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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.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade and Consumer Protection

Rules adopted revising **ch. ATCP 77**, relating to certification of drug residue screening laboratories and approval of laboratory analysts to perform drug residue screening tests on milk.

Finding of emergency

The Department of Agriculture, Trade and Consumer Protection ("department") finds that an emergency exists and that the following emergency rule is necessary to protect the public welfare. This emergency rule will bring Wisconsin into compliance with federal requirements. Wisconsin must comply with the federal requirements in order for Wisconsin dairy plants to continue shipping milk in interstate commerce. Interstate milk shipments are critical for the state's dairy industry, and for the overall economy and well being of the state. The facts constituting the emergency are as follows:

(1) Grade A milk shipments are governed by the Interstate Pasteurized Milk Ordinance (PMO), jointly administered by the United States Food and Drug Administration (FDA) and the National Conference of Interstate Milk Shippers (representing participating states). In order for Wisconsin dairy plants to ship milk in interstate, Wisconsin must comply with the PMO and FDA mandates related to the PMO. Under s. 97.24, Stats., the Wisconsin Legislature has directed the department to adopt rules that conform to the PMO.

(2) Under the PMO and current state rules, all raw milk received by a dairy plant must be tested for certain drug residues (antibiotics from the penicillin family of drugs).

(3) FDA approves tests used for drug residue testing. There are 15 different tests that are approved for use. Some of these tests use a mechanical reader that determines the test result and then records it on a printer tape or directly to a computer. But other approved tests are "visually read", and involve no mechanical reader. In these tests, an individual analyst

interprets a color change to determine whether drug residues are present.

(4) The department currently certifies laboratories and analysts that conduct confirmatory drug residue tests on raw milk samples. The department certifies these laboratories and analysts under ch. ATCP 77, Wis. Adm. Code. The department does not currently certify laboratories or analysts that perform only preliminary screening tests for drug residues, although it does provide training. Some preliminary screening tests use mechanical readers, while others are "visually read."

(5) On July 2, 2001, FDA issued a new directive requiring states to approve laboratories that conduct screening tests (not just confirmatory tests) for drug residues in milk. A state must conduct an on-site evaluation before approving a laboratory or analyst to conduct "visual read" screening tests. According to the FDA, the department must complete its evaluations and issue its approvals by March 1, 2002. FDA may de-certify Wisconsin milk shippers if the department fails to carry out this directive, or if milk shipments are not tested by approved laboratories and analysts. De-certification could prevent the movement of Wisconsin milk in interstate commerce.

(6) In order to ensure the continued movement of Wisconsin milk in interstate commerce, the department must adopt rules expanding the current lab certification program under ch. ATCP 77, Wis. Adm. Code. The rules will require certification of laboratories conducting drug residue screening tests. The rules will also require on-site evaluation and approval of individual analysts conducting "visual read" screening tests. The rules will create new lab certification fees to pay for the expanded program, including the cost to perform the required on-site evaluations. The department must adopt these rules as soon as possible, in order to complete the required evaluations and issue the required approvals by March 1, 2002.

(7) The department cannot create this new program, by normal rulemaking procedures, in time to meet the March 1, 2002 deadline. The department is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of "permanent" rules by normal procedures. This emergency rule is needed to ensure the continued movement of Wisconsin milk in interstate commerce, and to prevent the economic disruption that would occur if that movement were interrupted.

Publication Date: November 15, 2001

Effective Date: November 15, 2001

Expiration Date: April 14, 2002

Hearing Dates: November 29, December 4, 5 & 6, 2001

Commerce (3)

(Financial Assistance for Businesses and Communities)

(Chs. Comm 105-128)

1. Rules adopted revising **ch. Comm 110** relating to brownfields redevelopment grants.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under section 3628 of 2001 Wis. Act 16, the Department must begin

accepting applications from trustees and nonprofit organizations, for brownfields redevelopment grants. And, under section 3630 of the Act, the Department must begin disallowing use of the grant funds to pay either delinquent real estate taxes or lien claims of the Department of Natural Resources or the federal Environmental Protection Agency.

The Department's rules for administering the brownfields grant program are currently contained in ch. Comm 110 Wis. Adm. Code. These current rules do not recognize trustees and nonprofit organizations as eligible applicants, and do not include disallowing grant funds for payments on either back taxes, or on state or federal lien claims.

In November, the Department expects to begin promulgating permanent rules for making ch. Comm 110 consistent with Act 16. Due to the mandatory rulemaking procedures under ch. 227, Stats., the permanent rules are not expected to become effective until July 1, 2002. In order to comply with Act 16 by accepting applications and issuing grants for trustees and nonprofit organizations prior to then, emergency rules reflecting these changes are needed, as included herein. These emergency rules also address the above disallowance for grant proceeds, and include some minor updating of the ch. Comm 110 criteria for submitting grant applications and for filing subsequent financial and program reports.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Publication Date: October 27, 2001
Effective Date: October 27, 2001
Expiration Date: March 26, 2002
Hearing Date: January 11, 2002

2. Rules adopted revising **ch. Comm 108**, relating to community development block grant program.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

The facts constituting the emergency are as follows:

- Under the state's Consolidated Plan for the expenditure of U.S. Department of Housing and Urban Development Funds (HUD), the department has available Community Development Block Grant Funds specifically for community and economic development projects that typically are planned and designed during the winter months for commencement when the ground thaws.

- Having the ability to make these grants available at this time would assist eligible local governmental units with their project planning, obtain bids during a time when bids can be as much as 20 percent less than bids obtained in late winter or early spring, and allow for construction start-up early in the spring.

- Project readiness is a consideration in awarding grants under this program.

- Bid letting and contract approvals made prior to the construction season may allow for the completion of construction projects within one construction season.

- The acceptance and funding of applications at this time will provide an economic stimulus at the local government level in the form of planning, engineering and particularly construction contracts which offer high paying jobs.

This rule revision relates to changes in definitions which occurred in the 1999 Wis. Act 9; additional program funds now available from U.S. Housing and Urban Development

(HUD); revising the application schedule on a continuing basis; and updating the process of scoring applications.

Currently public facility grants to eligible communities are awarded annually. Under this proposal, grants can be awarded throughout the year making it easier for communities to prepare and submit their proposals.

The rule revisions reflect the expansion of funding programs for public facilities planning to issue grants to eligible local governments for public facilities planning up to \$12,500 per plan.

Publication Date: December 1, 2001
Effective Date: December 1, 2001
Expiration Date: April 30, 2002
Hearing Date: January 16, 2002

3. Rules adopted creating **ch. Comm 107**, relating to Wisconsin technology zone program.

Finding of emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Facts constituting the emergency are as follows:

- In accordance with s. 560.02 (4), Stats., the department of Commerce has the responsibility to promulgate rules to provide for the attraction, promotion and expansion of high-technology business in the state.

- Section 560.96, Stats., makes available certain tax benefits for certified businesses within the 8 designated technology zones. Tax benefits are available to certified businesses if their tax year begins on or after January 1, 2002.

- In response to a downturn in the economy and recent economic forecasts, Governor McCallum has prioritized the need to promulgate these rules as part of his economic stimulus package.

- The technology zone program will address several action items identified by the 2000 Wisconsin Economic Summit to ensure Wisconsin's short- and long-term economic vitality and success, including:

1. Combating the state's 'brain drain' by increasing high tech jobs.

2. Linking Wisconsin's research expertise with Wisconsin firms to grow clusters of high-tech jobs.

3. Linking economic strategies across regions for power through collaboration.

- This emergency rule is being created in order that the process of designating the 8 technology zones be commenced as soon as possible and that such eligible businesses may become certified and participate in the tax benefits through the Wisconsin Technology Zone Program.

Publication Date: December 5, 2001
Effective Date: December 5, 2001
Expiration Date: May 4, 2002
Hearing Date: January 11, 2002

Financial Institutions – Banking

A rule was adopted creating **s. DFI-Bkg 80.90**, relating to registration fees under the Wisconsin Consumer Act.

Finding of emergency

2001 Wis. Act 16 authorizes the Department of Financial Institutions to adopt rules pertaining to registration fees under the Wisconsin Consumer Act. The proposed rule revises the

formula for calculating these fees. Without this rule, the department is unable to effectuate the legislature's requirement that registrations be completed by February 28, 2002.

Publication Date: December 3, 2001
Effective Date: December 3, 2001
Expiration Date: May 2, 2002
Hearing Date: January 28, 2002
 [See notice this Register]

Financial Institutions – Corporate and Consumer Services

Rules adopted repealing **ch. SS 3** and repealing and recreating **chs. DFI–CCS 1 to 6**, created as emergency rules, relating to the Uniform Commercial Code.

Finding of emergency

2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (“UCC”), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to operate either a state-wide lien filing system or give effect to the provisions of the UCC before permanent rules can be promulgated. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with nation-wide uniformity in lien filings. The rules address general provisions, acceptance and refusal of documents, the information management system, filing and data entry procedures, search requests and reports, and other notices of liens under the UCC.

Publication Date: October 24, 2001
Effective Date: October 24, 2001
Expiration Date: March 23, 2002
Hearing Date: December 3, 2001

Health & Family Services (2)

(Community Services, Chs. HFS 30–)

1. A rule was adopted amending **s. HFS 94.20 (3)**, relating to patients' rights.

Finding of emergency

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

The Department operates secure mental facilities for the treatment of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third-parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the experience of investigations triggered by citizen complaints, it is clear

that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security-related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. The installation of the system at the facilities will be completed by June 20, 2001. The systems will allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for counter-therapeutic activity. An inpatient's calling lists is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is issuing these rules on an emergency basis to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. These rules also ensure the public's safety and welfare by promoting the effective treatment mission of the secure mental health facilities. The recording capability of the telephone system hardware that has been installed at the Wisconsin Resource Center and the Sand Ridge Secure Treatment Center cannot be turned off, i.e., when the system is functional, all features of the system are fully operational. If the secure telephone system is not operational, both the Wisconsin Resource Center and the Sand Ridge facility will lose the therapeutic and safety advantages afforded by the system. Since the Sand Ridge facility is accepting its first patients during the week of June 18th, there is not alternative telephone system for patients.

Publication Date: June 22, 2001
Effective Date: June 22, 2001
Expiration Date: November 19, 2001
Hearing Date: September 12, 2001
Extension Through: January 17, 2002

2. Rules adopted revising **ch. HFS 90**, relating to early intervention services for children birth to 3 with developmental needs.

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 health and welfare of children receiving early intervention services under the Wisconsin “Birth to 3 Program.” The facts constituting the emergency are as follows:

Counties must, under s. 51.44 (3) and (4), Stats., and s. HFS 90.06 (2), provide or contract for the provision of early intervention services for children with developmental needs in the age group from birth to 3. Qualifying children in each county are entitled to receive needed services. While counties may assess parents of children receiving early intervention services a share of those service costs, counties ultimately are responsible for the costs of providing such services. Since counties' cost exposure for Birth to 3 program costs is unlimited, unanticipated increases in a county's costs may result in a county suspending program services due to a lack of funding. Even though such cessations are illegal, one county indeed suspended the provision of needed services within the past year. By the time the Department was able to reinstate services in the county, enrolled children were deprived of needed services for several months. Given the negative effect such service cessations could have on children with disabilities, the Department needs to immediately alleviate the cost burden on counties by increasing the share of service costs parents must bear. In doing so, the Department will preserve the continuity of early intervention services.

The Department is also proceeding with the promulgation of the body of rules contained in this order as proposed permanent rules that will remain in effect when this emergency order expires. The full basis for the changes made by these orders is explained below:

Section HFS 90.06 (2) (h) specifies that county administrative agencies must determine the amount of parental liability for the costs of the early intervention services in accordance with ch. HFS 1. Chapter HFS 1 contains the Department's cost liability determination and ability to pay standards and guidelines for services purchased or provided by the Department and counties. Section HFS 90.06 (2) (h) also states that parents may satisfy any liability not met by third party payers if parents pay the amount determined in accordance with the family support payment formula in s. HFS 65.05 (7).

The Department's ability to pay system currently ties the Birth to 3 program to s. HFS 65.05 (7) and ch. HFS 1. Chapter HFS 90's use of these other Department administrative rules has had several undesirable consequences. First, the methodology in s. HFS 65.05 (7), while appropriate for families with children having severe disabilities, is inappropriate for the Birth to 3 program because of the variability in applying the methodology and the significantly greater turnover of families in the Birth to 3 program. This turnover of families makes the chapter's complex calculations relatively onerous on counties to administer.

Sections HFS 90.06 (2) (h) and 90.11 (2) (a) 2. and 4. cross reference and incorporate ch. HFS 1. Section HFS 1.01 (4) (d) allows counties to request an exemption from applying the ability to pay system because the county can document that the imposition of a ch. HFS 1 family cost sharing charge is administratively unfeasible. Twenty-four counties have demonstrated to the Department that their cost of administering the ability to pay system amounts to more than the revenues the counties collect. The relatively high cost of administering the program under the current provisions of ch. HFS 90 combined with relatively low rates of cost-sharing by families permitted by counties' application of s. HFS 65.05 (7), has made the program burdensome on some counties.

Second, federal policies governing Birth to 3 programs require participating states to administer a statewide early intervention system and do not allow a county to bill a family's insurance without the family's consent. Chapter HFS 1, however, requires that a family's insurance benefits be

billed; a contradiction of federal law. Third, the current ability of counties to request and obtain exemption from participating in the ability to pay system also is contrary to federal policies requiring states to operate a uniform statewide early intervention system. While federal regulations are currently being revised, none of the regulations circulated by the U.S. Department of Education would have any bearing on the Department of Health and Family Service's promulgation of these administrative rules.

The Department's modifications to ch. HFS 90 have two results. First, since ch. HFS 90 no longer cross-references ch. HFS 1, counties could no longer request exemption from participating in Wisconsin's Birth to 3 program cost share. County participation in administering the Birth to 3 program cost share becomes mandatory. Second, the method of determining parents' share of the costs of needed services is simplified and standardized statewide and is based on the relationship of families' incomes to the federal poverty threshold.

The rules simplify the determination of parental cost share, thereby eliminating the current ability to pay system's inequities for families statewide and reducing counties' administrative costs associated with the program. The Department's use of the federal poverty threshold, as revised annually, is a benchmark against which families' adjusted incomes are compared to determine the parental cost share liabilities. Under this system, the Department projects that the number of families required to share in the early intervention service costs will roughly double. Since each family's cost share will be based on approximately 1% of their income (as adjusted by a standard deduction for each child with a disability in the family) rather than the previous basis of 3% of income minus a standard deduction and disability-related expenses, the cost share of some families may increase. Families with incomes above 200% of the federal poverty level will be billed for part of the early intervention services their children receive. Families with adjusted incomes below 200% of the federal poverty threshold will be exempt from cost sharing. The Department projects that about 2,000 families will be exempt from cost sharing under the proposed formula and about 3,100 families will have a liability for a cost share.

Under the simplified payment system the Department is setting forth, the Department expects counties' costs to administer the payment system to decline as the number of forms and required calculations should be significantly reduced. The Department projects that the rule changes will increase the revenues generated by counties, in total, due to the fact that more families will have a parental cost share and more counties will be participating in the parental cost share system. However, individual counties having relatively lower per capita incomes may not experience significant revenue increases.

Publication Date: September 26, 2001

Effective Date: October 1, 2001

Expiration Date: February 28, 2002

Hearing Dates: October 16 and 17, 2001

Health & Family Services (2)

(Health, Chs. HFS 110—)

1. 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. These are the emergency rules. Department staff consulted with the Health Insurance Risk-Sharing Plan (HIRSP) Board of Governors on April 25, 2001 on the rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

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-six percent of the 10,790 HIRSP policies in effect in March 2001, 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 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, 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 must fund 60% of plan costs and cannot be less than 150% of the amount an individual would be charged for a comparable policy in the private market.

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. Fourteen percent of the 10,790 HIRSP policies in effect in March 2001, were of the Plan 2 type. The rate increases for Plan 2 contained in this rulemaking order increase an average of 3.4%. Rate increases for specific policyholders range from 0.0% to 4.9%, depending on a policyholder's age, gender, household income and zone of residence within Wisconsin. These rate increases reflect industry-wide cost increases.

The Department through this rulemaking order proposes to amend 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.

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 2000. 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, 2001. The total annual contribution to the HIRSP budget provided by an adjustment to the provider payment rates is

\$19,982,024. The total annual contribution to the HIRSP budget provided by an assessment on insurers is \$19,617,772. On April 25, 2001, the HIRSP Board of Governors approved the calendar year 2000 reconciliation process and the HIRSP budget for the plan year July 1, 2001 through June 30, 2002.

The fiscal changes contained in this order also reflect the conversion of HIRSP from cash accounting to accrual accounting, as recommended by the Legislative Audit Bureau and the HIRSP Board of Governors. Cash accounting recognizes the costs of claims and expenses when paid. Accrual accounting recognizes the costs of claims and expenses in the time period when first incurred. Basically, HIRSP program liabilities have been understated under the cash accounting methodology. The net effect of the HIRSP conversion to accrual accounting is to provide a more accurate reflection of the program's financial condition.

Publication Date: June 29, 2001

Effective Date: July 1, 2001

Expiration Date: November 28, 2001

Hearing Date: July 31, 2001

Extension Through: January 26, 2002

2. Rules adopted creating s. HFS 119.07 (6m), relating to prescription drug coinsurance coverage.

Exemption from finding of emergency

These are emergency rules creating HFS 119.07 (6m), Wis. Admin. Code to establish for prescription drug coverage a drug benefit separate from the medical benefits for the Health Insurance Risk-Sharing Plan (HIRSP) as authorized by s. 149.14 (5) (e), Stats., as amended by 2001 Wisconsin Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wisconsin Act 16. Section 9123 (9w) of the Act authorizes the department to use the emergency rulemaking procedures under s. 227.24, Stats., to promulgate these rules, exempts the department from making a finding of emergency, and from providing evidence that promulgating these rules as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

The HIRSP Board of Governors on September 13, 2001, approved the coinsurance rate and out-of-pocket limits established in these rules, as required by s. 149.14 (5) (e) Stats., as amended by 2001 Wisconsin Act 16 and s. 149.146 (2) (am) 5, Stats., as created by 2001 Wisconsin Act 16.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP health insurance coverage includes prescription drug coverage. Currently, two major issues affect HIRSP prescription drug coverage. The first issue is that pharmacies have difficulty determining the financial liability of HIRSP policyholders. The second issue is that the current system of HIRSP reimbursement to policyholders for prescription drug costs is financially burdensome to HIRSP policyholders. To resolve these issues, the department proposes to implement effective January 1, 2002, new coinsurance provisions for HIRSP's drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs and eliminate the process of reimbursing policyholders for prescription drug expenses by establishing policyholders' minimum and maximum out-of-pocket costs for covered prescription drugs.

The proposed rules will affect approximately 12,000 HIRSP policyholders statewide.

Publication Date: December 20, 2001
Effective Date: January 1, 2002
Expiration Date: May 31, 2002
Hearing Date: January 29, 2002
 [See Notice this Register]

Insurance

Rules adopted revising **chs. Ins 6, 26 and 28**, relating to Wisconsin agent licensing rules to be reciprocal and more uniform under Gramm Leach Bliley Act and the NAIC Producer model.

Finding of emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

This rule accomplishes changes required for new agent licensing software and other changes required for Gramm Leach Bliley Act and conformance to the NAIC model licensing law. This rule has already been sent to the legislature for review and the review period is completed. The only modification pending is related to the exemption for Rental Car insurance. The germane amendment has been sent to the appropriate committees and should be acceptable. The remainder of the rule is exactly as sent to the legislature and will be promulgated and published. The publication of the rule will not be effective until February of 2002 at the earliest and many of these provisions need to be effective immediately.

OCI has entered into a contract with a vendor for its agent's licensing software. This software is used by about 15 states. The software requires that certain modifications be made to existing rules in order for it to work. OCI has converted to the new system and requires the changes immediately.

In addition, in order for OCI to be considered reciprocal certain changes relating to the licensing of nonresidents need to be made.

Publication Date: November 9, 2001
Effective Dates: November 9, 2001 and January 1, 2002
Expiration Dates: April 8 and May 31, 2002

Natural Resources (2)

(Fish, Game, etc., Chs. NR 1-)

1. Rules adopted amending **s. NR 20.20 (73) (j) 1. and 2.**, relating to sport fishing for yellow perch in Green Bay and its tributaries and **s. NR 25.06 (2) (b) 1.**, relating to commercial fishing for yellow perch in Green Bay.

Finding of emergency

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

Yellow perch contribute significantly to the welfare of Wisconsin citizens by supporting popular and economically valuable sport and commercial fisheries. The yellow perch population in Green Bay is rapidly declining. This decline reflects a number of years of very poor reproduction. The

only recent year with reasonably good natural reproduction was 1998. The fish spawned that year contributed to the sport harvest in 2001 and will become vulnerable to commercial gear this summer. Sport and commercial harvests of adult yellow perch must be limited immediately in order to protect those fish and maximize the probability of good reproduction in the near future.

Publication Date: June 30, 2001
Effective Date: July 1, 2001
Expiration Date: November 28, 2001
Hearing Date: August 13, 2001
Extension Through: January 26, 2002

2. Rules adopted revising **ch. NR 20**, relating to sturgeon spearing on the Lake Winnebago system.

Finding of emergency

The department of natural resources finds that an emergency exists and the foregoing rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter spear harvest of sturgeon has continued to exceed the total allowable harvest goals due to an increase in spearing pressure and the current format of the season, which allows continued spearing for 1 day following the announcement of the season closure (when 80% of the total allowable harvest is reached). Harvest on the final day of the 2001 season resulted in a final harvest that exceeded the total allowable harvest by 52%. An emergency order is needed to protect the sturgeon population by preventing continued overharvest of female sturgeon during the 2002 season while permanent rules are being developed. The early closure should reduce spearing effort by 40%, which should decrease the daily harvest and reduce the risk of exceeding the total allowable harvest on the final day of the season.

Publication Date: December 14, 2001
Effective Date: December 14, 2001
Expiration Date: May 13, 2002
Hearing Date: January 14, 2002

Pharmacy Examining Board

Rules adopted revising **chs. Phar 1 and 2**, relating to a pharmacy internship program.

Finding of emergency

2001 Wisconsin Act 16 creates and amends rules relating to a pharmacy internship program.

Section 3608L of Wisconsin Act 16, Wis. Stats. § 450.045, which had previously authorized a Pharmacy Internship Board to implement and oversee the practice of pharmacy in this state by pharmacy interns prior to receiving licensure from the Pharmacy Examining Board.

Section 2154 of Wisconsin Act 16 mandates that effective December 31, 2001, the repeal of Wis. Stats. § 450.045 becomes effective. As of December 31, 2001, there will currently be pharmacy interns still serving internships in this state and additional pharmacy students beginning January 1, 2001, who will seek to begin an internship program. However, no standards or oversight will be in place by administrative rule of the Pharmacy Examining Board which is now charged with authority for the pharmacy internship process.

The administrative rule-making process will not allow rules to be in place as of January 1, 2002, without the use of the emergency rule procedure. The emergency rule is needed

therefore to effect a transfer of oversight from the extinguished Pharmacy Internship Board to the Pharmacy Examining Board as of January 1, 2001.

Publication Date: December 30, 2001
Effective Date: January 1, 2002
Expiration Date: May 31, 2002
Hearing Date: February 12, 2002
 [See Notice this Register]

Transportation

Rules adopted amending s. **Trans 102.15**, relating to the issuance of driver's licenses and identification cards.

Finding of emergency

This rule is adopted in response to the September 11, 2001, terrorist hijackings in the United States, and are intended to help uncover any possible terrorist attempting to obtain identification documents through the Wisconsin Department of Transportation. On November 21, 2001, the New York Times reported that to support their terrorism, terrorists finance applications for political asylum and thus implant terrorist cells in Western Europe. This rule change could interrupt terrorists who have applied for or received asylum in the United States and who attempt to obtain Wisconsin identification documents.

Because of the urgency of current government efforts directed at taking steps to interrupt terrorist workings, this order adopting an emergency rule shall take effect as provided below.

Publication Date: December 21, 2001
Effective Date: December 21, 2001
Expiration Date: May 20, 2002
Hearing Date: February 15, 2002
 [See Notice this Register]

Volunteer Fire Fighter and Emergency Medical Technician Service Award Board

Rules adopted creating ch. **VFF-EMT 1**, relating to the length of service award program.

Exemption from finding of emergency

(Section 10 (3) (a), 1999 Wis. Act 105.)

Analysis prepared by the Department of Administration:

Statutory authority: ss. 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats.

Statutes interpreted: s. 16.25 *et seq.*, Stats.

Pursuant to section 16.25 (2) through (5), Stats., the Volunteer Fire Fighter and Emergency Medical Technician Service Award Board ("Board") is required to establish by rule a program ("Length of Service Awards Program" or "Program") to provide length of service awards, as described in 26 USC 457 (e) (11), to volunteer firefighters ("VFF") and municipalities that operate volunteer fire departments or contract with volunteer fire companies, and to volunteer emergency medical technicians ("EMT"). To the extent permitted by federal law, the Program is to be designed to treat length of service awards as a tax-deferred benefit under the Internal Revenue Code. The rules are to include design

features for the Program, the requirements for and the qualifications of private sector entities that are eligible to provide administrative services and investment plans under the Program, and an appeal. Significant features of the rule are addressed below:

Section VFF-EMT 1.04 describes eligibility requirements for municipalities wishing to participate in the program, such as adopting a resolution or ordinance authorizing participation, developing standards for determining the service required of the individuals it sponsors in order to qualify for municipal contributions and providing for circumstances where municipalities wish to jointly operate, or contract with, the same volunteer fire department or volunteer fire company.

Section VFF-EMT 1.05 sets forth requirements and procedures for municipal contributions made on behalf of eligible volunteers, and for the state's matching contribution (up to \$250 per eligible individual annually).

Section VFF-EMT 1.06 sets forth the parameters for municipal contributions for prior service rendered before the municipality began participating in the Program. The minimum contribution for prior service is set at \$100, and those contributions may spread over a number of years. A separate accounting is required for these prior service payments.

Section VFF-EMT 1.07 sets forth the Program's vesting requirements and the various permutations possible between full and partial vesting periods and the minimum age requirement (age 60) for payout. Section VFF-EMT 1.07 (1) establishes that 20 years service is required to fully vest and, upon reaching age 60, the award must be paid. (This requirement insures that the benefit maintains its tax deferred status.) Section VFF-EMT 1.07 (2) provides that a fully vested individual age 60 or older may continue to provide service toward a new length of service award under a new account but, for IRS rule purposes, contributions must be paid immediately and cannot accumulate. Section VFF-EMT 1.07 (3) provides for partial vesting after 10 years' service. Should the individual perform more than 10 but less than 20 years' service, upon reaching age 60, he or she will receive only 50% of the net asset value of the benefit account for the first 10 years of service rendered, and an additional 5% for each year thereafter, up to 19 years. Section VFF-EMT 1.07 (7) allows an individual to provide simultaneous service to two or more separate municipalities but, in such cases, only one year of service credit may be earned.

Section VFF-EMT 1.09 details the notice and procedure for when a VFF-EMT ceases performing service for one participating municipality and begins performing service for another municipality, which utilizes a different program administrator or vendor. Such a transfer is allowed, but the account will be frozen and a new one started with the new program administrator. However, any accumulated years of credited service will continue to count toward the vesting requirements. Section VFF-EMT 1.10 allows for benefits to be received both upon disability, or to the beneficiaries upon death of the VFF-EMT.

Section VFF-EMT 1.12 sets forth minimum program administrator qualifications. These include five years of experience providing a length of service award program, adequate marketing and enrollment services capabilities, various accounting and record keeping procedures and abilities, membership in good standing in various organizations customary in the program administrator's or investment manager's industry that provides protection against loss, and overall financial strength.

Section VFF-EMT 1.13 provides for the administration of plans offered by a program administrator under a contract with the Board, and standard provisions to be included. These include compliance with all pertinent state and federal statutes, rules and regulations, mandatory full disclosure to the Board of all fees and commissions earned directly and indirectly on the operations of the program, audits, and data processing system failure and administrative service interruption contingency plans. Also important are the required annual statements to participating municipalities and the individuals they sponsor, detailing all contributions made and the fees commissions, and charges paid that affect the individual's account.

Section VFF-EMT 1.17 provides for a two-step appeals process in which a VFF-EMT may first protest service credit issues to the participating municipality, which may consult with the program administrator. Any decision of the municipality may be reviewed at the Board's discretion. An individual who has a substantial interest affected by a Board decision may appeal directly in writing to the Board. All Board decisions are final.

Publication Date: September 21, 2001
Effective Date: September 21, 2001
Expiration Date: February 18, 2002
Hearing Date: December 27, 2001

Workforce Development
(Prevailing Wage Rates, Chs. DWD 290-294)

Rules adopted revising **ch. DWD 290** and creating **ch. DWD 293**, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Finding of emergency

The Department of Workforce Development finds that an emergency exists and that the attached 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 adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the statutes were effective or the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

Publication Date: December 27, 2001
Effective Date: January 1, 2002
Expiration Date: May 31, 2002

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Kennels and Pet Facilities Regulation.

Policy analysis

Objective of the rule. Create rules to enable DATCP to administer s. 173.40, Stats., as created by 2001 Wis. Act 16.

In August, 2001 Wis. Act 16 was enacted. This act required licensing of kennels and kennel facilities, animal shelters, and facilities at which pet dealers and pet breeders operate. It requires DATCP to inspect all licensed facilities biennially. It also allows DATCP to establish the following rules.

- Minimum standards for animal shelters, kennels, and facilities at which pet dealers and pet breeders operate;
- Minimum requirements for humane care to be provided;
- Transportation of animals;
- Minimum ages for the sale of animals;
- Grounds for revocation of licenses;
- Grounds to issue orders prohibiting sales or movement of an animal;
- Fees;
- Record keeping requirements;
- Requirements relating to space and exercise for an animal.

DATCP will appoint an advisory committee to advise the department regarding the appropriate standards to establish. When drafting the rule, DATCP will need to establish standards that will protect the health and welfare of the animals without being onerous for the operators of the licensed facilities. In seeking to protect and promote the health and welfare of the animals, DATCP will also seek to protect the consumers' interest in purchasing healthy animals.

DATCP will need to establish a licensing program that will allow the department to meet the legislative expectations as expressed in the statute. The specifics of that program will be established by this rule.

Policy alternatives

DATCP is creating rules to establish standards that the legislature has identified in s. 173.40 (5), Stats. If DATCP does not create these rules, DATCP will not be able to carry out the required licensing and inspection of the entities identified in the statute. Therefore, there really is not alternative to creation of rules. The alternatives relating to the specific provisions of the rules will be identified by and explored with the advisory committee that DATCP will appoint in compliance with the non–statutory provisions of 2001 Wis. Act 16.

Statutory authority

D proposes to create ch. ATCP 16, Wis. Adm. Code, under authority of ss. 93.07 and 173.40, Stats.

Staff time required

DATCP estimates that it will use approximately 1 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected

persons and groups. DATCP will use existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject

Pesticide Product Restrictions; Atrazine Pesticides.

Policy analysis

Objective of the rule. Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin's Groundwater Law. Update current rule to reflect groundwater–sampling results obtained during the past year. Review the restrictions on the timing of atrazine applications. Renumber and reorganize current rule, as necessary.

Under the Wisconsin Groundwater Law, ch. 160, Wis. Stats., the department must regulate the use of pesticides to assure compliance with groundwater standards established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 mg/liter for atrazine and its chlorinated metabolites.

Under s. 160.25, Wis. Stats., the department must prohibit atrazine uses that result in groundwater contamination levels that violate the DNR enforcement standard. The department must prohibit atrazine use in the area where the groundwater contamination has occurred unless the department determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Currently under ch. ATCP 30 the use of atrazine is prohibited in 102 designated areas (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices including the timing of applications on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, the department may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with the Groundwater Law, the department must take further action to prohibit or regulate atrazine use in the areas where these wells are located. The department proposes to amend ch. ATCP 30 to add or repeal prohibition areas or take other appropriate regulatory action in response to any new groundwater findings. The department also plans to review the statewide restriction on the timing of atrazine product applications. Current rules limit the application of atrazine products to the time period between April 15 and July 31 of each year.

Policy alternatives

No Change. If the department takes no action on this proposed rulemaking, the Board approved final draft of the ch. ATCP 30 Pesticide Product Restrictions (to be promulgated in May, 2002) will apply. However, the department would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly discovered contaminated areas, nor would it meet the department's

obligations under the Groundwater Law. Conversely, the department would be unable to repeal the current restrictions on atrazine use where indicated by groundwater findings.

Statutory authority

The department proposes to revise ch. ATCP 30, Wis. Adm. Code, under authority of ss. 93.07, 94.69, and 160.19 through 160.25, Wis. Stats.

Staff time required

The department estimates that it will use approximately 0.6 FTE staff to develop this rule. This includes investigation; drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. The department will use existing staff to develop this rule.

Chiropractic Examining Board

Subject

Continuing education requirements.

Policy analysis

Objective of the rule. To allow chiropractors to satisfy continuing education requirements by taking internet-based distance learning courses.

Recognizing internet-based distance learning courses as reliable sources for continuing education. This rule will expand the options for continuing education credits.

Statutory authority

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Staff time required

50 hours.

Commerce

Subject

Objective of the rule. The objectives of this rule revision, incorporated into one or more rule packages in chapter Comm 5 and other associated/related chapters, are to:

- a) Expand the qualification options for a person applying for a journeyman plumber-restricted license examination.
- b) Establish requirements for completion of an approved course for persons with a master plumber-restricted appliance license and who install or modify multipurpose piping systems.
- c) Revise the required license, certification and registration fees relative to the costs incurred by the Department.
- d) Evaluate and possibly incorporate recognition of licenses, certifications and registrations issued by other jurisdictions.
- e) Create requirements for the registration of commercial electrical inspection agencies.
- f) Evaluate and revise license, certification and registration rules to coordinate with other revised codes or programs.

Policy analysis

Presently under chapter Comm 5, the qualifications to take one of the journeyman plumber-restricted exams dictate the completion of specific educational course work. The proposed rules would eliminate this particular qualification. The necessary knowledge associated with the requirement will be incorporated as part of the journeyman plumber-restricted exam. Other options to qualify for the license are to be evaluated, including the completion of an apprenticeship-type program.

Under chapter Comm 5, master plumbers who are responsible for the installation of a multipurpose piping

system are required to complete an educational course on the system installation. An oversight did not impose a similar requirement on a person with a master plumber-restricted appliance license who may also install and work on multipurpose piping systems.

Chapter Comm 5 specifies fees for the examination and issuance of numerous trade licenses, certifications and registrations. The fees are established to offset the Department's costs associated with various aspects of the programs.

Most of the licenses, certifications and registrations under the rules of chapter Comm 5 prescribe only one path to qualify either for the credential or the credential exam. Recognizing the licenses, certifications and registrations of other governmental jurisdictions that are equivalent to the Department's programs as qualifying for a Department corresponding credential would allow individuals alternative avenues in demonstrating their skill and knowledge.

In accordance with state statutes, the Department is responsible for the inspection of the electrical construction in commercial buildings in municipalities that do not provide these inspections. The recognition of independent electrical inspection agencies would help to facilitate accomplishment of this responsibility.

Statutory authority

Sections 101.02 (1), 101.19, and 145.14, Stats.

Staff time required

It is estimated that these rule revisions relating to credentials will require the resources of staff members from the Department as follows:

Administrative time:	40 Hours
Code Consultant's time:	120 Hours
Program Managers' time	<u>80 Hours</u>
Total Time:	240 Hours

Commerce

Subject

Objective of the rule. The objective of the rule is to revise chapters Comm 41, 43 and 45 rules relating to the requirements for periodic inspections of boilers, pressure vessels, anhydrous ammonia systems and mechanical refrigeration systems.

Policy analysis

The current chapters Comm 41, 43 and 45 specify the types and sizes of boilers, pressure vessels, anhydrous ammonia systems and mechanical refrigeration systems that must be inspected every year or every 3 years. The number of objects requiring inspection grows every year as more buildings are constructed in the state. In order to focus both public and private resources in areas of greatest safety concern, the Department is considering revising the requirements for periodic inspections of certain installations. New policies to be considered for the inspection thresholds include eliminating inspections of some smaller installations and changing the cycle time for periodic inspections.

The alternative of not revising the inspection thresholds would result in an increase in the number of randomly selected objects not receiving required periodic inspections.

Statutory authority

Section 101.17 of the Wisconsin Statutes.

Staff time required

The Department estimates that it will take approximately 200 hours to develop this rule. This time includes meeting with an advisory council, then drafting the rule and processing

the rule through public hearings and legislative review. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

Corrections

Subject

Rule amendment to update ch. DOC 332, relating to sex offender registration, sex offender lie detector testing, and community notification requirements, to update and clarify the rule to conform and adapt to recent changes in the law, rising sex offender population, and technological advances.

Policy analysis

Objective of the rule. The administrative rules under this chapter were promulgated in February, 1998, with the exception of provisions relating to lie detector requirement and associated issues, which were promulgated by emergency rule in December, 1997, and became effective in July, 1998. The changes to the rule will ensure consistency with present law, clarify and improve the language of its provisions, and synchronize the rule with current and prospective information technology. This includes integration of legislative changes under 1999 Wisconsin Laws Acts 9, 89, 156 and 186, and Wisconsin 2001 Laws Act 16, as well as judicial interpretation of ss. 301.45 (8), 301.46 (8), and 301.132 (3), Stats., into the rule.

DOC 332 relates to sex offender registration and community notification requirements, as well as requirements that certain sex offenders be required to submit to lie detector testing. Sex offender registration and community notification legislation was mandated by the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994, which included state sex offender registration laws, and Megan's Law of 1996, requiring public notification of sex offender release. Sections 301.45 (8), 301.46 (8), and 301.132 (3), Stats., were enacted by the State of Wisconsin to monitor and track people convicted of sex crimes, to utilize lie detector technology in the community supervision process, and to provide access to this information for law enforcement, victims and the general public.

The rules administering these statutes were promulgated in 1998. The sex offender registry has been a useful tool in protecting the public and promoting public awareness and safety. The system enhances public safety by making the information contained in the Sex Offender Registry accessible to the victims, law enforcement and the public. It also serves to enhance public awareness about sexual violence in our communities and provides valuable information about the ways in which individuals and communities can protect themselves and others from acts of sexual violence. However, new legislation, judicial interpretation, and potential procedural improvements require that the Department update the rule to ensure present compliance with the law, clarify and improve the efficacy of its provisions, and synchronize the rule with current and prospective information technology systems.

Statutory authority

Sections 227.11 (2), 301.45 (8), 301.46 (8), and 301.132 (3), Stats.

Staff time required

200 hours.

Employee Trust Funds

Subject

Sections ETF 50.48 (3) and 50.50 (5) require that the employer provide medical certification of a claimant's

disability for eligibility under the Long-Term Disability Insurance (LTDI) program. The proposed rule will delete the requirement that the employer provide the medical certification.

Policy analysis

Objectives of the rule. The amended rule will accomplish two objectives: provide clarification in regards to medical certification between the employer and physicians; and avoid denial of coverage for employees under the LTDI program as a result of the employer's lack of or denial of medical certification.

Currently under the LTDI program, an employee is eligible for a LTDI disability benefit from the Wisconsin Retirement System (WRS) if he or she meets certain requirements under ch. ETF 50, including the requirement to be certified by the employer as having left employment due to an apparent disability. Under ss. 50.48 (3) and 50.50 (5), the employer is required to provide a medical determination whether the employee is disabled within the meaning of the LTDI subchapter and to certify whether the disability was employment related in cases where the employee did not meet the service requirement.

If the Department receives a certification from the employer indicating that the employee is not disabled within the meaning of the LTDI subchapter or if the employer indicates they have no information on which to base an opinion, the Department is required to deny the application (claim) for LTDI benefits. The application is denied even if the Department receives the required medical documentation from the two required physicians certifying the claimant's disability. The proposed rule will be amended to remove the responsibility of the employer to make a medical determination related to employment and to instead rely on the physicians' medical determinations.

Policy alternatives to the proposed rule. The amendment to the current rule is intended to remove the responsibility of the employer making a medical determination. The medical and employment related disability certification would then be obtained from one source, the physicians, rather than from the employer and the physicians, which have and would continue to have conflicts. If the rule were not amended, the result would be less certainty and efficiency in the administration of the disability benefit program under ch. ETF 50, as well as continued denials of coverage to eligible employees when the employer does not make a medical determination.

Statutory authority

Section 40.03 (6), Stats.

Staff time required

80 hours.

Financial Institutions – Corporate and Consumer Services

Subject

Chapter DFI—CCS 8 – Relating to authorized records.

Policy analysis

Objective of the rule. To create ch. DFI—CCS 8. 2001 Act 10 repealed and recreated the Wisconsin Uniform Commercial Code (“UCC”), effective July 1, 2001. The act authorizes the Department of Financial Institutions to promulgate rules to implement the UCC. Without these rules, the department will be unable to give effect to the provisions of the UCC before permanent rules can be promulgated. The act is part of an effort by the National Conference of Commissioners on Uniform State Laws and all member states to implement a revised model Uniform Commercial Code on July 1, 2001 to facilitate interstate commerce with

nation-wide uniformity in lien filings. The rule is in regards to authorized records.

Statutory authority

Sections 227.11 (2) and 409.526, Stats.

Staff time required

40 hours.

Health and Family Services

Subject

The Department proposes to modify ch. HFS 63, Wis. Adm. Code, relating to community support programs for persons who have severe and persistent mental illness and live in the community. Community support programs (CSPs) are the primary means of providing effective treatment, rehabilitation and support services to this population.

Policy analysis

The Department's rules for CSPs were originally adopted in 1989. The standards are being updated through this proposed rulemaking order to reflect a better understanding of both the nature of mental illness and the efficacy of various treatment modalities. Experience with the certification process and CSPs has indicated the need for clarification in the areas of the certification process, personnel qualifications, assessment, use of psychotropic medications, discharge criteria, dealing with attempted suicide, and the time periods required to do assessments and treatment planning. In addition, the proposed standards will reflect increased understanding regarding evidence-based and recovery-focused treatment methods.

The Department will undertake a series of initiatives to gather input for the proposed rule from the professional community, consumers and family members. The Department will survey counties to identify their particular issues of concern. Regional listening sessions for consumers and families will occur in six locations around the state. Staff from CSPs who have demonstrated skill and leadership will be convened for an additional listening session. Input from all sources will be consolidated and analyzed. A workgroup will be established by the Wisconsin Bureau of Community Mental Health to develop a draft proposed rule to address all areas identified as in need of change. This workgroup will consist of DHFS staff, county representatives, CSP staff, Wisconsin Counties Human Services Association (WCHSA) representatives, consumers, family members and advocates.

Statutory authority

The Department's authorization to repeal and recreate these rules is found in ss. 51.42 (7) (b), 51.421 (3) (a) and (c) and 227.11 (2) (a), Stats. The rule promulgates the requirement to monitor the establishment and the continuing operation of community support programs as specified in s. 51.421, Stats.

Staff time required

Community input is a critical aspect of this rule revision. It is anticipated that approximately 160 staff hours will be required. This will ensure that adequate input is gathered and appropriately incorporated. Information not directly relevant to the rules revision will be used in alternative ways. Additional funds are available for a consultant to work with staff and workgroups to draft the rules. Consumers will be reimbursed for their efforts in this process.

Revenue

Subject

Sections Tax 2.03, 2012 and 3.91, relating to corporation returns, claims for refund and other amended returns, and petitions for redetermination.

Policy analysis

Objective of the rule. The general objectives of the rule are to update various statutory references, remove obsolete notes and update language, style and format, per Legislative Council Rules Clearinghouse standards.

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes and court decisions. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy. The only substantive new policy, which reflects a law change, is to permit a claim for refund to be filed for up to four years after an audit adjustment, effective with taxable year 2000. The circumstances under which a claim for refund may be filed after an audit adjustment are also revised, to reflect a law change.

Statutory authority

Sections 71.80 (1) (d) and 227.11 (2) (a), Stats.

Staff time required

Approximately 100 hours.

State Treasurer

Subject

The Wisconsin College Savings Program, popularly known as "EDVEST", is the state sponsored program providing a tax advantaged investment structure to help families prepare for future higher education expenses.

Policy analysis

Objective of the rule. The Wisconsin College Savings Program Board proposes rules and procedures for the operation of the program. The rules and procedures are designed to grant flexibility to program participants wherever possible, while enabling the State and its private-sector partners to administer the program in a manner that protects the program's financial integrity and viability. Maintaining eligibility as a "qualified tuition program" pursuant to section 529 of the Internal Revenue Code [26 USC 529] is another primary objective. "529" programs are eligible for a number of federal tax benefits that are attractive to families saving for future college costs.

The proposed rule addresses specific issues including who may open a college savings account, who may be designated as a beneficiary, how to open an account, how to change the account owner or beneficiary, how contributions can be made to an account, how withdrawals can be made, qualified vs. non-qualified distributions, special condition distributions such as death, disability or scholarship of the beneficiary, termination of an account, and other policy matters.

Statutory authority

Section 14.64 (2) (e), Stats., and section 15, 2001 Wisconsin Act 7.

Staff time required

50 hours.

Workforce Development

Subject

When a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in

accordance with those wage rates. Sections 66.0903 (5) and 103.49, Stats., set initial estimated project cost thresholds for application of prevailing wage rates and require that DWD adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the threshold adjustment is based on changes in the construction cost index published in the Engineering News-Record, a construction trade publication.

Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing materials for a public improvement or public work. Section 779.14 (1s), Stats., requires the department to adjust the thresholds for application of various requirements in proportion to any change in construction costs since the statute was effective or the last adjustment. These threshold adjustments will also be

based on changes in the construction cost index published in the Engineering News-Record.

Policy analysis

The thresholds for application of the prevailing wage rate laws will be adjusted based on a 1.7% increase in the construction cost index since the thresholds were last adjusted. The thresholds for the performance assurance requirements in s. 779.14, Stats., will be adjusted based on a 8.7% increase in the construction cost index since the statute was effective in June 1998.

Statutory authority

Sections 66.0903 (5), 103.49 (3g), 779.14 (1s), and 227.11, Stats.

Staff time required

Less than 30 hours.

Submittal of rules to legislative council clearinghouse

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

Commerce

Rule Submittal Date

On December 21, 2001, the Wisconsin Department of Commerce submitted a proposed rule affecting Chs. Comm 122 and 128 to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to health care loan assistance.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for January 29, 2002.

Contact Information

Jane Thomas, (608) 267-3837.

Financial Institutions – Banking

Rule Submittal Date

On December 26, 2001, the Department of Financial Institutions submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to registration fees under the Wisconsin Consumer Act.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 28, 2002 at 9:00 a.m. in the Tommy G. Thompson Conference Room, 5th floor, 345 West Washington Avenue, Madison, Wisconsin 53703.

Contact Information

David Mancl, Director, Department of Financial Institutions, Office of Financial Education, (608) 261-9540.

Pharmacy Examining Board

Rule Submittal Date

On December 19, 2001, the Wisconsin Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to requirements for the dispensing of prescription orders for schedule II controlled substances.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 12, 2002 at 9:15 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.

Pharmacy Examining Board

Rule Submittal Date

On December 19, 2001, the Wisconsin Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to the definition of “active practice of pharmacy.”

Agency Procedure for Promulgation

A public hearing is required and will be held on February 12, 2002 at 9:15 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.

Social Workers, Marriage and Family Therapists and Professional Counselors

Rule Submittal Date

On December 17, 2001, the Wisconsin Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to pre-certification supervised practice.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 17, 2002 at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.

Social Workers, Marriage and Family Therapists and Professional Counselors

Rule Submittal Date

On December 17, 2001, the Wisconsin Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to a rules committee.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 17, 2002 at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.

**Social Workers, Marriage and Family Therapists
and Professional Counselors****Rule Submittal Date**

On December 17, 2001, the Wisconsin Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to supervised clinical practice.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 17, 2002 at 9:30 a.m. in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin, 53702.

Contact Information

Pamela Haack, Paralegal, Office of Administrative Rules, (608) 266-0495.

Transportation**Rule Submittal Date**

On December 20, 2001, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule relates to safety responsibility and damage judgment suspension of operating privileges and vehicle registration.

Agency Procedure for Promulgation

A public hearing is required and will be held on January 28, 2002.

Contact Information

Julie Johnson, Paralegal, Wisconsin Department of Transportation, 266-8810.

Rule-making notices

Corrected Notice of Hearing

Commerce (Explosive Materials, Ch. Comm 7)

The following was omitted from the notice of hearing on page 18 of the December 31, 2001, Register.

Analysis of Proposed Rules

Statutory Authority: Section 101.15 (2) (e), Stats.

Statutes Interpreted: Section 101.15 (2) (e), Stats.

The current rule of s. Comm 7.35 (2) indicates that blasting operations in communities shall comply with all local regulations. This rule has the unintended effect of requiring the Department of Commerce to enforce local regulations relating to blasting. The proposed rule removes s. Comm 7.35 (2) from ch. Comm 7.

Notice of Hearing

Commerce (Financial Resources for Business and Communities, Chs. Comm 105 to 128) [CR 01-157]

NOTICE IS HEREBY GIVEN that pursuant to ss. 560.02 (4), 560.183 and 560.184, Stats., the Department of Commerce will hold a public hearing on proposed rules relating to health care loan assistance.

Hearing Date, Time and Location

Date: **Tuesday, January 29, 2002**

Time: 10:00 a.m.

Location: Thompson Commerce Center
201 West Washington Avenue
Room 3C
Madison, Wisconsin

Analysis of Proposed Rules

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

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

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

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

Appearances at the Hearing

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **February 8, 2002**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing. Written comments should be submitted to Ronald Acker, Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The proposed rules will affect any small business licensed as a dentist or a dental hygienist who wishes to participate in the Department's health care loan assistance program.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The proposed rules require the dentist to keep a record of the number of Medical Assistance and Badger Care patients.

3. Types of professional skills necessary for compliance with the rules.

The proposed rules apply to dentists and dental hygienists.

Fiscal Estimate

The proposed rules add dentists and dental hygienists to the health care loan assistance program currently administered by the Department of Commerce. There are no new administrative activities required to implement these rule additions. Therefore, the proposed rules will not have any effect on costs or revenues at the state or local level.

Copies of Rule and Contact Person

Copies of the proposed rules may be obtained without cost from Ronald Acker, Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, Email racker@commerce.state.wi.us, telephone (608) 267-7907 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Corrected Notice of Hearing

Employment Relations [CR 01-140]

The notice for public hearing on Employment Relations proposed rules amending ch. ER 30 has an error on page 21 of the December 31, 2001, Register.

Section 5 should read:

Section 5. ER 30.085 is amended to read:

ER 30.085 Career executive temporary assignment. A career executive employee may be assigned to a position for employee development purposes or to complete a special project for a duration not to exceed 24 years. The employee's classification and pay status shall not be affected. ~~An intra-agency temporary assignment requires the written agreement of the employee and the appointing authority. An inter-agency temporary assignment requires the written agreement of the employee, and the appointing authorities of both the sending and receiving agencies. The appointing authority in an intra-agency temporary assignment or the appointing authority of the receiving agency in an inter-agency temporary assignment shall send a copy of the written agreement to the secretary prior to the effective date of the assignment. If the employee is expected to return to the sending agency upon completion of the temporary assignment, the employee and the appointing authority of the sending agency shall develop a formal leave agreement under s. ER 18.14 (2) (a).~~

Notice of Hearing

Financial Institutions – Banking

Pursuant to s. 227.17, Stats., notice is hereby given that the Department of Financial Institutions, Office of Financial Education will hold a public hearing at the time and place indicated below to consider creating a rule regarding registration fees under the Wisconsin Consumer Act. The hearing covers an emergency rule effective December 3, 2001 and a proposed rule regarding the same.

Hearing Date, Time and Location

Date: **Monday, January 28, 2002**
 Time: 9 a.m.
 Location: Tommy G. Thompson Conference Room
 5th Floor
 Department of Financial Institutions
 345 West Washington Avenue
 Madison, WI 53703

This facility is accessible to individuals with disabilities through levels A, B or the first floor lobby. If you require reasonable accommodation to access any meeting, please call David D. Mancl at (608) 261-9540 or TTY (608) 266-8818 for the hearing impaired at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided by the Americans with Disabilities Act.

Written comments in lieu of public hearing testimony must be received not later than the hearing date and should be addressed to David D. Mancl, Director, Department of Financial Institutions, Office of Financial Education, P.O. Box 8041, Madison, WI 53708-8041.

Analysis Prepared by Department of Financial Institutions, Division of Banking

The create s. DFI-Bkg 80.90. Statutory authority: ss. 426.201 (3) and 227.11 (2), Stats. Summary: 2001 Act 16 amended ss. 426.201 (2) (intro), (2) (fm), (3), and 426.202 (1m) (b) and (1m) (c), Stats.; created s. 426.201 (2m), Stats.; repealed ss. 426.202 (1m) (a) 1. a., (1m) (a) 1. b., and (1m) (a) 1. c., (d) and (e), Stats.; and renumbered and amended s. 426.202 (1m) (a) 1. (intro.), Stats. The act authorizes the Department of Financial Institutions to adopt rules pertaining to registration fees under the Wisconsin Consumer Act. The proposed rule revises the formula for calculating these fees.

Fiscal Estimate

The rule increases existing revenues. There is no local government costs. Program fund sources are affected. The affected ch. 20 appropriations are s. 20.144 (1) (g).

Initial Regulatory Flexibility Analysis

The rule may have an impact on small business. Types of small business that will be affected by the rule: entities providing credit. Description of the proposed reporting, bookkeeping and other procedures required for compliance: registration form and payment of fee to the department. Types of professional skills necessary for compliance: no new skills.

Contact Person

A copy of the full text of the proposed rules and fiscal estimate may be obtained from David D. Mancl, Director, Department of Financial Institutions, Office of Financial Education, P.O. Box 8041, Madison, WI 53708-8041, Tel. (608) 261-9540. A copy of the full text of the proposed rules may also be obtained at the department's website, www.wdfi.org.

Notice of Hearing

Health and Family Services (Health, Chs. HFS 110-) [CR 01-148]

Hearing Date, Time and Location

Date: **Tuesday, January 29, 2002**
 Time: 10:0 p.m.
 Location: State Office Building
 1 West Wilson Street
 Conference Room 372
 Madison, Wisconsin

Appearances at the Hearing

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building or in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Family Services

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 health insurance coverage includes prescription drug coverage. Two major and longstanding issues affect HIRSP prescription drug coverage.

The first issue is that pharmacies currently have difficulty determining the financial liability of HIRSP policyholders, because they do not have access to information regarding policyholder deductibles and coinsurance obligations. The second issue is that the existing HIRSP system of policyholder reimbursement for prescription drug costs is both lengthy and financially burdensome to policyholders.

The department proposes to implement new coinsurance provisions for HIRSP's drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs. The new provisions also eliminate unnecessary delays and burdens in HIRSP reimbursement for prescription drug expenses by establishing policyholders' minimum and maximum out-of-pocket costs for covered prescription drugs.

The proposed rules affect about 12,000 HIRSP policyholders statewide. The impact of these proposed rules was reviewed and approved by the HIRSP Board of Governors on September 13, 2001. By law, the Board is a diverse body composed of consumers, insurers, health care providers, small business and other affected parties.

Contact Person

To find out more about the hearing or to request a copy of the proposed rules, write or phone:

Randy McElhose
Division of Health Care Financing
P.O. Box 309, Room B274
Madison, WI 53701-0309

(608) 267-7127 or, if you are hearing impaired, (608) 266-1511 (TTY)

If you are hearing or visually impaired, do not speak English, or have other personal 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 on the proposed rules received at the above address no later than February 5, 2002 will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

The fiscal effect of these proposed rules was developed by an independent actuarial firm under contract to HIRSP. This fiscal effect was reviewed and approved by the HIRSP Board of Governors on September 13, 2001.

It is estimated that the proposed rule will increase HIRSP program expenditures by about \$700,000, annually. These expenditures will be funded in the same manner as other HIRSP expenditures. About \$420,000 (60%) of this sum will be funded by an increase in policyholder premiums. The remaining \$280,000 (40%) will be shared equally between an increased HIRSP levy on health care provider rates and an increased HIRSP assessment on insurers.

An adjustment to the levy and assessment is expected to occur on July 1, 2002 as part of a routine, scheduled HIRSP rule update. A budget-based update of HIRSP rules previously occurred in 1998, 1999, 2000 and 2001. Policyholder premiums will be adjusted as new HIRSP policies are initiated or renewed. The HIRSP program has sufficient cash flow and reserves to fund this proposed rule prior to July 1, 2002, according to the independent actuarial firm under contract to HIRSP.

Initial Regulatory Flexibility Analysis

The rule changes will affect HIRSP policyholders, the Department of Health and Family Services and the Department's fiscal agent. The rule changes will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. Although the program statutes and rules provide for assessment of insurers to help finance HIRSP, no assessed insurer is a small business as defined in s. 227.114 (1) (a), Stats. Moreover, s. 149.143, Stats., prescribes how the amount of an insurer's assessment to help finance HIRSP is to be determined and, similarly, how the health care provider payment rate is to be calculated.

Notice of Hearing

Pharmacy Examining Board

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 450.03 (1) (g), Stats., as created by 2001 Wis. Act 16, and s. 450.04 (3) (b), Stats., as amended by 2001 Wis. Act 16, and interpreting ss. 450.03 (1) (g) and 450.04 (3) (b), Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order adopting emergency rules relating to a pharmacy internship program.

Hearing Date, Time and Location

Date: **February 12, 2002**
Time: 9:15 a.m.
Location: 1400 East Washington Avenue
Room 179A
Madison, Wisconsin

Appearances at the Hearing:

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 February 15, 2002 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing.

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11, (2), Stats., and s. 450.03 (1) (g), Stats., as created by 2001 Wis. Act 16, and s. 450.04 (3) (b), Stats., as amended by 2001 Wis. Act 16.

Statutes interpreted: ss. 450.03 (1) (g) and 450.04 (3) (b), Stats.

In this rule-making order the Pharmacy Examining Board creates rules relating to a pharmacy internship program to reflect statutory amendments to s. 450.04 (3) (b), Stats. effective December 31, 2001. Currently, no board rules exist to specify the requirements for the implementation and administration of a pharmacy internship program and establish necessary procedural and substantive guidelines for such a program.

SECTION 1 defines an "intern." This is necessary to maintain the distinction between the interns and technicians encompassed in Wis. Adm. Code ch. Phar 7. Interns, with limitations, practice pharmacy. Technicians do not practice pharmacy. Five classes of interns are created. SECTION 1 also defines "direct supervision."

The first class of intern, s. Phar 1.02 (4e) (a), defines an intern as a student who is practicing as part of a practical experience program sponsored by the student's school or college of pharmacy.

The second class of intern, s. Phar 1.02 (4e) (b), defines a student who practices under the direct supervision of a pharmacist. This type of intern typically engages in the practice of pharmacy within the context of summer internships for no credit under a practical experience program.

The third class of intern, s. Phar 1.02 (4e) (c), defines foreign graduates applying for original licensure who may not

have completed a traditional pharmacy internship therefore needing a means to complete an internship in the practice of pharmacy in this state.

The fourth class of intern, s. Phar 1.02 (4e) (d), defines recent graduates from an approved pharmacy school who have filed an application for licensure with the board and are awaiting board action. This class of intern may need either to obtain additional hours of internship credit to qualify for original licensure, or may be working under the direct supervision of a pharmacist while awaiting final board action on their application.

The fifth class of intern is a statutory creation, restating in the rule for clarity the provisions of s. 450.03 (1) (g), Stats. These persons have applied for a license under s. 450.05, Stats. (out-of-state licensees) and their practice of pharmacy is limited to performing duties under the direct supervision of a person licensed as a pharmacist by the board and during the period before which the board takes final action on the person's application. This class of intern is not included within the definition of "internship" because this intern does not need to satisfy an internship requirement for licensure under s. 450.05, Stats. However, a definition as an "intern" is still necessary to place such persons and their supervising pharmacists on notice of the requirements and distinctions between interns and technicians created by Wis. Adm. Code ch. Phar 7.

An internship in the practice of pharmacy is defined to mean the completion of 1500 hours in aggregate in the practice of pharmacy in the delineated categories. Not all of the required 1500 hours need to be completed in any one category, yet a minimum of 1500 hours must be earned and certified. There are five types of categories of internship experience.

The first category is the practice of pharmacy in a practical experience program consisting of the practice of pharmacy sponsored by a professional Bachelor's of Science degree in pharmacy or Doctor of Pharmacy degree granting institution located in this or another state.

The second category is the practice of pharmacy by a qualified student under the direct supervision of a pharmacist. The hours earned in this category may not count as a part of a practical experience program if previously credited therein. Hours earned in this second category are therefore considered in addition to the hours earned in the practical experience program.

The third category allows foreign graduate applicants applying for original licensure to earn internship credits to qualify for original licensure. This internship is limited to a maximum of 2000 hours of credit earned at which time the internship is deemed ended. The applicant may not then further engage in the practice of pharmacy until such time a license is granted by the board.

The fourth category allows applicants for original licensure awaiting board action on their application to practice pharmacy under the direct supervision of a pharmacist during the pendency of their application. This internship is limited to a maximum of 1500 hours of credit earned at which time the internship is deemed ended. The applicant may not then further engage in the practice of pharmacy until such time a license is granted by the board.

The fifth category is created by statute at s. 450.04 (3) (b), Stats. The statute allows the board to grant credit for practical experience acquired in another state which is comparable to include in an internship and which is approved and verified by the board or by the agency which is the equivalent of the board in the state in which the practical experience was acquired. In

determining comparable practical experience the board shall consider the duties performed constituting the practice of pharmacy as described in s. 450.01 (16), Stats.

SECTION 3 creates the definition of a "supervising pharmacist" who supervises an intern in the practice of pharmacy.

SECTION 4 amends the requirement for original licensure removing the statutory reference to Wis. Stats. s. 450.045, which was repealed.

SECTIONS 5 and 6 amend the required proofs necessary to evidence the successful completion of an internship in the practice of pharmacy and the payment of fees under that section.

TEXT OF RULE

SECTION 1. Phar 1.02 (3c) and (4c) are created to read:

Phar 1.02 (3c) "Direct supervision" means immediate on premises availability to continually coordinate, direct and inspect at first hand the practice of another.

(4c) "Intern" means a person engaged in the practice of pharmacy pursuant to s. Phar 1.02 (4e) (a), (b), (c), (d) or s. 450.03 (1) (g), Stats.

SECTION 2. Phar 1.02 (4e) is created to read:

Phar 1.02 (4e) "Internship in the practice of pharmacy" means completion of a minimum of 1500 hours in aggregate of any one or more of the following:

(a) A practical experience program consisting of the practice of pharmacy sponsored by a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state.

(b) The practice of pharmacy by a person who has successfully completed his or her second year in and is enrolled at a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state whose practice of pharmacy is limited to performing duties under the direct supervision of a supervising pharmacist, which is not acquired in a practical experience program described in par. (a). The supervising pharmacist shall keep a written record of the hours and location worked by an intern under his or her direct supervision.

(c) For a person who has first filed an application with the board for original licensure under s. Phar 2.02 and has supplied to the board evidence of having obtained certification by the foreign pharmacy graduate examination committee, the practice of pharmacy which is limited to performing duties under the supervision of a supervising pharmacist. Prior to performing duties as an intern or to receiving credit for hours in an internship in the practice of pharmacy under this section, the supervising pharmacist shall be disclosed in the initial application and any change of a supervising pharmacist shall be disclosed to the board prior to further performing duties constituting the practice of pharmacy as an intern. Upon completing a maximum of 2000 hours of the practice of pharmacy under this paragraph the internship is terminated and a person shall not further engage in the practice of pharmacy until obtaining licensure from the board.

(d) For a person who has first filed an application with the board for original licensure under s. Phar 2.02 and has supplied to the board evidence of having been graduated from a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state, the practice of pharmacy which is limited to performing duties under the supervision of a supervising pharmacist. Prior to performing duties as an intern or to receiving credit for hours in an internship in the practice of

pharmacy under this section, the supervising pharmacist shall be disclosed in the initial application and any change of a supervising pharmacist shall be disclosed in the initial application and any change of a supervising pharmacist shall be disclosed to the board prior to further performing duties constituting the practice of pharmacy as an intern. Upon completing a maximum of up to 2000 hours of the practice of pharmacy under this paragraph, the internship is terminated and a person shall not further engage in the practice of pharmacy until obtaining licensure from the board.

(e) Practical experience acquired in another state which is comparable to that described in par. (a). In determining comparable practical experience the board shall consider the duties performed constituting the practice of pharmacy as described in s. 450.01 (16), Stats.

SECTION 3. Phar 1.02 (14m) is created to read:

Phar 1.02 (14m) "Supervising pharmacist" means a pharmacist who has responsibility for supervising an intern in the practice of pharmacy.

SECTION 4. Phar 2.01 (2) is amended to read:

Phar 2.01 (2) Has completed an internship program approved by the pharmacy internship under s. 450.045, Stats in the practice of pharmacy.

SECTION 5. Phar 2.02 (1) (d) is renumbered Phar 2.02 (1) (e).

SECTION 6. Phar 2.02 (1) (d) is created to read:

Phar 2.02 (1) (d) Evidence of having completed an internship in the practice of pharmacy which shall consist of one or more of the following:

1. A statement from the dean of the school of pharmacy or the academic records office of the respective educational institution certifying the number of hours that the applicant has successfully completed in a practical experience program described in s. Phar 1.02 (4e) (a).

2. A statement from a supervising pharmacist certifying the number of hours that the applicant was supervised by that supervising pharmacist in an internship in the practice of pharmacy described in s. Phar 1.02 (4e) (b), (c) and (d).

3. Verification of practical experience acquired by the applicant in another state as described in s. Phar 1.02 (4e) (e), which is approved and verified by the board or by the agency which is the equivalent of the board in the state in which the practical experience was acquired.

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 Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearing

Transportation [CR 01-156]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 227.11 and 343.02, Stats., and interpreting ss. 343.23 (2), 344.01 to 344.27, and 346.70, Stats., the Department of Transportation will hold a public hearing to consider the amendment of ch. Trans 100, Wis. Adm. Code, relating to safety responsibility and damage judgment suspension of operating privileges and vehicle registration.

Hearing Date, Time and Location

Date: **January 28, 2002**

Time: 9:00 a.m.

Location: Hill Farms State Transportation Building
4802 Sheboygan Avenue
Room 394
Madison, Wisconsin

Appearances at the Hearing:

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business February 1, 2002, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Pat McCallum, Section Chief, Traffic Accident Section, Room 804, P. O. Box 7919, Madison, WI 53707-7919. Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16 (1), 227.11 and 343.02, Stats.

STATUTES INTERPRETED: ss. 343.23 (2), 344.01 to 344.27, and 346.70, Stats.

General Summary of Proposed Rule.

This proposed rule making rewrites much of ch. Trans 100 to incorporate changes in procedures mandated by 1997 Wis. Act 84, and to bring the chapter up to current drafting standards. In general, this rule making codifies many DMV practices and procedures that are used in the administration of the safety responsibility laws.

The definition of "accident" changed to carry over the exception for parked vehicles formerly contained in s. Trans 100.02 (3) remains in the law.

Section Trans 100.025 is created to clarify the circumstances under which the DMV will consider a vehicle to have been involved in an accident. These criteria have been applied by DMV for years in determining whether a vehicle or person was involved in an accident, and are codified in this rule making for clarity. Vehicles or persons are considered to have been involved in an accident if:

- They are injured or damaged in the accident, they contribute to causing the accident.
- They cause damage to another person or property.
- The vehicle is damaged because of a mechanical failure while being driven.
- Something falls from the vehicle and causes an accident.
- The vehicle moves to avoid debris or strikes debris and causes an accident.
- The vehicle moves without being driven, such as situations where parking brakes fail, and causes an accident.

- Where doors or a load extend from a parked vehicle into a traffic lane and an accident results.

Section Trans 100.03 (2) is amended and 100.03 (2m) created to separate two concepts contained in current s. Trans 100.03 (2). First, how does a person who is misidentified in a police report go about correcting the report so that they are not involved in a safety responsibility matter. Second, that the Department accepts filed police reports as accurate in the absence of any correspondence from the drivers involved in an accident.

Section Trans 100.03 (3) is amended to better state the Department's practice with regard to records related to accidents that do not meet the reporting criteria of s. 346.70, Stats. The Department discards or returns reports that indicate in Box 1 of the report form that the accident is not reportable. It processes all forms that indicate in that box that the accident is reportable. If the accident is later determined not to be reportable, the Department does not include any reference to the accident or report in public abstracts of the driver's record from that point forward.

Section Trans 100.04 (3) is amended to clarify that an apparently uninsured driver who would ordinarily be required to post security may avoid that requirement by proving that he or she was, in fact, insured, or proving that the accident is exempt from the safety responsibility law under s. 344.14 (2), Stats.

Section Trans 100.06 (2) is amended to clarify that the Department does consider investigator reports and payment claim notices in deciding whether there is no reasonable possibility of a judgment being entered against an uninsured driver.

Section Trans 100.10 is completely rewritten to more clearly lay out the procedural aspects of a safety responsibility hearing. No changes are contemplated with regard to the manner in which these hearings are conducted. Rather, this provision simply codifies the longstanding procedures used by DMV in conducting these hearings.

Section Trans 100.11 is similarly rewritten to clarify the procedures used in connection with the receipt of subrogation notices from subrogated parties. Again, these provisions codify the DMV's longstanding practices in a manner that should be easier for the legal community and public to use and understand.

Section Trans 100.12 provisions related to releases executed on behalf of a minor is amended to conform to the Department's practices and current law. Under s. 344.24 (2) (h), Stats., parents are permitted to settle matters related to minor children if the claim is for \$5000 or less; a legal guardian must be appointed to settle a claim valued in excess of \$5000. This rule is amended to reflect those rules.

Section Trans 100.12 is also amended to include a section on bankruptcy. Federal bankruptcy laws preempt state law in some areas and not in others. The Department has developed a set of procedures for dealing with bankrupt uninsured persons over the years, and codifying those procedures should assist attorneys for uninsured drivers in understanding the repercussions of a bankruptcy filing on a petitioner.

Section 128.21, Stats., state wage earner voluntary debt reorganization, proceedings affect only executions, attachments or garnishments, and do not affect driver license revocations or suspensions. Because those proceedings are referred to commonly as "state bankruptcy proceedings," the Department occasionally deals with debtors under such plans who mistakenly believe a ch. 344 suspension or revocation will be released if a safety responsibility indebtedness is treated under their s. 128.21, Stats., repayment plan. A

damage judgment suspension or revocation may only be affected under state law by a court order entered under s. 344.27, Stats.

Section Trans 100.13 is amended to clarify rules related to the circumstances under which accident claims of a minor may be settled by the minor's parents. In situations where a minor's parent is not authorized to settle a claim under s. 344.14 (2) (h), Stats., because it involves a claim valued at more than \$5000, a guardian must be appointed to settle the matter. Similarly, guardians must resolve settlements involving incompetent persons. Trans 100.13 is amended to concisely repeat these statutory and common law rules in a format that requires less general knowledge of the law to understand.

Section Trans 100.15 is amended to codify the policies and procedures related to reinstating a suspended or revoked operating privilege at the end of a safety responsibility or damage judgment suspension or revocation.

Section Trans 100.16 is amended to provide a consistent mechanism for determining whether to permit an organization or entity to self-insure. The primary standard employed is one suggested by the Insurance Industry Committee on Motor Vehicle Administration. The \$60,000 figure from s. 344.37 (1) is used as the minimum dollar amount required and is multiplied by the square root of the number of vehicles owned by the self-insurance applicant. The "square root" rule recognizes a risk management mechanism known as the "law of large numbers" which postulates that the probability of all vehicles being involved in an accident (in a given year, for example) diminishes as the number of vehicles increases. In addition to meeting the capital amount requirements of this calculation, a self-insured must be making payments to creditors as the debts become due and not have any unpaid judgments of record.

Section 344.14 (1g), Stats., requires the Secretary to refuse vehicle registration to persons whose registration is revoked for failure to deposit security under the safety responsibility law. DMV has long applied the rule that it would not honor a transfer of vehicle title for a vehicle subject to a registration suspension if the purpose of the transfer was to avoid the repercussions of that statute. Two standards DMV uses to determine whether a transfer was made for the purpose of avoiding the statute are whether a transfer was made without adequate consideration, such as a sale ostensibly for \$1, and whether the transferee shares the same address with the transferor. These criteria are now expressly set forth in the rule.

Section Trans 100.20 is amended to clarify that DMV generally purges information from the driver database twice annually. The language of the existing rule left the impression with some readers that the minute an accident meets the criteria for deletion from the public record that the computers somehow immediately purged the information. To the contrary, a special program is run to purge information from driver records twice per year. If the item is eligible for deletion on the date the purge program runs, the information is deleted at that time.

Trans 100.19 is created to provide guidance beyond the statutory provisions in ch. 344, Stats., to clarify the procedures related to the suspension or revocation of driver licenses for failure to pay a damage judgment and license reinstatement procedures. Longstanding administrative practices with regard to acceptance of installment agreements and judgment debtor bankruptcies are codified.

Finally, a provision related to occupational licenses issued to commercial driver license holders is moved from s. Trans

100.18 into ch. Trans 117, which generally deals with occupational licensing.

Initial Regulatory Flexibility Analysis

This regulatory change has no impact on small business. This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department does not anticipate any fiscal effect upon small businesses from this codification.

The proposed amendments to s. Trans 100.16 that propose solvency requirements for entities that self-insure could theoretically impact businesses. Only 12 companies currently self-insure with the state, and they are all utilities or rental car companies. The Department surveyed these entities and they indicated that they would meet or exceed the standard set forth in the rule. Moreover, none qualifies as a "small business" under s. 227.114, Stats. Accordingly, the Department concludes the amendment would have no fiscal impact upon

small businesses.

Fiscal Estimate

This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department does not anticipate any fiscal effect from this codification.

Preparation and Copies of Proposed Rule.

Preparation of this proposed rule was done by the Department's Traffic Accident Section. Copies of the proposed rule may be obtained upon request, without cost, by writing to Pat McCallum, Section Chief, Traffic Accident Section, Room 804, P. O. Box 7919, Madison, WI 53707-7919, or by calling (608) 266-1249. Hearing-impaired individuals may contact the Department using TDD (608) 266-0824. Alternate formats of the proposed rule will be provided to individuals at their request.

Submittal of proposed rules to the legislature

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

Transportation

(CR 01-121)

Ch. Trans 131, relating to vehicle emission inspections.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders 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 date of these rules could be changed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rule orders.

**Administration
(CR 01-086)**

An order creating ch. Adm 48, relating to the department's comprehensive planning and transportation planning grants to local governmental units.

Effective 3-1-02

**Health and Family Services
(CR 01-045)**

An order creating HFS 95, relating to the use of force to prevent escapes, pursue and capture escaped persons detained or committed and to provide security at facilities housing such persons.

Effective 2-1-02

**Nursing Home Administrator Examining Board
(CR 01-101)**

An order affecting chs. NHA 1 to 5, relating to examination, education, continuing education, reciprocity requirements and unprofessional conduct.

Effective 3-1-02

**Pharmacy
(CR 01-091)**

An order affecting ch. Phar 2, relating to examinations for original licensure and for persons licensed in another state.

Effective 3-1-02

**Revenue
(CR 99-158)**

An order affecting ch. Tax 20, relating to the lottery and gaming property tax credit.

Effective 2-1-02

**Revenue
(CR 01-088)**

An order affecting chs. Tax 61 to 63, relating to Wisconsin lottery retailers and nonprofit organization retailers and the Wisconsin lottery's major procurements.

Effective 3-1-02

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