

The Governor approved this Statement of Scope on October 12, 2015.

**STATEMENT OF SCOPE**  
**DEPARTMENT OF HEALTH SERVICES**

**Rule No.:** DHS 133

**Relating to:** Home health agencies

**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 rulemaking is to conform ch. DHS 133 with s. 50.49 (1) (b), Stats., as amended by 2011 Wisconsin Act 161 which, in pertinent part, defines home health services as those services provided under the care of a physician, physician assistant, or advanced practice nurse prescriber and to correct or remove outdated rule provisions and cross-references.

**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 50.49 (1) (b), Stats., as amended by 2011 Wisconsin Act 161, in pertinent part, defines home health services to include services that are provided to an individual who is under the care of a physician, physician assistant, or advanced practice nurse prescriber. Chapter DHS 133 currently only recognizes home health care services as those provided under the care of a physician or advanced practice nurse prescriber. The department proposes to conform the rule to reflect that home health services, as now defined under s. 50.49 (1) (b), Stats., may also be provided under the care of a physician assistant.

The existing rule provides that persons performing unspecified therapy services be qualified by training or licensure. The department intends to clarify that persons providing “other therapies” include art or music therapy. The existing rule also requires that an abstract of the patient’s record accompany the patient when the patient is transferred to another health facility. The department intends to clarify that an abstract of a patient’s record is the same as a summary of a patient’s record. The existing rule only specifies the Centers for Disease Control and Prevention as an authority for reference in the development of an agency’s infection control and prevention program. The department proposes to clarify that agencies may use other nationally recognized subject authorities, in addition to the Centers for Disease Control and Prevention, to assist in the development of their infection control and prevention program.

**3b. Analysis of policy alternatives**

There is no reasonable alternative to the proposed rulemaking.

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

Section 50.49 (2) (a), Stats., reads:

The department may develop, establish and enforce standards for the care, treatment, health, safety, welfare and comfort of patients by home health agencies and for the maintenance and operation of home health agencies which, in the light of advancing knowledge, will promote safe and adequate care and treatment of such patients by home health agencies.

Section 227.11 (2) (a), 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.

**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 200 staff hours for rulemaking.

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

The entities that may be affected by the proposed rule are home health agencies, the Wisconsin Association for Home Health Care, Inc., physician assistants, and home health agency patients.

**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 :**

Federal regulations under 42 CFR 484.18, in pertinent part, require that medical care in home health agencies be supervised by a physician. Both physician assistants and advanced nurse prescribers must act under the supervision or in collaboration with the physician. The regulations also otherwise establish the conditions for participation in the Medical Assistance program. The department's proposal is to revise ch. DHS 133 to reflect the recent change in the definition of home health services under s. 50.49 (1) (b), Stats., which now include services provided under the care of a physician assistant, in addition to those provided under the care of a physician or advanced nurse prescriber.

**8. Anticipated economic impact of implementing the rule:**

The proposed rule is anticipated to have little to no economic impact if promulgated.

**Contact Person:**

Rosie Greer

608-266-1279

[rosie.greer@dhs.wisconsin.gov](mailto:rosie.greer@dhs.wisconsin.gov)