

WISCONSIN DEPARTMENT OF HEALTH SERVICES PROPOSED ORDER TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services (“the Department”) proposes an order to **amend** DHS 5.07 (2) (intro) and (2) (a) and (b), 10.41 (Note), 60.01 (6) (d), 61.021 (11), 61.022 (13), 61.06 (8), 61.10, 61.40 (intro), 61.76 (intro), 61.79 (2) (a), 63.06 (1) (a), 63.09 (4), 88.10 (3) (L), 101.03 (152), 103.06 (2) (c) 1. a. to c., 104.01 (2) (title) and (2), 105.36 (2) (a) (intro) and 1. to 3., 106.02 (10), 106.06 (intro), (22), (23) (title), and (23), 107.06 (3) (d) (intro) and 1. to 7., 110.54 (24), 124.06 (1) (a), 129.03 (18), 129.05 (2) (a) 1. e., 129.07 (2) (a) 3., 129.08 (5) (a), 134.60 (2) (a) 1., 134.82 (3) (b) 2., 134.83 (5) (g), 134.84 (3) (c) (title) and (3) (c), and 152.04 (4); and to **repeal and recreate** DHS 61.022 (5) and 63.02 (12), relating to the use of inclusive language under 2019 Executive Order 15.

RULE SUMMARY

Statute interpreted

Chapter 49 Stats, subchs. IV–VI
Chapter 50, Stats.
Sections 49.2805 to 49.2897, Stats.
Section 227.11, Stats

Statutory authority

Section 227.11 (2) (a), Stats.:

(2) 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.

Explanation of agency authority

Within certain parameters, the Department is authorized under s. 227.11 (2) (a), Stats., to 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.

Related statute or rule

2019 Executive Order 15
2019 Wis. Act 1

Plain language analysis

The objective of this proposed rulemaking order is to comply with 2019 Executive Order 15. The executive order requires each state agency to review its administrative rules and replace any derogatory or offensive terms with current, inclusive terms. Because the Department has been directed by 2019 Executive Order 15 to update the affected rules, there is no reasonable alternative to rulemaking. Many of the effective rule chapters were amended by 2019 Wis. Act 1, and the Department is in the process of revising or repealing many of the rule chapters listed in the Statement of Scope. This proposed rule order aims to replace any outdated and non-inclusive terms not addressed by 2019 Wis. Act 1 or the department's other active rulemaking.

Summary of, and comparison with, existing or proposed federal regulations

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

Comparison with rules in adjacent states

Illinois:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Iowa:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Michigan:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Minnesota:

Not applicable – the proposed rule order is based on executive order from the Governor of Wisconsin.

Summary of factual data and analytical methodologies

No factual data or methodologies were relied upon. This proposed rule order is based on the Governor's directives in 2019 Executive Order 15.

Analysis and supporting documents used to determine effect on small business

The Department's fiscal estimate and economic impact analysis determined that the proposed rules would not have any effect on small businesses.

Effect on small business

This rule is not anticipated to have any effect on small businesses.

Agency contact person

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Statement on quality of agency data

As provided in the “summary of factual data and analytical methodologies,” no data was used for this proposal rule section repeal.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department’s website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 5.07 (2) (intro) and (2) (a) and (b) are amended to read:

DHS 5.07 (2) AFFIRMATIVE ACTION. An affirmative action plan shall be developed to increase the utilization of women, minorities and ~~handicapped~~ individuals with disabilities previously underutilized and underrepresented by the identification of goals and establishment of timetables formulated to correct substantial disparities. The plan shall include all of the following:

(a) Provision for the collection and maintenance of data on applicants and employees by race, sex, ethnic group and ~~handicapped~~ disability status to determine the impact of the selection process on the composition of the work force; ~~and,~~

(b) Periodic evaluation of results to assess the effectiveness of the plan in achieving both long term and interim goals on a timely basis; ~~and,~~

SECTION 2. DHS 10.41 (Note) is amended to read:

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

SECTION 3. DHS 60.01 (6) (d) is amended to read:

DHS 60.01 (6) (d) Parking in any parking area reserved for ~~the handicapped~~ individuals with disabilities is prohibited at all times to persons other than ~~the handicapped~~ individuals with disabilities.

SECTION 4. DHS 61.021 (11) is amended to read:

DHS 61.021 (11) “Sheltered employment” means non-competitive employment in a workshop, at home, or in a regular work environment for persons with a physical or ~~mental handicap~~ intellectual disability. ~~A handicapped person~~ An individual with a disability is defined as any person who, by reason of physical or

mental defect or alcohol or drug abuse, is or may be expected to be totally or partially incapacitated for remunerative operation.

SECTION 5. DHS 61.022 (5) is repealed and recreated to read:

DHS 61.022 (5) “Developmental disability” has the meaning given in s. 51.01 (5) (a), Stats.

SECTION 6. DHS 61.022 (13) is amended to read:

DHS 61.022 (13) “Substantial ~~handicap~~ disability” means a level of disability of such severity that, alone or in combination with social, legal, or economic constraints, it requires the provision of specialized services over an extended period of time directed toward the individual’s emotional, social, personal, physical, or economic habilitation and rehabilitation.

SECTION 7. DHS 61.06 (8) is amended to read:

DHS 61.06 (8) A teacher shall be eligible for certification by the department of public instruction for teaching the appropriate ~~mental handicap~~ intellectual disability or shall secure the temporary approval of the department

SECTION 8. DHS 61.10 is amended to read:

DHS 61.10 **Eligibility for Service.** In accordance with Title VI and Title IX of the Civil Rights Act and the Rehabilitation Act of 1973, services shall be available and accessible and no person shall be denied service or discriminated against on the basis of sex, race, color, creed, ~~handicap~~ disability, age, location or ability to pay.

SECTION 9. DHS 61.40 (intro) is amended to read:

DHS 61.40 **Sheltered employment and work activity services.** Sheltered employment services are non-competitive remunerative employment for an indefinite period of time for individuals who are presently unemployable in the competitive labor market. Work activity services are worklike therapeutic activities for ~~handicapped persons~~ individuals with disabilities whose physical or mental impairment is so severe as to make their productive capacity inconsequential (never more than 25% of the normal production capacity). Sheltered employment programs shall include sheltered employment services or work activity services and may include the additional developmental disabilities services of counseling, education, recreation, training, personal care and transportation. A sheltered employment program shall comply with all of the following:

SECTION 10. DHS 61.76 (intro) is amended to read:

DHS 61.76 **Rehabilitation program.** The community mental health program shall be responsible for the provision of an organized rehabilitation service designed to reduce the residual effects of emotional disturbances and to facilitate the adjustment of ~~the mentally ill, mentally handicapped and emotionally disturbed~~ individuals with mental illnesses, intellectual disabilities, or emotional disturbances in the community through a variety of rehabilitation services. When possible, these services should be provided in conjunction with similar services for other disabilities. A rehabilitation program shall comply with all of the following:

SECTION 11. DHS 61.79 (2) (a) is amended to read:

DHS 61.79 (2) (a) *General consideration.* Children and adolescents shall be accepted for other than emergency inpatient treatment only if the child or adolescent requires treatment of a comprehensive and intensive nature and is likely to benefit from the program the inpatient facility has to offer or outpatient alternatives for treatment are not available. No child or adolescent shall be admitted to any inpatient facility more than 60 miles from home without permission of the department. Each inpatient service shall specify in writing its policies and procedures, including intake and admission procedures, current costs, the diagnostic, treatment and preventive services it offers and the manner in which these are regularly conducted. Intake and admission procedures must be designed and conducted to ensure as far as possible a feeling of trust on the part of the child and family. In preparation for admission, the diagnosis and evaluation as well as the development of the treatment plan shall take into consideration the age, life experience, life styles, individual needs and personality, clinical condition, special circumstances necessitating admission and special problems presented by the patient and family. Complete assessment shall include clinical consideration of each of the fundamental needs of the patient; physical, psychological, chronological and developmental level, family, education, social, environmental and recreational. In addition to establishing a diagnosis and carrying out treatment, each service must also make provision for the diagnosis and treatment of any concurrent or associated illness, injury, or ~~handicap~~ disability. When treatment is to be concluded, the responsible agency will plan with the child, parents and other significant persons or community agencies to ensure an environment that will encourage continuing growth and development.

SECTION 12. DHS 63.02 (12) is repealed and recreated to read:

DHS 63.02 (12) “Developmental disability” has the meaning given in s. 51.01 (5) (a), Stats.

SECTION 13. DHS 63.06 (1) (a) is amended to read:

DHS 63.06 (1) (a) A CSP shall have written personnel policies to ensure that employment practices do not discriminate against any employee or applicant for employment on the basis of age, race, religion, color, sexual orientation, marital status, arrest and conviction record, ancestry, creed, national origin, ~~handicap, sex, or physical condition or developmental disability~~ disability, sex or physical condition.

SECTION 14. DHS 63.09 (4) is amended to read:

DHS 63.09 (4) The CSP shall ensure that no client is denied any benefits or services or is subjected to discrimination on the basis of age, race, religion, color, sexual orientation, marital status, arrest and conviction record, ancestry, creed, national origin, ~~handicap~~ disability, sex or physical condition.

SECTION 15. DHS 88.10 (3) (L) is amended to read:

DHS 88.10 (3) (L) *Safe physical environment.* To a safe environment in which to live. The adult family home shall safeguard residents who cannot fully guard themselves from environmental hazards to which they are likely to be exposed, including conditions which would be hazardous to anyone and conditions which would be or are hazardous to a particular resident because of the resident’s condition or ~~handicap~~ disability.

SECTION 16. DHS 101.03 (152) is amended to read:

DHS 101.03 (152) "Rehabilitation agency" means an agency providing an integrated multi-disciplinary program of services designed to upgrade the physical functioning of ~~handicapped, disabled individuals~~ individuals with disabilities by bringing together as a team specialized rehabilitation personnel to provide these services, the services at a minimum consisting of physical therapy or speech pathology services and a rehabilitation program which, in addition to physical therapy or speech pathology services, includes social or vocational adjustment services.

SECTION 17. DHS 103.06 (2) (c) 1. a. to c. are amended to read:

DHS 103.06 (2) (c) For persons whose eligibility is being determined according to SSI categorically needy or medically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned it is exempt if it meets one of the following conditions:
 - a. It is necessary for employment;.
 - b. It is necessary for medical treatment of a specific or regular medical problem;.
 - c. It is modified for operation or transportation of a ~~handicapped person; or~~ person with a disability.

SECTION 18. DHS 104.01 (2) (title) and (2) are amended to read:

DHS 104.01 (2) ~~RIGHTS OF HANDICAPPED PERSONS~~ INDIVIDUALS WITH DISABILITIES. No otherwise qualified ~~handicapped individual~~ individual with a disability may, solely by reason of ~~handicap~~ disability, be excluded from the participation in MA, be denied benefits of MA or be subjected to discrimination under MA.

SECTION 19. DHS 105.36 (2) (a) (intro), and 1. to 3. are amended to read:

DHS 105.36 (2) (a) Family planning services shall be made available in all of the following conditions:

1. Upon referral from any source or upon the patient's own application;.
2. Without regard to race, nationality, religion, family size, ~~marital~~ marital status, maternity, paternity, ~~handicap~~ disability or age, in conformity with the spirit and intent of the ~~civil rights act~~ Civil Rights Act of 1964, as amended, and the ~~rehabilitation act~~ Rehabilitation Act of 1973, as amended;.
3. With respect for the dignity of the individual; ~~and~~.

SECTION 20. DHS 106.02 (10) is amended to read:

DHS 106.02 (10) NONDISCRIMINATION. Providers shall comply with the ~~civil rights act~~ Civil Rights Act of 1964, 42 USC 2000d et. seq., and s. 504 of the ~~rehabilitation act~~ Rehabilitation Act of 1973, as amended. Accordingly, providers may not exclude, deny or refuse to provide health care services to recipients on the grounds of race, color, gender, age, national origin or ~~handicap~~ disability, nor may they discriminate in their employment practices.

SECTION 21. DHS 106.06 (intro), (22), (23) (title), and (23) are amended to read:

DHS 106.06 **Involuntary termination or suspension from program participation.** The department may suspend or terminate the certification of any person, partnership, corporation, association, agency,

institution or other entity participating as a health care provider under the program, if the suspension or termination will not deny recipients access to MA services and if after reasonable notice and opportunity for a hearing the department finds that any of the following occurred:

DHS 106.06 (22) ~~RACIAL OR ETHNIC DISCRIMINATION~~. The provider has refused to provide or has denied services to recipients on the basis of the recipient's race, color or national origin in violation of the ~~civil rights act~~ Civil Rights Act of 1964, as amended, 42 USC 200d, et. Seq., and the implementing regulations. 45 CFR Part 80;

DHS 106.06 (23) ~~HANDICAPPED~~ DISABILITY DISCRIMINATION. The provider has refused to provide or has denied services to a ~~handicapped recipient~~ recipient with a disability solely on the basis of ~~handicap~~ disability, thereby violating section 504 of the ~~rehabilitation act~~ Rehabilitation Act of 1973, as amended, 29 USC 794;

SECTION 22. DHS 107.06 (3) (d) (intro) and 1. to 7. are amended to read:

DHS 107.06 (3) (d) *Informed consent*. For purposes of this subsection, an individual has given informed consent only if all of the following occur:

1. The person who obtained consent for the sterilization procedure offered to answer any questions the individual to be sterilized may have had concerning the procedure, provided a copy of the consent form and provided orally all of the following information or advice to the individual to be sterilized:
 - a. Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled;
 - b. A description of available alternative methods of family planning and birth control;
 - c. Information that the sterilization procedure is considered to be irreversible;
 - d. DHS 107.06(3)(d)1.d.d. A thorough explanation of the specific sterilization procedure to be performed;
 - e. A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used;
 - f. A full description of the benefits or advantages that may be expected as a result of the sterilization; ~~and~~;
 - g. Advice that the sterilization will not be performed for at least 30 days, except under the circumstances specified in par. (a) 4.
2. Suitable arrangements were made to ensure that the information specified in subd. 1. was effectively communicated to any individual who is blind, deaf, or otherwise ~~handicapped~~; disabled.
3. An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent;

4. The individual to be sterilized was permitted to have a witness of his or her choice present when consent was obtained;
5. The consent form requirements of par. (e) were met;
6. Any additional requirement of state or local law for obtaining consent, except a requirement for spousal consent, was followed; ~~and~~.
7. Informed consent is not obtained while the individual to be sterilized is in any of the following situations:
 - a. In labor or childbirth;
 - b. Seeking to obtain or obtaining an abortion; ~~or~~.
 - c. Under the influence of alcohol or other substances that affect the individual's state of awareness.

SECTION 23. DHS 110.54 (24) is amended to read:

DHS 110.54 (24) The person failed or refused to provide emergency medical care to a patient because of the patient's race, color, sex, age, beliefs, national origin, ~~handicap~~ disability, medical condition, or sexual orientation.

SECTION 24. DHS 124.06 (1) (a) is amended to read:

DHS 124.06 (1) (a) The patient may not be denied appropriate care because of the patient's race, creed, color, national origin, ancestry, religion, sex, sexual orientation, marital status, age, newborn status, ~~handicap~~ disability, or source of payment.

SECTION 25. DHS 129.03 (18) is amended to read:

DHS 129.03 (18) "~~Handicapping condition~~ Disability" means a physical or mental impairment that makes ability to care for oneself unusually difficult or limits one's capacity to work.

SECTION 26. DHS 129.05 (2) (a) 1. e. is amended to read:

DHS 129.05 (2) (a) 1. e. Reasonable accommodations for prospective students with ~~handicapping conditions~~ disabilities.

SECTION 27. DHS 129.07 (2) (a) 3. is amended to read:

DHS 129.07 (2) (a) 3. The program shall have reasonable accommodations for students and prospective students with ~~handicapping conditions~~ disabilities.

SECTION 28. DHS 129.08 (5) (a) is amended to read:

DHS 129.08 (5) (a) Reasonable accommodations for students with ~~handicapping conditions~~ disabilities.

SECTION 29. DHS 134.60 (2) (a) 1. is amended to read:

DHS 134.60 (2) (a) 1. "DD level I" means the classification of an individual who has a profound or severe intellectual disability; is under the age of 18; is severely physically ~~handicapped~~ disabled; is

aggressive, assaultive or a security risk; or manifests psychotic-like behavior and may engage in maladaptive behavior persistently or frequently or in behavior that is life-threatening. This individual's habilitation program emphasizes basic ADL skills and requires intensive staff effort.

SECTION 30. DHS 134.82 (3) (b) 2. is amended to read:

DHS 134.82 (3) (b) 2. The facility shall make special provisions for evacuating ~~physically handicapped persons~~ individuals with physical disabilities during drills.

SECTION 31. DHS 134.83 (5) (g) is amended to read:

DHS 134.83 (5) (g) *Conditions for housing certain residents above the street level floor.* Residents who are blind, non-ambulatory or physically ~~handicapped~~ disabled may not be housed above the street level floor in an existing facility of 2 or more stories that is not at least 2-hour fire-resistive construction unless the facility is one-hour protected noncombustible construction as defined in standard 220 of the NFPA's National Fire Code, 1979 edition, fully sprinklered one-hour protected ordinary construction or fully sprinklered one-hour protected wood frame construction.

SECTION 32. DHS 134.84 (3) (c) (title) and (3) (c) are amended to read:

DHS 134.84 (3) (c) ~~*Physically handicapped facilities*~~ *Facilities for persons with physical disabilities.* Resident bathrooms and bathroom appliances shall be equipped for use by ~~physically handicapped persons~~ individuals with physical disabilities.

SECTION 33. DHS 152.04 (4) is amended to read:

DHS 152.04 (4) The department may not discriminate against or deny benefits to anyone on the basis of race, sex, age, national origin, marital status, creed, ~~handicap~~ disability, sexual orientation or ancestry.

SECTION 34. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro), Stats.