

The Governor approved this Statement of Scope on August 24, 2015.

STATEMENT OF SCOPE

DEPARTMENT OF HEALTH SERVICES

Rule No.: Chapter DHS 129

Relating to: Certification of programs for training and testing nurse aides, medication aides and feeding assistants

Rule Type: Permanent

Type of Statement of Scope: Original

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable.

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to establish standards for the approval of nurse aide training programs and competency evaluation programs that are designed for individuals who received nursing aide training of less than 120 hours in another state, that when combined with an instruction program in the other state, will result in the individual receiving substantially the same instruction as an individual who completes the 120 hours of training in Wisconsin.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Section 146.40 (3g), Wis. Stats., as created by 2013 Wisconsin Act 357 requires that the department establish standards, by rule, for the approval of instructional programs for nurse aides who have successfully completed an instructional program for nurse aides in another state that, when combined with instruction received from another state, provide instruction that is substantially equivalent to instruction received through a department approved Wisconsin program and meet the standards prescribed in rule.

Under current law before a nurse aide may be employed in Wisconsin, the nurse aide is required to complete 120 hours of instruction, including 32 clinical hours, through a department approved nurse aide training program and pass a competency examination. The department proposes to revise the existing rule to conform the rule with s. 146.40 (3g), Stats., as created by 2013 Wisconsin Act 357 to bridge the gap between the current minimum federal nurse aide training and competency requirements and Wisconsin's nurse aide program and competency requirements.

The department proposes to revise the existing rule to include curriculum specific to the needs of persons with dementia, the effects of medication, restorative services and client rights. Program standards that include the minimum number of training hours and hours in a clinical setting will also be proposed.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 146.40 (3g), Stats., reads:

Except as provided in sub. (4d), the department shall approve instructional programs for nurse aides that apply for approval; that satisfy standards for approval that are promulgated by rule by the department; and that allow an individual who has successfully completed an instructional program for nurse aides in another state to receive instruction in this state that, when combined with the instructional program in the other state, will result in the individual having received substantially the same instruction as an individual who successfully completes an instructional program approved under sub. (3).

Section 227.11 (2) (a) 1. to 3., Stats., reads:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

3a. Policy alternatives:

There are no alternatives to rulemaking. Section 146.40 (3g), Stats., as created by 2013 Wisconsin Act 357, requires that the department establish, by rule, approval standards for nurse aide instructional programs and competency evaluation programs for nurse aides who have less than 120 hours of training from another state.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department will spend approximately 1000 staff hours for rulemaking. The department will form an advisory committee to assist in development of the rule.

6. List with description of all entities that may be affected by the proposed rule :

The proposed rule would affect nurse aide training programs, including the Wisconsin Technical College System, nursing homes, hospitals, home health agencies, hospices and private programs.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

Similar federal regulations are located at 42 CFR 483.150 through 483.156. The federal regulations establish the minimum requirements that must be met by states for the review and approval of nurse aide training and competency evaluation programs. The requirements establish the minimum number of hours of training, qualification of the instructors, curriculum and content of the nurse aide competency evaluation.

8. Anticipated economic impact of implementing the rule :

The proposed rules are anticipated to have little or no economic impact if promulgated.

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