

CR 08-108

**ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT RULES**

The Wisconsin Department of Health Services proposes to amend DHS 105.17 (1) (intro.), relating to benefits covered by the Wisconsin Medical Assistance program.

SUMMARY OF PROPOSED RULE

Statute interpreted

Section 49.45 (2) (a) 11., Stats.

Statutory authority:

Section 49.45 (2) (a) 11., Stats.

Explanation of agency authority:

Section 49.45 (2) (a) 11., Stats., requires the Department to promulgate rules establishing criteria for certification of providers of medical assistance.

Related statute or rule:

Section 49.45 (42), Stats., describes the circumstances under which personal care services are paid for by Wisconsin Medicaid.

Plain language analysis:

The Department proposes to amend ch. DHS 105 to allow federally recognized American Indian tribes and bands in Wisconsin to be certified by Wisconsin Medicaid as providers of personal care services. The proposed amendments would increase the number of providers available in Wisconsin to provide personal care services.

The Department believes that the proposed change is necessary in order to allow tribal government agencies to become personal care agencies, thereby providing tribal members access to culturally sensitive personal care providers in their own communities.

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

The section of the Code of Federal Regulations which provides the regulatory authority to provide personal care services under the Medicaid program is 42 CFR § 440.167. The federal regulations are less detailed than the proposed rule and existing Wisconsin regulations concerning personal care services provided to Medicaid recipients.

Comparison with rules in adjacent states:

Illinois:

Wisconsin offers personal care as an optional Medicaid state plan service, but Illinois does not. Illinois does offer some types of personal care services under waivers.

Iowa:

Wisconsin offers personal care as an optional Medicaid state plan service, but Iowa does not. Iowa does offer some types of personal care services under waivers.

Michigan:

Both Michigan and Wisconsin offer personal care as an optional Medicaid state plan service.

Minnesota:

Both Minnesota and Wisconsin offer personal care as an optional Medicaid state plan service.

Summary of factual data and analytical methodologies:

The Home Care Consumer Advisory Committee and the Home Care Advisory Committee advise the Department on issues relating to home health care. The Department has kept the committees informed of efforts on this rulemaking order and will continue to work with these committees as the rulemaking order proceeds through the rulemaking promulgation process. The committees are generally supportive of the proposed change.

Analysis and supporting documents used to determine effect on small business:

The proposed rule does not affect small business.

Effect on small business:

The proposed rule does not affect small business.

Agency contact person:

Al Matano
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53702
608-267-6848
alfred.matano@wisconsin.gov

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 deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

TEXT OF PROPOSED RULE

SECTION 1. DHS 105.17 (1) (intro.) is amended to read:

DHS 105.17 (1) (intro.) REQUIREMENTS. For MA certification, a personal care provider shall be a home health agency licensed under s. 50.49, Stats., and ch. DHS

133, a county department established under s. 46.215, 46.22 or 46.23, Stats., a county department established under s. 51.42 or 51.437, Stats., which has the lead responsibility in the county for administering the community options program under s. 46.27, Stats., ~~or~~ an independent living center as defined in s. 46.96 (1) (ah), Stats., or a federally recognized American Indian tribe or band in Wisconsin. A certified provider shall:

SECTION 2. 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), Stats.

Wisconsin Department of Health Services

Dated: May 12, 2009

Karen E. Timberlake, Department Secretary

SEAL: