

Chapter DHS 199

TOBACCO CONTROL ACTIVITIES

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Note: Chapter TCB 1 was created as an emergency rule effective November 7, 2000. Chapter TCB 1 was renumbered to HFS 199 under s. 13.93 (2m) (b) 1. Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats., Register January 2004 No. 577. Chapter HFS 199 was renumbered chapter DHS 199 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 199.01 Authority and purpose. This chapter is promulgated under the authority of s. 255.15 (1m) (c), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.435 (1) (fm), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

History: Cr. Register, May, 2001, No. 545, eff. 6-1-01; correction made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667.

DHS 199.02 Applicability. This chapter applies to the department of health services, to applicants for grants awarded by the department, and to organizations that have been awarded grants by the department.

History: Cr. Register, May, 2001, No. 545, eff. 6-1-01; CR 20-067: am. Register December 2021 No. 792, eff. 1-1-22.

DHS 199.03 Definitions. In this chapter:

(1) “Administrative costs” means costs associated with implementing grant objectives and activities, such as the provision of office space, telephone service and employees.

(2) “Applicant” means an organization that applies for a grant from the department to operate a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(3) “Continuation grant” means a grant awarded by the department to an applicant who received an initial grant for the current funding year and who proposes to continue to operate the same program, or that program as modified in consultation with the department, in the new funding year.

(4) “Culturally competent” means activities that are appropriate and effective for the populations those activities are directed at and that utilize the leadership of those populations in developing, implementing and evaluating those activities.

(4m) “Department” means the department of health services.

(5) “Evaluation committee” means a department committee that reviews and evaluates applications.

(6) “Funding year” means the 12-month period beginning July 1.

(7) “Governmental body” means a state or local agency, board, committee, council, department or public body created by constitution, statute, ordinance, rule.

(8) “Grant” means a monetary award made by the department from the appropriation under s. 20.435 (1) (fm), Stats., to an applicant for the uses specified in s. 255.15 (3) (b), Stats.

(9) “Initial grant” means a grant awarded for the first time to an applicant.

(10) “Public agency” has the meaning prescribed in s. 46.856 (1) (b), Stats., namely, a county, city, village, town or school district, an agency of Wisconsin state government or an agency of a county, city, village, town or school district.

(11) “Request for proposals” or “RFP” means a document that describes a grant program, invites applications for the grant and specifies who may apply, application procedures, criteria for awarding grants and conditions and restrictions that accompany grant awards.

(13) “Tobacco prevention and control” means anti-tobacco activities including but not limited to comprehensive efforts in prevention, cessation, policy advocacy, media and countermarketing, evaluation, monitoring, and administrative activities.

History: Cr. Register, May, 2001, No. 545, eff. 6-1-01; correction in (8) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667; CR 20-067: am. (2), (3), cr. (4m), am. (5), (8), r. (12) Register December 2021 No. 792, eff. 1-1-22.

DHS 199.04 Project eligibility. (1) The department shall do all of the following:

(a) Fund projects that have prevention and control of tobacco use as their primary goal.

(b) Make funds available to community coalitions such that each county of the state has the opportunity to have at least one anti-tobacco coalition ensuring tobacco prevention and control activities within its geographic borders.

(c) Fund only programs or projects that are culturally competent.

(d) 1. Fund media activities that shall be measured against the following performance-based standards:

a. Create awareness of campaign messages among 80% of the target population within 6 months of initiating the campaign message.

b. Create a 10% change in attitudes, beliefs and knowledge of identified tobacco-related issues. Issues may include secondhand smoke, the dangers of tobacco, tobacco addiction cessation and the roles of the tobacco industry.

2. As determined appropriate by the department, specify additional performance-based standards in each grant contract based on the scope and content of the media and counter-marketing campaign.

(e) Fund programs or projects that demonstrate plans and progress toward achieving program quality criteria and indicators of success specified in the grant RFP and the department strategic plan.

(f) Fund only programs or projects that maintain administrative costs no more than 10% of total costs.

(g) Fund programs and projects that demonstrate independence from the influence of the tobacco industry.

(2) The department may provide funding to governmental organizations performing or providing support for tobacco preven-

tion and reduction activities, including tobacco education, cessation services, policy development, policy advocacy, monitoring, evaluation, resource distribution, program planning or monitoring.

History: Cr. Register, May, 2001, No. 545, eff. 6-1-01; CR 03-033: am. (1) (d) 1. b. Register January 2004 No. 577, eff. 2-1-04; CR 20-067: am. (1) (intro.), (d) 2., (e), (2) Register December 2021 No. 792, eff. 1-1-22.

DHS 199.05 Application. (1) WHO MAY APPLY. (a) An applicant may be any of the following:

1. A public agency.
2. A legally-formed organization.
3. A coalition of organizations under the auspices of a public agency or a legally-formed organization.
4. The tribal governing body of a federally recognized Wisconsin tribe or band of Indians, or an American Indian organization appointed by the tribal governing body.

(2) SOLICITATION. (a) The department shall solicit applications for initial grants by preparing one or more RFPs, publishing a legal notice of the availability of each RFP at least twice in the official state newspaper no later than 3 weeks before the application deadline, and distributing copies of an RFP on request.

(b) Based upon satisfactory performance and availability of funds, the department may solicit applications annually for continuation grants from current grantees. The department's solicitations shall be published as a legal notice at least twice in the official state newspaper no later than 3 weeks before the application deadline. The department shall provide details of the continuation grant to interested parties upon request.

(3) MAKING APPLICATION. (a) *Initial grants.* 1. An application for an initial grant shall be made on forms included in the RFP.

2. The RFP shall specify a date by which the applicant must apply.

3. The application shall be submitted to department in accordance with the deadline and processes indicated in the RFP.

(b) *Continuation grants.* 1. The department may solicit applications for continuation grants from currently funded projects in a form determined by the department to be appropriate for the projects.

2. The continuation solicitation shall specify a date by which the applicant must apply.

3. The application shall be submitted to the department in accordance with the deadline, required format and content specifications indicated in the continuation solicitation.

(4) CONTENT OF APPLICATION. An application for an initial grant shall include all of the following:

- (a) An application summary sheet.
- (b) The application checklist included in the RFP.
- (c) An abstract that briefly describes the project and highlights the project's purpose.
- (d) A summary of the budget request.
- (e) A justification of the proposed budget detailing cost estimates used in compiling the budget request.
- (f) A narrative description of the program.
- (g) A statement of assurance of compliance with applicable federal statutes and regulations and state statutes and rules, including the requirements of this chapter and the RFP.

(5) REVIEW OF APPLICATIONS. (a) *Applications for initial grants.* 1. 'Preliminary review.' All initial grant applications shall include all of the application contents specified in sub. (4) and, if applicable, the RFP. The department or its designated evaluation committee shall review each application for compli-

ance with the format and content specifications of sub. (4) and the RFP. Applications that fail to meet all of the criteria may not be approved by the department. Rejection of an application for failure to meet form and content specifications is not subject to appeal to the department.

2. 'Evaluation criteria.' The department or its designated evaluation committee shall evaluate initial grant applications that receive a favorable preliminary review as specified in subd. 1. against criteria specified in sub. (4) and the RFP. The criteria shall include all of the following:

- a. The applicant's organizational and programmatic capacity to implement the proposed project.
- b. The applicant's understanding and ability to communicate the needs of the target population.
- c. The applicant's stated purpose and objectives for the program and methods and timetable for implementing the program.
- d. The extent to which the applicant's proposed budget is clear and justified.
- e. An evaluation plan for the project.

(b) *Criteria for evaluating continuation applications.* The department or its designated evaluation committee shall evaluate continuation grant applications against all of the following criteria:

1. The applicant's understanding and capacity to communicate the needs of the target population.
2. The applicant's timetable for implementing the continuation of the current program.
3. The quality of the program as measured by program objectives and methodology, evaluation methodology and outcomes, fiscal management, documentation of program services, and the involvement of community partners.

(6) RANKING APPLICATIONS. (a) *Ranking applications for initial grants.* 1. The department or its designated evaluation committee shall weight the importance of each evaluation criterion by assigning points to it. The criteria weighting shall be provided in the RFP.

2. Using the evaluation criteria specified in subs. (4) and (5), the department or its designated evaluation committee shall evaluate each application against each applicable criterion and assign points signifying the degree to which the application meets each criterion up to the maximum number of points specified in the RFP. The total points assigned to the application for all applicable criteria will be the score for each application.

3. The department shall numerically rank each application for each RFP and for continuation grants.

(b) *Ranking applications for continuation grants.* 1. Using evaluation criteria specified in sub. (5) (b), the department or its designated evaluation committee shall conduct a non-competitive evaluation of each application.

2. The department shall assign a numerical score to each continuation grant application.

3. The department or its designated evaluation committee shall award continuation grants based upon the applicant's demonstration of effective grant administration and achievement of program outcomes during the previous funding period.

History: Cr. Register, May, 2001, No. 545, eff. 6-1-01; CR 20-067: am. (2), (3) (a) 3., (b) 1., 3., (5) (a) 1., 2. (intro.), (b) (intro.), (6) Register December 2021 No. 792, eff. 1-1-22; correction in (2) (b) made under s. 13.92 (4) (b) 6., Stats., Register December 2021 No. 792.

DHS 199.06 Grant awards. (1) MAKING AWARDS. (a) *Initial grants.* For a given RFP, the department shall award a grant to the applicant with the highest numerical score pursuant to s. DHS 199.05 (6), except that:

1. The department or its designated evaluation committee may reject any application failing to meet the content specifications under s. DHS 199.05 (4). Rejection of an application for failure to meet the content specifications under s. DHS 199.05 (4) is not subject to appeal.

2. The department may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a grant to an applicant.

3. The department or its designated evaluation committee may reject applications submitted by organizations or individuals that have a contractual, corporate, organizational or business responsibility to promote, assist in the promotion of, the use of or the sale of tobacco products for a company involved in the production, distribution or marketing of tobacco products.

(b) *Continuation grants.* The department may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a continuation grant to an applicant.

(c) *Intergovernmental procurements.* In accordance with s. 16.75 (6) (b), Stats., the department may perform an intergovernmental procurement for purchases of supplies, materials, equipment or contractual services other than printing and stationary, from the federal government, from another state, or from any county, city, village, town or other governmental body in the state.

(2) NOTIFICATION. The department shall notify all applicants, in writing, within 60 days of the deadline stated in the RFP for an initial grant, or within 30 days of the expiration of an existing grant, of awards for the new funding agreement.

(3) APPEAL. Except as provided in s. DHS 199.05 (5) (a) 1. And sub. (1) (a) 1., an applicant for either an initial grant or a continuation grant may appeal to the department an adverse decision of the department. The appeal shall be in writing and shall fully identify all contested issues. The appeal shall be filed with the department within 10 working days of the date on which the notice of awards is postmarked.

(4) CONTRACT. The department shall make all grant awards through a contract between the department and each applicant selected to receive a grant.

(5) AVAILABILITY OF FUNDS. (a) The department shall decide in advance of the funding year the amount of funds available for grants from the expected appropriation under s. 20.435 (1) (fm), Stats., and shall announce the availability of funds in one or more RFPs.

(b) All funding decisions shall be contingent upon availability of funds under s. 20.435 (1) (fm), Stats. Any changes in the amount of funds available which were unforeseen at the time of the department's release of an RFP or continuation grant materials shall be accommodated by the department, as appropriate, by

means of reduction, elimination or increase in existing awards, by awarding of funds to applicants previously denied due to insufficient funds, or by release of a new RFP or new continuation grant application materials.

(c) Any funds that become available due to a denial of an award to a selected grantee as a result of failure of the selected grantee to sign the required agreement or as a result of termination of a project by the department or grantee shall be reallocated by the department at its discretion but within the limits of the intent of the appropriation and this chapter.

History: Cr. Register, May, 2001, No. 545, eff. 6-1-01; corrections in (5) (a) and (b) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667; CR 20-067: am. Register December 2021 No. 792, eff. 1-1-22.

DHS 199.07 Restrictions. **(1) PROHIBITED USE OF FUNDS.** The following activities are prohibited under any grant awarded by the department:

(a) Purchasing tobacco use cessation medications without written permission from the grant manager.

(b) Developing, implementing and evaluating of non-tobacco related activities and programs.

(c) Supplanting existing anti-tobacco resources and activities.

(2) VIOLATION OF PROHIBITED ACTIVITIES. If a grantee conducts prohibited activities under sub. (1), the department may terminate the grant and recover funds previously paid to the grantee for that funding period on a recoupment schedule specified in the grant contract.

(3) GRANTEE ADMINISTRATION. (a) A grantee may not use grant funds to supplant existing employee salaries. Grant funds may be used to hire a person who will work less than 40 hours per week or to increase the hours of existing employees currently working less than 40 hours per week.

(b) A grantee may not use grant funds to purchase capital equipment without the prior written approval of the department, although funds may be used to rent capital equipment. In this paragraph, "capital equipment" means equipment having a value greater than \$5000 and a useful life of more than one year.

(c) Grant recipients shall annually furnish the department with an independent certified audit of grant expenses within 30 days after receipt of the report from the audit firm but no later than 90 days after completion of the grant recipient's fiscal year. The cost of the audit shall be included in an applicant's budget of administrative costs.

(d) Grant recipients shall maintain records for 3 years and provide information to the department as required by the department for purposes of program and fiscal audits and, at the request of the department, shall appear before department to respond to any questions about the project and use of the grant monies.

History: Cr. Register, May, 2001, No. 545, eff. 6-1-01; CR 03-033: am. (1) (a) Register January 2004 No. 577, eff. 2-1-04; CR 20-067: am. (1) (intro.), (2), (3) (b) to (d) Register December 2021 No. 792, eff. 1-1-22.