

The Governor approved this Statement of Scope on September 13, 2016

STATEMENT OF SCOPE
DEPARTMENT OF HEALTH SERVICES

Rule No.: Chapter DHS 68

Relating to: Support for Persons with Alzheimer’s Disease and their Caregivers

Rule Type: Permanent

Type of Statement of Scope: Original

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

This is not an emergency rule

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

2015 Wisconsin Act 273 amended eligibility requirements, increased appropriation levels and included tribes or bands as local administrators for the Wisconsin Alzheimer’s Family Caregiver Support Program (AFCSP). Revisions to ch. DHS 68 are necessary to conform the rule to 2015 Act 273. Additionally, rule revisions are required in order to correct outdated terminology, to update the range of caregiver support services that can be provided by the program, to reconsider the program’s cost-share requirement, and to establish a funding formula that includes tribes or bands as entities contracted to administer the AFCSP at the local level.

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:

Updating the rule would allow the department to address the following program limitations, which have been identified by stakeholders, including AFCSP coordinators and Wisconsin families enrolled in the program:

1. Until the passage of 2015 Act 273, Tribes were not allowed to contract with the department to operate the Alzheimer’s Family Caregiver Support Program. Although legally allowed through the passage of 2015 Act 273, the rule must be updated to reflect current law.
2. The funding formula established in the current rule for the allocation of funds requires data that is not readily available, especially from tribes. By allowing the department to establish a new funding formula that uses common and easily available data sources, AFCSP allocations will be less time consuming for department staff and be more fair and reflective of the needs of families across the state.
3. The current rule requires program participants to contribute a “cost-share” based on fees included in the Uniform Fee Schedule, contained in ch. DHS 1. The Uniform Fee Schedule was created for programs that provide a much higher level of services. When the Uniform Fee Schedule’s “ability to pay” cost share requirements are applied to this small program with a maximum benefit of only \$4,000, families near the high end of the

eligibility scale are prevented from accessing the program. In counties where the maximum allowable service payment has been reduced to \$2,000 or less, families that should be eligible for the program become ineligible. The department intends to revise the current administrative rule in order to reflect the legislature's intent to make AFCSP available to more families across the state.

The department could choose not to revise ch. DHS 68. However, this alternative is not reasonable because the rule would fail to reflect current law, and the change is necessary to correct outdated terminology, update the range of services provided by the program, and establish a funding formula to include tribes or bands as entities contracted to provide the AFCSP.

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

Section 46.87 (2), Stats., reads:

From the appropriations under s. 20.435 (7) (b) and (o), the department shall allocate funds to agencies designated under sub. (3) (c) or (d), to be used for the administration and implementation of an Alzheimer's family and caregiver support program for persons with Alzheimer's disease and their caregivers. The department shall allocate at least \$1,000,000 in each fiscal year toward respite care.

Section 46.87 (3) (b), Stats. reads:

The department shall select counties and tribes or bands to participate in the program on the basis of criteria promulgated by rule.

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:

It is estimated that approximately 500 hours of staff time will be required to promulgate the proposed rules.

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

- Aging and Disability Resource Centers
- County Aging Units
- Wisconsin residents with Alzheimer's disease and dementia and their caregivers
- Wisconsin Department of Health Services
- Tribes or Bands participating in the AFCSP

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:

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rules

8. Anticipated economic impact of implementing the rule:

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

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