical restraints to confine inmates only with the express authorization of the shift supervisor and only in the following circumstances:

(a) To protect staff and inmates from an inmate who poses an immediate risk of physical injury to others unless restrained.

(b) To protect an inmate who poses an immediate threat of physical injury to self unless restrained.

(c) To protect property.

(2) Staff may not use mechanical restraints:

(a) As a method of punishment.

(b) In a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the inmate.

(3) When staff places an inmate in a mechanical restraint, staff shall follow all of the following procedures:

(a) The shift supervisor shall notify the licensed psychologist or designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff. They shall interview the inmate and arrange for a physical and mental examination as soon as possible. They shall recommend to the warden, based on their interview and the examinations, whether the inmate should remain in restraints. The warden shall evaluate the recommendation and decide if the inmate shall remain in restraints.

(b) A staff member shall observe an inmate in restraints every 15 minutes.

(c) If possible, staff may release an inmate from restraints to perform bodily functions and for meals. Three staff members, one of who shall be a security supervisor, shall be present at the time of release.

(d) The security director shall keep a record of persons placed in restraints.

(e) The security director shall not allow an inmate to remain in restraints for longer than 12 hours, unless the inmate is examined by a licensed psychologist or a designee acting under the supervision of the licensed psychologist, or a psychiatrist, and a member of the medical staff who shall make a recommendation to the warden as to whether the person should remain in restraints. The institution shall conduct such an examination at least every 12 hours an inmate is in restraints. The warden shall notify the administrator of the decision to continue the use of restraints beyond 12 hours.

(4) The security director shall maintain a supply of restraining devices which staff shall periodically examine.

DOC 306.12 Duty of staff regarding escapes. Staff shall take actions to prevent the escape of any inmate.

DOC 306.13 Escapes. (1) Each institution shall have a written plan to be implemented if an escape occurs or is attempted. The security director shall prepare this plan and shall review and update the plan yearly.

(2) If a staff member is taken as a hostage in an escape or escape attempt, that hostage has no authority to order any action or inaction by staff. Staff shall disregard any orders issued by a hostage.

(3) The institution shall coordinate the pursuit of escapees with law enforcement authorities.

DOC 306.14 Search of institution premises. A staff member may conduct a search of any area on the premises of a correctional institution.

DOC 306.15 Periodic search of entire institution. Warden may suspend or modify institution operations and authorize a search of all or part of institution premises.

DOC 306.16 Search of inmate living quarters. (1) Staff may conduct a search of the living quarters of any inmate at any time. Entry into the living quarters of an inmate by a staff member to retrieve state property does not constitute a search of the living quarters of an inmate.

(2) The institution shall maintain a written record of all searches conducted under sub. (1).

(3) If staff seize any property or damage any property pursuant to the search of an inmate's living quarters, staff shall identify the property to the inmate in writing. The institution shall reimburse the inmate for damage to any property that is not contraband. The institution shall value any property which is damaged at its fair market value, not replacement cost.

(4) In conducting searches under this section, staff shall disturb the effects of the inmate as little as possible, consistent with thoroughness.

(5) Staff shall read only that part of the inmate's legal materials as necessary to determine that the item is legal material and does not contain contraband.

DOC 306.17 Search of inmates. (1) PERSONAL SEARCH. (a) In this subsection, "personal search" means a search of a person, including, but not limited to, the clothing, frisking the body, and an inspection of the mouth.

(b) Any staff member may conduct a personal search of an inmate under any of the following circumstances:

1. If the staff member has reasonable grounds to believe that the inmate possesses contraband.

2. At the direction of a supervisor either verbally or in written job instructions, post orders, or policies and procedures.

3. Before an inmate enters or leaves the security enclosure of a maximum or medium security institution or the grounds of a minimum–security institution.

4. Before an inmate enters or leaves the segregation unit or changes status within the segregation unit of an institution.

5. Before and after a visit to an inmate or as part of a periodic search or lockdown of a housing unit.

(2) STRIP SEARCH. (a) In this subsection, "strip search" means a search in which the person is required to remove all clothes.

(b) Permissible inspection pursuant to a strip search includes examination of the inmate's clothing and body and visual inspection of body cavities. Staff shall conduct a strip search in a clean and private place. Any staff member may conduct a visual inspection of body cavities. Except in emergencies, a person of the same sex as the inmate being searched shall conduct the strip search.

(c) Staff may conduct a strip search of an inmate under any of the following circumstances:

1. Before an inmate leaves or enters the security enclosure of a maximum or medium security institution or the grounds of a minimum–security institution.

2. Before an inmate enters or leaves the segregation unit or changes status within the segregation unit of an institution.

3. Before and after a visit under s. DOC 309.

4. As part of a periodic search and lockdown of an institution under s. DOC 306.15.

5. At the direction of a supervisor. Staff shall write a report or log entry of the searches under this subdivision.

(3) BODY CAVITY SEARCH. (a) In this subsection, "body cavity search" means an x–ray, or a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(b) Medical staff shall conduct body cavity searches. Medical staff may conduct a body cavity search only if the warden approves. The warden shall approve if there is probable cause to believe that contraband is hidden in a body cavity.

(4) BODY CONTENTS SEARCH. (a) In this subsection, "body contents search" means a search in which the inmate is required to provide a biological specimen, including, but not limited to a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen for testing.

(b) Only assigned staff may obtain samples as part of a body contents search.

(c) Staff may conduct a body contents search only under one of the following conditions and only after approval by the warden:

1. Security reasons.

2. Program reasons.

3. Investigation purposes.

4. As part of a random testing program.

5. For a biological specimen analysis. In this subsection, "biological specimen analysis" means a search in which the inmate is required by a court to provide a biological specimen for deoxyribonucleic acid or DNA analysis under s. 973.047, Stats., or any other biological specimen analysis. Biological specimens may include, but are not limited to, a sample of urine, breath, blood, stool, hair, fingernails, saliva, or semen.

(5) STAFF CONDUCT. (a) Staff shall strive to preserve the dignity of inmates in all searches conducted under this section.

(b) Before a search is conducted pursuant to this section, staff shall inform the inmate that a search is about to occur, the nature of the search, and the place where the search is to occur.

DOC 306.18 Search of visitors. (1) Before a visit by a non–inmate to an institution is permitted, the staff member responsible for the admission of visitors shall be satisfied that the visitor is not carrying any unauthorized objects into the institution.

(2) The institution shall have information readily available to visitors informing them of the objects they may carry into the institution. The institution may provide a place for the safekeeping of objects that may not be carried into the institution.

(3) Before admitting a visitor, the staff member responsible for admission may require the visitor to empty pockets and containers, permit the inspection of containers and submit the visitor and objects carried by the visitor into the institution to inspection by a device designed to detect metal or other unauthorized objects.

(4) The warden may require a visitor to submit to a personal search or strip search as defined in s. DOC 306.17 (1) and (2) prior to entering the institution. The staff member may conduct such a search only with the approval of the warden, who shall require the search only if there are reasonable grounds to believe the visitor is concealing an unauthorized object.

(5) The staff member shall write a report if the visitor refuses to submit to a search or if the search is conducted, and shall submit the report to the security director, with a copy to the warden and the administrator.

(6) Before an inspection or search is conducted pursuant to subs. (3) and (4) staff shall inform the visitor orally and in writing, either by a sign posted in a prominent place or on a notice, that the visitor need not permit the inspection or search and that if the visitor does not permit it, staff shall not admit the visitor to the institution at that time.

(7) If in an inspection pursuant to sub. (3) or a search under sub. (4) staff finds an unauthorized object, staff may deny the visitor the visit to the institution on the occasion, may suspend the visitor from further visits to the institution, or may allow the visit without the object.

(8) If the institution finds an unauthorized object pursuant to a search under this section, and it is illegal to conceal or possess the object, the warden shall inform a law enforcement agency and turn the object over to the law enforcement agency for referral to the district attorney pursuant to ss. 302.04 and 302.07, Stats., and deny the visit. If the institution determines that the visitor appears to be under the influence of an intoxicating substance, the warden shall deny the visit, may detain the visitor, and may inform a law enforcement agency.

(9) Staff shall conduct all inspections and searches in a courteous manner. Staff shall strive to protect the dignity of visitors who are inspected or searched pursuant to this section.

DOC 306.19 Search of staff. (1) The warden may require that a staff member be searched while on the grounds of an institution or require that a staff member's car be searched while on institution grounds. The institution may conduct such a search by requiring the staff members to empty pockets and containers and submit themselves and objects they carry into the institution to inspection by a device designed to detect metal or other unauthorized objects, a personal search, or a strip search, as defined under s. DOC 306.17 (1) and (2). Before a strip search of a staff member or the search of a staff members' vehicle is conducted, the warden and the administrator shall approve the search. They shall approve the search only if there are reasonable grounds to believe the staff member is concealing an unauthorized object. The institution shall not admit a staff member who refuses to submit to a search into the institution or may remove such a staff member from the institution and may subject the staff member to disciplinary action.

(2) If an unauthorized object is found pursuant to a search conducted under this section and it is illegal to conceal or possess the object, the warden may detain the staff member pursuant to ss. 302.04 and 302.07, Stats., and shall inform a law enforcement agency and turn the object over to the sheriff or law enforcement agency for referral to the district attorney. If the warden determines that the staff member appears to be under the influence of an intoxicating substance, the warden may detain the staff member and may inform a law enforcement agency.

(3) Staff shall conduct all searches in a courteous manner. Staff shall strive to protect the dignity of staff who are inspected or searched.

(4) Each institution shall inform staff in writing what objects they may not carry into the institution.

(5) If a strip search is conducted pursuant to this section, the staff member conducting the search shall file a report with the security director. The security director shall provide a copy of the report to the warden and the administrator.

DOC 306.20 Use of contraband as evidence at disciplinary hearing. Contraband that is seized during a search under this chapter may be used as evidence by the institution at a disciplinary hearing conducted under ch. DOC 303.

DOC 306.21 Use of test results as evidence at disciplinary hearings. Subject to the confirmation required under s. DOC 303.59 (2), the institution may use results of physical examinations and tests performed on body content specimens for the purpose of detecting intoxicating substances as evidence at a disciplinary hearing conducted pursuant to ch. DOC 303.

DOC 306.22 Emergency. (1) If an emergency occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the emergency is ended and order is restored to the institution.

(2) If an emergency occurs, the secretary may convene an emergency review panel to investigate the emergency. The panel shall be made up of persons selected in accordance with s. DOC 306.08 (5) (d) the panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to an emergency. The department shall provide the panel with staff adequate to conduct a thorough investigation of the emergency.

DOC 306.23 Disturbance. (1) If a disturbance occurs that prevents the normal functioning of the institution, the warden may suspend the administrative rules of the department or any parts of them, except ss. DOC 306.07 to 306.09, until the disturbance is ended and order is restored to the institution. The warden shall make provisions for access to medical care.

(2) If a disturbance occurs and a person is injured and if it results in the suspension of these rules, the secretary may convene a disturbance review panel to investigate the disturbance. The secretary shall appoint the panel in accordance with s. DOC 306.08 (5) (d) and the panel shall submit a written report to the secretary that includes the facts relevant to the incident and an opinion as to whether this chapter was complied with relating to a disturbance. The department shall provide the panel with staff adequate to conduct a thorough investigation of the disturbance.

(3) A staff member taken hostage has no authority to order any action or inaction by staff.

DOC 306.24 Emergency preparedness plan. (1) The warden shall ensure that the institution has a written emergency preparedness plan for disturbances and emergencies and that a copy of the plan is filed with the administrator and implemented in a disturbance or an emergency.

(2) The purposes of the written emergency preparedness plan for disturbances and emergencies shall be:

(a) To ensure the safety and welfare of the general public, staff, and inmates.

(b) To protect property.

(c) To maintain and restore order to the institution.

(d) To identify any person who participated in the disturbance, to provide for disciplinary action to be taken according to these rules, and to provide relevant information to a law enforcement agency so that participants can be arrested and prosecuted.

(e) To identify any person who contributed to the creation of an emergency and to provide this information to a law enforcement agency for the person's arrest and prosecution.

(3) The plan shall give the highest priority to insuring the safety and welfare of the general public, staff, and inmates.

Chapter DOC 306

APPENDIX

Note: DOC 306.05. Some inmates wish to be confined because they fear for their safety. Protective confinement is permitted by this rule.

Maximum custody is used in this case for the inmate's safety. Because the status is not punitive, DOC attempts to provide normal property and privileges consistent with the place where the confinement occurs, but the inmate shall be allowed at least the privileges and property allowed in temporary lock–up (TLU).

Note: DOC 306.06. Accurate counts are essential for security and recordkeeping. Given the variety among institutional schedules, each warden is given the responsibility to see to it that an accurate system exists and that it does not unduly interfere with programs.

Note: DOC 306.07. Section DOC 306.07 states the purposes for which non–deadly force and deadly force may be used.

Situations arise in prison that must be controlled before substantial danger to others arises. The requirements for discipline and order in a prison and to prevent escapes give substantial responsibility to prison officials that may require the use of force to fulfill.

Sub. (2) states the circumstances in which non–deadly force may be used in a prison. This rule applies to correctional staff and not inmates. Inmates are not authorized to use force at any time by this rule.

This section does not require that the user of force reasonably believe that in so doing he or she is preventing an unlawful interference with another. A typical situation in which a correctional staff member would be authorized to use force in defense of another

is if there was a fight between or among inmates. The correctional staff member must be authorized to use force to stop the fight. In so doing, it might be necessary to use force against someone who is not unlawfully interfering with another but who is lawfully defending himself or herself. This is so because, in a prison setting, correctional staff must have the authority to prevent disturbances without worrying about whom is wrongfully fighting and who is acting in self–defense.

Sub. (3) (d) authorizes the use of force to change the location of an inmate. Occasionally, an inmate is ordered to be placed in a segregation unit and refuses to go. To maintain the orderly operation of the institution, staff may have to physically move an inmate from one place to another.

Sub. (3) (g) authorizes the use of force to enforce department rules, policies and procedures and staff member orders. A typical situation in which a correctional officer would be authorized to use force under this paragraph is if an inmate refuses to be strip–searched prior to entering the segregation unit. Without the strip search the inmate could be hiding a weapon that could be used by a self–destructive inmate to kill or severely injure himself or herself or someone else. If the inmate cannot be persuaded to obey the order, staff may use force to compel compliance.

Note: DOC 306.08. The use of firearms is subject to the limitations on the use of force in s. DOC 306.07. This section reflects present policy of the department of corrections. Correctional staff in daily contact with inmates are not armed. Rather, officers who are posted in towers and in control centers are the only staff who are issued firearms, unless there is a disturbance or an emergency. Sub. (3).

Sub. (6) provides for the investigation of incidents in which a weapon is discharged. This investigation is for the purpose of administrative review and is not intended to take the place of an investigation conducted by another government agency.

Sub. (6) provides for investigation and reporting through the normal chain of command and for investigation and reporting by a special panel when anyone is killed or wounded by a firearm discharge. Because of the seriousness of such an event, it is desirable to include on the panel people from outside the department of corrections to insure that the investigation is conducted with the necessary objectivity.

Sub. (7) indicates that the warden must authorize staff before they may carry firearms off grounds. Correctional staff officers need not be deputized since "Correctional staff have authority and possess the power of a peace officer in pursuing and capturing escaped inmates." (OAG 103–79).

Note: DOC 306.09. Section DOC 306.09 authorizes and regulates the use of incapacitating agents in adult correctional institutions.

As stated in sub. (2), this section regulates the use of incapacitating agents. Because incapacitating agents pose a risk of injury to others, staff may only use them in limited situations.

Sub. (3) identifies situations in which incapacitating agents may be used. Under this subsection, incapacitating agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, s. DOC 306.24 (1), or disturbance, s. DOC 306.23 (1). "Part of an institution" may be a building or a small area like a room. Whether an incapacitating agent should be used in such a situation depends upon whether using the incapacitating agent is less hazardous for both the person seeking to use the incapacitating agent and the inmate than using other reasonable means to accomplish the purpose.

This rule requires appropriate medical care, if necessary, and an opportunity for hygienic care. "Exposed inmates" are not just those against whom the agent is used but those exposed to it because they are nearby. Medical examinations and cleaning may minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of incapacitating agents as well as the discomfort they may cause.

The incident report for incapacitating agents in sub. (7) ensures adequate administrative notification and review of the use of incapacitating agents.

Note: DOC 306.11. Section DOC 306.11 regulates the use of restraints to immobilize inmates. Restraining devices are permitted in three situations: to protect property; to protect others from an inmate; and to protect an inmate from himself or herself. The use for transporting is regulated by s. DOC 302.10, relating to custody requirements for inmates. Section DOC 306.11 addresses the other uses. While the use of restraints is never pleasant, it is sometimes more humane than other measures for controlling dangerous or disturbed people. Subs. (1) and (2) are designed to insure that restraining devices are used only when necessary, to regulate their use to insure that they are used humanely, and to adequately provide for the safety of inmates and correctional staff.

It is important that the authority to require restraining devices be centralized. For this reason, only the warden or the staff member in charge may order their continued use or removal after review of psychological or medical staff reports. Sub. (3) (a).

To avoid injury, it is necessary to have adequate staff to subdue the inmate.

Inmates placed in restraints are typically in need of counseling, time to calm down, and periodic monitoring to insure that the person is not being injured by the restraints. Furthermore, the decision to keep a person in restraints must be continually reviewed. Sub. (3) (a) and (b) provide for medical exams and monitoring to get the inmate the immediate help he or she needs that may permit the removal of the restraints, as well as a review of the necessity for them.

Sub. (3) (c) provides for the removal of the restraints for meals and to perform bodily functions when possible. This is to preserve the inmate's dignity, consistent with the safety of the inmate and staff.

Sub. (3) (e) requires an examination by a licensed psychologist or a designee acting under the supervision of a licensed psychologist, or a psychiatrist, and a member of the medical staff every 12 hours an inmate remains in restraints. This is to provide expert judgment about the need for restraints and to provide additional mental health services to the inmate.

Sub. (4) requires that DOC shall maintain and periodically review a supply of restraining devices. This is to insure that devices that might injure an inmate or permit escape are not used.

Note: DOC 306.12. Section DOC 306.12 states the general policy that it is the responsibility of each staff member to take appropriate actions to prevent escapes. Appropriate action may include being alert and diligent, reporting observations and events, and may also include taking physical actions consistent with directed duty and training. Decisive action when signs of trouble exist is also important.

Note: DOC 306.13. Sub. (2) states the rule that no hostage, no matter what his or her rank, has any authority while a hostage. A person under such stress cannot be expected to make decisions that affect himself or herself, the institution, or inmates. To permit a person to retain authority while a hostage is an invitation to take high ranking officials as hostages.

Note: DOC 306.14. Section DOC 306.14 authorizes the search of institution premises at any time. Contraband, including drugs and weapons, are sometimes concealed in areas of general access, in workshops and in classrooms. Searches turn up contraband and also serve as a deterrent to bringing contraband into institutions.

Such searches must be performed randomly so that inmates may not move the contraband in anticipation of a search. DOC is not required to give a specific reason for conducting a search.

Note: DOC 306.15. Section DOC 306.15 (1) permits that each institution may be completely searched periodically. DOC has discovered contraband during these searches. This has convinced correctional officials of the desirability of such searches and of random area searches.

These searches are to include the living quarters of inmates as good correctional practice.

Note: DOC 306.16. The search of the living quarters of an inmate is of importance to correctional officials and inmates. It is important that random searches of living quarters be conducted because contraband, including drugs and objects fashioned into dangerous weapons, are sometimes discovered during such searches and such searches deter the possession of contraband.

Contraband is a direct threat to the safety of staff and the institution as a whole. Weapons can be used against staff as well as inmates and may be an inducement to cause a disturbance that threatens everyone in the institution.

DOC conducts its searches unannounced so that inmates do not have the opportunity to remove contraband from the living unit. Various means may be used to conduct searches, including the use of canines and other available technological methods.

DOC staff conduct searches in a manner which demonstrates respect for an inmate's personal property. DOC staff shall notify inmates of any objects that are seized.

Note: DOC 306.17. Section DOC 306.17 is primarily directed to controlling the entry of contraband, including intoxicating substances, into correctional institutions and its movement within institutions. Visitors or inmates who go outside may carry contraband into institutions. It is transported by inmates within institutions and is frequently moved to avoid detection. Contraband, including money illegally obtained, is also removed from institutions. Much of this contraband poses a threat to inmates, to correctional treatment, to staff, and to the very institution itself. See the note to s. DOC 306.16.

Body contents searches and urinalyses in particular are directed at controlling inmate use of intoxicants. Drug and alcohol use promotes the illegal entry, movement and selling of contraband within institutions and provides financial incentives which may corrupt other inmates and staff. Body contents searches and subsequent testing of those specimens are effective means to detect illicit use of drugs and alcohol. Test results may form the basis for disciplinary action, the prospect of which should deter inmates from using intoxicants or bringing them into the institutions.

Because inmates bring contraband in and out of institutions, it is necessary to permit strip searches upon entry and exit.

DOC places inmates in segregation units because they have committed a serious violation of prison rules, or because they are dangerous or disturbed. With this need for a heightened level of security, it is essential to the safety of inmates that contraband not be brought into a segregation unit. Strip searches of inmates as they move in or out of the segregation unit are necessary for security.

Sub. (2) (c) 3. authorizes strip searches prior to and after a visit. Frequently, visitors are not restricted to the visiting area during visits. Either the authority must exist to permit the search of visitors and inmates, or contact with visitors must be limited.

Sub. (2) (c) 4. authorizes strip searches during a search of an entire institution or a part of an institution during a lockdown. Without strip searches during a lockdown, inmates can conceal contraband on their persons and defeat the purpose of the search under s. DOC 306.15.

Sub. (2) (c) limits staff members' discretion to conduct strip searches.

Sub. (4) (c) describes the circumstances under which a body contents search may be conducted. Medical staff is in no way restricted from requesting physical examinations and tests for medical reasons. The division of adult institutions is expected to develop a protocol to define the role of health staff and their obligations under these rules for both body cavity and body contents searches. When possible, less invasive means of screening for contraband will be employed before involving health care staff.

Note: DOC 306.18. Section DOC 306.18 regulates the search of visitors. Other rules relating to visits are found under ch. DOC 309.

Sub. (1) states the principle that correctional staff must be satisfied that visitors are not carrying unauthorized objects into the institution. Because such objects may be things which people normally carry with them and which visitors might assume are authorized, it is important to inform visitors of what they may or may not carry. Visitors may be provided with a place to store their belongings during the visit. Sub. (2).

If a visitor does not wish to submit to an inspection or search, the visitor need not do so. This will result in the visitor not being permitted to enter the institution on this occasion. No authority exists independently to require visitors to submit to inspections or searches. However, the responsibility for the safety of the institution does permit visitors to be excluded if they refuse to submit to inspections and, in the rare cases when they are conducted, personal searches.

The large majority of visitors are asked to empty pockets, permit the inspection of containers and submit to a metal detector screening similar to those used in airports. Sub. (3). This typically satisfies staff that contraband is not concealed. Occasionally, correctional staff has received information that a visitor is carrying contraband and that the inspection called for in sub. (3) will not detect it. If there are reasonable grounds to believe a visitor is carrying contraband, the warden may require the visitor to submit to a personal search or strip search as defined in s. DOC 306.17 (1) (a) and (2) (a) or be excluded from the institution.

Sub. (6) states the rule that visitors shall be excluded from the institution if they attempt to bring contraband into the institution. The visiting privilege itself may be suspended, as provided in ch. DOC 309. It is not the intention of the rule to exclude people who unwittingly carry unauthorized objects.

Sub. (8) requires correctional staff to turn over to law enforcement such objects which it is illegal to possess or conceal. The warden is a peace officer within the institution and on institution grounds by virtue of s. 301.29 (2), Stats. Under s. 939.22 (22), Stats., "peace officer" means any persons vested by law with a duty to maintain public order or to make arrest for crimes, whether that duty extends to all crimes or is limited to specific crimes. Section 302.095, Stats., makes delivering articles to inmates a crime subject to being detained by staff and turned over to the sheriff or local law enforcement officers. (OAG–103–79).

Note: DOC 306.19. Searches of staff members are sometimes necessary. This is so for three reasons. First, staff members may inadvertently bring unauthorized objects into institutions. For example, an employee taking medication may bring in more than he or she needs for an 8–hour period. Second, inmates may threaten staff or their families and thereby attempt to force the staff member to bring contraband into an institution. Third, a staff member may deliberately bring an unauthorized object into an institution.

Note: DOC 306.23. Sub. (1) permits the suspension of the rules of the department. It is not intended that this rule be relied on frequently, but only in situations where the usual functioning of the institution becomes impossible. For example, programs and visits are impossible if a portion of an institution is taken over by inmates. Some rules, like those relating to the use of force, may never be suspended. This is provided for in the rule.

Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

Fiscal Estimate

Chapter DOC 306 pertains to institution security standards and practices. This rule was created in 1980, and has not been updated since then. Due to various changes in correctional terminology, practices, and technological changes, the Department proposes to update the rule.

The changes are basically in three categories: 1) definitions and terminology, 2) use of various levels of force and restraints, and 3) search procedures.

1) Changed definitions include various staff titles to reflect current organization charts, changing the term "voluntary confinement" to "protective confinement," and changing the definition of "chemical agent" to "incapacitating agent." It is not believed that these and other similar changes will have a fiscal effect on the Department.

2) A number of changes are made to procedures that are acceptable for staff to use in various situations where some degree

of force is needed. Generally, more discretion is permitted. Reporting requirements are maintained, but with less detail required in some cases. These changes could possibly result in a saving of staff time in filling out more detailed reports.

3) Search procedures are modified in some cases. In general, the effect of the changes is to permit increased use of search procedures in various circumstances. One example is the deletion of the enumeration of criteria staff should consider in determining reasonable grounds for a search. Another removes the requirement for a housing unit supervisor or shift supervisor to approve a search of inmate living quarters. These procedural changes are not estimated to have a fiscal impact on the Department.

Overall, the revisions to ch. DOC 306 are not expected to have any significant fiscal impact on the Department.

Contact Information

If you have questions, please contact:

Julie M. Kane
Telephone: (608) 267–9839
Office of Legal Counsel
149 East Wilson St.
P.O. Box 7925
Madison, WI 53707–7925

If you are hearing– or visually–impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non–English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non–English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments

Written comments on the proposed rules received at the above address no later than **Wednesday, November 15, 2000** will be given the same consideration as testimony presented at the hearing.

Notice of Hearing

Professional Geologists, Hydrologists and Soil Scientists Examining Board

[CR 00–139]

Notice is hereby given that pursuant to authority vested in the Examining Board of Professional Geologists, Hydrologists and Soil Scientists in ss. 15.08 (5) (b), 15.405 (2m) and 227.11 (2), Stats., and interpreting s. 470.03, Stats., the Examining Board of Professional Geologists, Hydrologists and Soil Scientists will hold a public hearing at the time and place indicated below to consider an order to create s. GHSS 1.07, relating to a rules committee.

Hearing Information

The public hearing will be held as follows:

Date & Time	Location
October 31, 2000 **Tuesday** **9:45 a.m.**	**Room 180** **1400 East Washington Ave.** **MADISON, WI**

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **Monday, November 13, 2000** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 15.405 (2m) and 227.11 (2)

Statute interpreted: s. 470.03

Current rules for the Examining Board of Professional Geologists, Hydrologists and Soil Scientists do not permit the formation of a rules committee to act for the Board in rule–making proceedings. The objective of the rule is to authorize the Board to form a rules committee. The Board may currently approve and adopt rules proposed by any section of the Board. A rules committee would better enable the Board to develop and refine rules proposed by the sections or the Board. This would meet the objective of standardizing the rules development process between the sections of the Board and provide for greater efficiency.

The proposed rule would consist of two sections. The first section would permit the Board to approve and adopt rules proposed by any section of the Board. The second section would define the composition of a rules committee and provide that the rules committee shall act for the Board in rule–making proceedings except for final rule adoption.

Text of Rule

SECTION 1. GHSS 1.07 is created to read:

GHSS 1.07 Rule–making. (1) PROCEDURE. The board may approve and adopt rules proposed by any section of the board.

(2) RULES COMMITTEE. (a) The rules committee is comprised of one professional member from each section and 2 public members. The board chair shall appoint the 2 public members from any of the 3 sections of the board.

(b) The rules committee shall act for the board in rule–making proceedings except for final approval as specified in sub. (1).

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: $0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: $0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: $0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Information

Copies of this proposed rule are available without cost upon request to:

Pamela Haack
Dept. of Regulation and Licensing
Office of Administrative Rules
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Telephone: (608) 266–0495
Email: pamela.haack@drl.state.wi.us

Notice of Hearing

Regulation and Licensing

[CR 00–141]

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 440.03, Stats., and interpreting s. 440.03 (1), Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to repeal s. RL 7.06 (1) (d) and (2) (d); to renumber and amend s. RL 7.06 (1) (e) and (2) (e); to amend ss. RL 7.04 (1) (e) and 7.05 (1) (d); and to create s. RL 7.11 and Appendix II of Chapter RL 7, relating to standards for approved drug testing programs.

Hearing Information

The public hearing will be held as follows:

Date & Time	Location
October 30, 2000	**Room 133**
Monday	**1400 East Washington Ave.**
10:00 a.m.	**MADISON, WI**

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **Monday, October 30, 2000** to be included in the record of rule–making proceedings.

Analysis Prepared by the Dept. of Regulation and Licensing

Statutes authorizing promulgation: ss. 227.11 (2) and 440.03

Statute interpreted: s. 440.03 (1)

Currently there is no uniformity concerning the collection of specimens, the transfer of specimens to testing laboratories, the integrity of the chain of custody, appropriate drug panels for medical professionals, true randomization of selection of specimen drop occasions and prompt and accurate reporting of test results for drug testing of professionals regulated by the Department. The proposed standards would insure that these variables in the testing program are minimized, thus offering greater protection to the public and greater fairness to participants. Just as important, the proposed standards require the professional to contact the testing program on a daily basis without the intermediary of counselors and therapists. This will encourage personal responsibility and avoid inefficiencies and reporting delays which often occur under the present system. Finally, the proposed standards offer the public more protection by allowing the Department to enlarge and tailor the drug testing panels in light of the special opportunities available to medical professionals for access and abuse of pharmaceuticals. It is anticipated that economies of scale will also be encouraged by this program, which will ease the cost for participants in drug screening programs.

Text of Rule

SECTION 1. RL 7.04 (1) (e) is amended to read:

RL 7.04 (1) (e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department, as required.

SECTION 2. RL 7.05 (1) (d) is amended to read:

RL 7.05 (1) (d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department at the credential holder's expense, if deemed necessary by the board liaison.

SECTION 3. RL 7.06 (1) (d) is repealed.

SECTION 4. RL 7.06 (1) (e) is renumbered RL 7.06 (1) (d) and amended to read:

RL 7.06 (1) (d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, ~~submits a positive blood or urine screen,~~ relapses, or is believed to be in an unsafe condition to practice.

SECTION 5. RL 7.06 (2) (d) is repealed.

SECTION 6. RL 7.06 (2) (e) is renumbered RL 7.06 (2) (d) and amended to read:

RL 7.06 (2) (d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, ~~submits a positive blood or urine screen,~~ relapses, or is believed to be in an unsafe condition to practice.

SECTION 7. RL 7.11 is created to read:

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. The standards for approval of drug testing programs are at Appendix II.

SECTION 8. Appendix II of Chapter RL 7 is created to read:

Chapter RL 7

APPENDIX 2
DRUG TESTING PROGRAM
STANDARDS FOR APPROVAL OF PROGRAMS

To be approved as a drug testing program for the Department of Regulation and Licensing, programs must satisfactorily meet all of the following standards:

A. Program Administration Requirements

1. The drug–testing program (program) shall enroll participants (donors) by assigning the donor an account number, a Private Identification Number (PIN) and establish a method of payment with the donor. No costs are to be incurred by the department.

2. The program shall provide the donor with an adequate supply of preprinted chain of custody forms and notify the donor when additional forms must be purchased.

3. The program shall provide the donor with the address and phone number of the nearest collection site. The program shall assist the donor in locating a qualified collection site when traveling outside their home area.

4. Once enrollment is complete, random selection shall begin immediately and the program shall notify the designated department staff person that selection has begun.

5. The program shall maintain a nationwide 800 number capable of processing 300–500 department calls per day that is operational 24 hours per day, 7 days per week, including holidays. In the alternative, this requirement may be met by providing random notification to donors through a secure Internet website.

6. The 800 number or secure website shall be accessible for donors to contact daily and provides for computer randomization of each participant that automatically designates whether the donor must provide a specimen, based on a frequency determined by the department.

7. The program shall maintain data that is updated on a daily basis verifying the date and time each donor was notified, date, time and location each specimen was collected, results of drug screen and whether or not the donor complied as directed.

8. The program shall make available through secure Internet access data that is updated on a daily basis such as notification times, noncompliance to notification procedures, day, time and site of each collection performed along with the drug test results.

9. The program must utilize appropriate internal (e.g., test call–ins, record audits, off–site computer backups, etc.) and external (e.g., random checks of collection sites, control specimens routed through courier service to laboratory, etc.) quality controls.

10. The program shall maintain the confidentiality of donors in accordance with federal confidentiality regulations.

11. The program shall not sell or otherwise transfer or transmit names and other personal identification information of the credential holders to other persons or entities without permission from the department. The program will not solicit from credential holders presently in the monitoring program or formerly in the monitoring program or otherwise contact credential holders except for purposes consistent with administering the program and only with permission from the department.

12. The program shall provide a detailed inventory of all services and supplies that are included in the standard fee paid by the donor. The program will clearly inform donors of the bundled cost for each drug screen that includes the cost for program administration, collection, transportation, analysis, reporting and confirmation. Cost should not include Medical Review Officer (MRO) review.

13. The program shall provide the department with at least three (3) references of current businesses that use its services with the names and phone numbers of contact people.

14. The program shall immediately report to the department if the program, laboratory or any collection site fails to meet these standards. The department reserves the right to remove a program from the approved list if the program fails to comply with the standards.

15. The program shall make available expert testimony, at a reasonable cost, regarding the drug–testing program. The cost for this service shall be part of the costs of investigation incurred by the department. The program shall make litigation services available for five (5) years after the termination of the agreement.

16. The program must agree to protect the contents of all drug panels and not disclose the contents to donors. The program must also obtain agreement from the laboratory to protect the contents of all drug panels and not disclose the contents to donors.

B. Collection Site Administration

1. The program will locate, train and monitor all collection sites per industry standards for drug test collections. The program will locate new collections sites as needed as well as locate sites for donors who travel out of state. The program shall make special effort to locate collection sites open 24 hours per day that utilize the U.S. Department of Transportation collection protocol.

2. The program shall provide donors and employers of donors with assistance on a 24–hour/day basis if collection is needed for cause.

3. The program shall provide the department with a list of collection sites within Wisconsin that utilize the U.S. Department of Transportation collection protocol.

4. The program shall provide the name, address and phone number of a contact person for the courier service used.

5. The program shall ensure delivery of specimens within twenty–four hours of sampling.

C. Laboratory Requirements

1. The program shall identify the laboratory by name, address and phone number of the laboratory's representative and provide a copy of their current contract.

2. The program must utilize a laboratory that holds DHHS/SAMHSA certification that has had no adverse/corrective action within the last 3 years. The laboratory must maintain DHHS/SAMHSA certification during the entire time the program is providing drug–testing services to the department.

3. The program shall utilize a laboratory that complies with all DHHS/SAMHSA standards, including those related to the handling, processing and storage of specimens.

4. The program shall utilize a laboratory that is capable of processing all specimens for the drugs listed in the department's standard panel and additional individual drugs as listed in the attached drug list.

5. Testing of participant specimens shall be initiated within 48 hours of pickup by courier.

6. Gas Chromatography/Mass Spectrometry (GC/MS), Mass Spectrometry (MS), or another acceptable method shall confirm all positives.

7. The laboratory shall allow department personnel to tour its facilities where donor specimens are tested.

D. Reporting of Results

1. The program shall provide results of each specimen to the designated department personnel within 24 hours of processing.

2. The program shall be capable of distributing results of drug screens to two or more department personnel.

3. The program shall immediately inform the designated department personnel regarding all confirmed positive test results the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

4. Upon request, the program shall fax, email or electronically transmit laboratory copies of drug test results.

5. The program shall provide a medical review officer (MRO) upon request and at the donor's expense for MRO review of disputed positive test results.

6. Upon request of the donor or the department, the program shall provide chain–of–custody transfer of disputed specimens to an independent laboratory for re–testing.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: $0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: $0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: $0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Information

Copies of this proposed rule are available without cost upon request to:

Pamela Haack
Dept. of Regulation and Licensing
Office of Administrative Rules
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Telephone: (608) 266–0495
Email: pamela.haack@drl.state.wi.us

NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE, UNDER S. 227.19, STATS.

Please check the Bulletin of Proceedings for further information on a particular rule.

Corrections (CR 97–13):
Ch. DOC 303 – Relating to inmate conduct, inmate discipline and procedures for the imposition of discipline.

Employee Trust Funds (CR 00–116):
S. ETF 10.10 – Relating to election procedures for the Employee Trust Funds Board.

Financial Institutions–Securities (CR 00–117):
SS. DFI–Sec 2.02, 3.03, 4.03, 4.06, 5.03, 5.05 and 7.02 – Relating to securities registration exemptions and to securities broker–dealer, agent, investment adviser and investment adviser representative licensing procedures, record–keeping requirements, and rule of conduct provisions.

Health and Family Services (CR 00–95):
Ch. HFS 120 – Relating to the collection, analysis and dissemination of health care information.

Insurance, Commissioner of (CR 00–120):
SS. Ins 23.30, 23.35 and 23.40 – Relating to standards for insurance marketed to fund prearranged funeral plans.

Regulation and Licensing (CR 00–100):
Chs. RL 30 to 35 – Relating to the regulation of private detectives, private detective agencies and private security personnel.

Regulation and Licensing (CR 00–105):
Chs. RL 17 and 24 and s. RL 25.05 – Relating to real estate education requirements.

Regulation and Licensing (CR 00–106):
SS. RL 121.025, 125.03, 126.02 and 126.03 – Relating to the regulation of auctioneers and auction companies.

Revenue (CR 00–123):
S. Tax 9.69 – Relating to the Master Settlement Agreement between the state of Wisconsin and tobacco product manufacturers.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rules.

Agriculture, Trade and Consumer Protection (CR 99–72):
An order affecting ch. ATCP 160, relating to county and district fairs.
Effective 12–01–00.

Agriculture, Trade and Consumer Protection (CR 99–168):
An order affecting s. ATCP 1.03 and chs. ATCP 10 to 12, relating to animal diseases, animal movement, and livestock markets, dealers and truckers.
Effective 12–01–00.

Agriculture, Trade and Consumer Protection (CR 00–58):
An order affecting ch. ATCP 35, relating to the agricultural chemical cleanup program.
Effective 11–01–00.

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors Examining Board (CR 00–50):
An order affecting ss. A–E 2.02, 4.05, 6.04 and 6.05, relating to registration seals, experience requirements for professional engineers, and educational requirements for land surveyors.
Effective 12–01–00.

Corrections (CR 97–27):
An order repealing and recreating ch. DOC 314, relating to mental health treatment for inmates.
Effective 12–01–00.

Professional Geologists, Hydrologists, and Soil Scientists Examining Board (CR 00–64):
An order affecting ss. GHSS 2.06, 3.05 and 4.05, relating to experience requirements prior to sitting for the fundamentals examination.
Effective 12–01–00.

Natural Resources (CR 00–2):
An order affecting ss. NR 108.02 and 108.04 and chs. NR 114, 809 and 811, relating to plans and specifications submittals for reviewable projects, operator certification, safe drinking water, and operation and design of community water systems.
Effective 12–01–00.

Pharmacy Examining Board (CR 99–166):
An order creating s. Phar 7.09, relating to the automated dispensing of prescription drugs.
Effective 11–01–00.

Revenue (CR 00–78):
An order affecting ss. WGC 61.02, 61.04, 61.08 and 61.085, relating to the implementation and maintenance of the Retailer Performance Program (RPP) of the Wisconsin lottery.
Effective 11–01–00.

PUBLIC NOTICE

Public Notice

Dept. of Health and Family Services

(Medical Assistance Reimbursement for Private Duty Nursing Services: State of Wisconsin Medicaid Program)

The State of Wisconsin reimburses home health agencies and nurses in independent practice for private duty nursing (PDN) provided for Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.497, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid.

Under current law, PDN services provided by limited practice nurses (LPNs) and registered nurses (RNs) are paid the lesser of: (a) their usual and customary charges; or (b) maximum fees established by the Department for each procedure.

The Department is proposing an increase in the maximum fees for reimbursement of private duty nursing services provided to adults who are not assisted by a ventilator under the MA program. The increase for LPNs will be from $18.04 per hour to $21.02 per hour. The increase for RNs will be from $21.76 per hour to $31.53 per hour. Each of these rate increases would take effect on **October 16, 2000**. The Department's proposal involves no change in the definition of who is eligible to receive the private duty nursing benefit and the benefits remain the same.

It is estimated that this change will increase annual aggregate Medicaid expenditures by $280,880 all funds for the remaining 9 months of state fiscal year (SFY) 2001 ($164,654 federal and $116,226 state GPR).

Proposed Change

The proposed change is to increase the maximum allowable fee for private duty nursing services provided to adults who are not assisted by a ventilator, for LPNs from $18.04 per hour to $21.02 per hour, and for RNs from $21.76 per hour to $31.53 per hour.

Copies of the Proposed Change

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail:
Division of Health Care Financing
P.O. Box 309
Madison, WI 53701–0309

Telephone:
Mary Laughlin, Budget Unit Chief
Telephone: (608) 261–7833

FAX:
FAX: (608) 266–1096
Attention: Mary Laughlin

E–Mail:
matana@dhfs.state.wi.us

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e–mail, or regular mail to the Division of Health Care Financing. The FAX number is (608) 266–1096. The e–mail address is matana@dhfs.state.wi.us. Regular mail can be sent to the above address. All written comments will be reviewed and considered. All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Division of Health Care Financing
Room 350, State Office Building
One West Wilson Street
Madison, WI

Revisions may be made in the proposed changed methodology based on comments received.

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