

The Governor approved this Statement of Scope on September 19, 2016

STATEMENT OF SCOPE
DEPARTMENT OF HEALTH SERVICES

Rule No.: DHS 124
DHS 131
DHS 132
DHS 134

Relating to: Hospitals
Hospices
Nursing Homes
Facilities serving people with developmental disabilities

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:

On May 4, 2016, the federal Centers for Medicare & Medicaid (CMS) adopted the 2012 Life Safety Code (LSC) by final rule. The LSC is published and periodically revised by the National Fire Protection Association (NFPA), which was founded in 1896 to promote the science and improve the methods of fire protection. The LSC establishes fire protection requirements that address construction, protection, and operational features, and that are intended to provide a reasonable degree of safety from fire, smoke, and panic.

Federally-certified health care providers must comply with the 2012 LSC within 60 days of the publication date of the final rule, unless otherwise stated in the rule. Affected provider types include federally-certified hospitals, hospices, nursing homes and facilities serving people with developmental disabilities. These providers are also regulated by Chapters DHS 124, DHS 131, DHS 132, and DHS 134, which currently adopt the 2000 edition of the LSC. The Department therefore proposes to adopt the 2012 edition of the LSC in these chapters, in order to promote safe and adequate care for patients and residents in Wisconsin health care facilities, and to achieve consistency between federal and state rules. The Department also proposes to update, correct, or remove any outdated rule provisions or cross-references.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:

Effective May 4, 2016, CMS adopted the 2012 edition of the LSC in order to modernize and improve protection from fire. Proposed rule revisions are intended to ensure safe and adequate care for patients and residents in Wisconsin health care facilities, and to maintain consistency between federal and state requirements. The Department therefore proposes to adopt the 2012

edition of the LSC in the following sections of the Wisconsin Administrative Code: DHS 124.28 (2), DHS 131.38(2), DHS 132.82 (1), DHS 134.82 (1).

There are no reasonable policy alternatives because all federally-certified, Wisconsin health care providers must comply with the 2012 Life Safety Code. If state rules are not updated, affected providers will be subject to inconsistent requirements, and fire protections for patients and residents in Wisconsin health care facilities will remain outdated.

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

The Department's authority to promulgate rules is as follows:

Wis. Stat. § 50.02(2) states:

The department, by rule, shall develop, establish and enforce regulations and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in community-based residential facilities and nursing homes and for the construction, general hygiene, maintenance and operation of those facilities which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of residents in those facilities; and promulgate and enforce rules consistent with this section. Such standards and rules shall provide that intermediate care facilities, which have 16 or fewer beds may, if exempted from meeting certain physical plant, staffing and other requirements of the federal regulations, be exempted from meeting the corresponding provisions of the department's standards and rules. The department shall consult with the department of safety and professional services when developing exemptions relating to physical plant requirements.

Wis. Stat. § 50.02 (3) states:

50.02(3)(a) The department shall establish several levels and types of community-based residential facilities and nursing homes as provided in par. (b), including a category or categories designed to enable facilities to qualify for federal funds.

(b) In setting standards and regulations, the department shall consider the residents' needs and abilities, the increased cost in relation to proposed benefits to be received, the services to be provided by the facility, the relationship between the physical structure and the objectives of the program conducted in the facility and the primary functions of the facility. Recognizing that size and structure will influence the ability of community-based residential facilities to provide a homelike environment, the legislature encourages the department to develop rules which facilitate in particular the development of: small facilities, small living units in larger facilities, individual residential units, independent living to the extent possible, and integration of residents into the community.

(c) The department shall promulgate rules to establish a procedure for waiver of and variance from standards developed under this section. The department may limit the duration of the waiver or variance.

(d) The department shall promulgate rules to establish a procedure for the admission, evaluation and care of short-term care nursing home residents. These rules shall specify that the nursing home or community-based residential facility shall be required to provide to the department as documentation of this admission, evaluation and care only that amount of information commensurate with the length of stay and the medical needs, if any, of the particular resident.

Wis. Stat. § 50.36 (1) states:

The department may use and enforce the conditions in 42 CFR 482.60 as standards that apply to psychiatric hospitals, which are hospitals primarily engaged in providing psychiatric services for the diagnosis and treatment of persons who have mental illness. Beginning on July 1, 2016, except as otherwise provided under ss. 50.32 to 50.39, the department shall use and enforce the conditions for Medicare participation for hospitals as the minimum standards that apply to hospitals. The department shall interpret the conditions for Medicare participation for hospitals using guidelines adopted by the federal centers for medicare and medicaid services, unless the department determines that a different interpretation is reasonably necessary to protect public health and safety. The department may promulgate, adopt, amend, and enforce additional rules and standards for the construction, maintenance, and operation of hospitals that the department determines are necessary to provide safe and adequate care and treatment of hospital patients and to protect the health and safety of the patients and employees. The building codes and construction standards of the department of safety and professional services shall apply to all hospitals to the extent that they are not incompatible with any building codes or construction standards required by the conditions for Medicare participation for hospitals. Except for the construction codes and standards of the department of safety and professional services and except as provided in s. 50.39 (3), the department shall be the sole agency to adopt and enforce rules and standards pertaining to hospitals.

Wis. Stat. § 50.95 states:

The department shall promulgate all of the following rules:

(1) Except as provided in s. 50.942, standards for the care, treatment, health, safety, rights, welfare and comfort of individuals with terminal illness, their families and other individuals who receive palliative care or supportive care from a hospice and the maintenance, general hygiene and operation of a hospice, which will permit the use of advancing knowledge to promote safe and adequate care and treatment for these individuals. These standards shall permit provision of services directly, as required under 42 CFR 418.56, or by contract under which overall coordination of hospice services is maintained by hospice staff members and the hospice retains the responsibility for planning and coordination of hospice services and care on behalf of a hospice client and his or her family, if any.

Wis. Stat. § 227.11 (2) states:

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 estimates that approximately 100 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:

The proposed rule will affect hospitals, hospices, nursing homes, and facilities serving people with developmental disabilities, regulated under chs. DHS 124, DHS 131, DHS 132, and DHS 134, as well as individuals receiving care from these facilities.

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:

Proposed rule revisions are intended to achieve consistency between federal and state fire safety regulations, affecting hospitals, hospices, nursing homes, and facilities serving people with developmental disabilities.

8. Anticipated economic impact of implementing the rule:

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

Contact Person:

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