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# Wisconsin Legislative Council

## STUDY COMMITTEE MEMO

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**Memo No. 3**

**TO:** MEMBERS OF THE STUDY COMMITTEE ON THE COMMERCIAL BUILDING PERMITTING PROCESS

**FROM:** Ethan Lauer, Senior Staff Attorney, and Anna Henning, Principal Attorney

**RE:** Information Relating to Plan Review for Health Care Facilities

**DATE:** September 21, 2022

During the committee meeting on July 19, 2022, members of the Study Committee on the Commercial Building Permitting Process requested that Legislative Council committee staff obtain information from the Department of Health Services (DHS) regarding that agency's plan review process for the health care facilities under its jurisdiction.

To that end, we asked DHS for the following information: (1) jurisdictional overlap with the Department of Safety and Professional Services (DSPS); (2) whether DHS uses a "triage" system to preliminarily screen construction plans for errors or omissions in advance of full plan review; (3) approximate percent of submissions that contain errors or omissions; (4) most frequent errors and omissions; (5) whether DHS reviews plans on a "first in first out" queue basis or an appointment basis; (6) average turnaround time for plan review; and (7) whether DHS has a flow chart of the plan review process.

This memo relays the information Legislative Council committee staff received from DHS in response to these questions.

### **RELEVANT ADMINISTRATIVE CODE PROVISIONS**

DHS noted the following provisions of its administrative code as relevant to the study committee's interest in plan review procedures:

- Section DHS 124.30 (3), Wis. Adm. Code, requires DHS to review and make a determination on an application for plan review for a **hospital** within 30 business days of submission of the application.
- Section DHS 131.40 (4) (a), Wis. Adm. Code, requires DHS to review and make a determination on an application for plan review for a **hospice** facility within 30 business days. The application form must be included with the construction documents and information submitted to DHS for examination and approval.
- Section DHS 132.812 (2), Wis. Adm. Code, gives DHS 45 working days from the receipt of an application for plan review and all required forms, fees, plans, and documents to complete the review and to approve, approve with conditions, or deny approval for the plan for a **nursing home**.

- Section DHS 83.63 (2), Wis. Adm. Code, establishes requirements relating to plan review for **community-based residential facilities** (CBRFs). It generally requires DHS to approve plans for all new construction, additions, remodeling projects, and existing buildings applying for CBRF licensure after April 1, 2009, before construction may begin. Applicants must submit at least two sets of working drawings and specifications. The drawings must be scaled and to dimension. The review process begins after DHS receives all required documents and fees.

## **ANSWERS TO SPECIFIC QUESTIONS**

Under each heading below, we have presented the answer provided by DHS staff in response to our request for information.

### **Jurisdictional Overlap**

DHS and DSPS currently have a Memorandum of Agreement in place. [See Attachment 1.] In addition, DHS maintains the publication [Regulatory Authority for Health Care Construction Plan Review](#) on its website summarizing the responsibilities of each agency regarding health care construction plan review. [See Attachment 2.]

### **Use of a “Triage” System**

DHS ensures the following three items are received for each submitted project:

1. Plan Approval Application.
2. Plan Review Drawings and Documents.
3. Plan Review Fees.

A submitted project is assigned to a plan reviewer only after these three items are received and found to be satisfactorily complete for each submitted project.

### **Error Rate**

Submissions contain a rate of errors and omissions similar to the rate reported by DSPS, approximately 30 percent.

### **Most Common Errors**

The issues DHS most frequently encounters are as follows:

- Missing signatures on the plan approval application.
- Incorrect information on the plan approval application.
- Fees calculated incorrectly.
- Fees submitted incorrectly.
- Delays between electronic plan submission, application submission, and when the fees are received.
- Submitters sending a check as a placeholder in the plan review queue. The number of days to conduct plan review begins when DHS has received the plan approval application, the plans, and the correct fees.
- Missing information on the plans.
- Inexperienced submitters that require more attention at the plan intake phase as well as during the plan review phase.

## **Use of a Queue System**

DHS reviews plans on a first in, first out queue basis. However, because DHS is allotted 30 business days to review hospitals and hospices and 45 business days to review nursing homes, a facility with fewer allotted review days may jump ahead of a facility with more allotted review days.

## **Average Processing Time**

DHS maintains a [Plan Review Intake Status Report](#) on its website that lists all projects in the order of receipt and the number of days that each complete plan submittal has been with DHS. At this time, DHS does not maintain data on the length of time needed to complete the actual plan review process.

## **Flow Chart**

At this time, DHS does not have a flow chart illustrating the plan review process.

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**Memorandum of Agreement**  
**Between the Department of Health Services (DHS)**  
**Division of Quality Assurance (DQA)**  
**and**

**Department of Safety and Professional Services (DSPS) – Division of  
Industry Services**

**Title: Coordination and Areas of Mutual Responsibility for Health  
Care Facility Construction**

**I. Summary / Purpose**

The following is an inter-agency Memorandum of Agreement (MOA) between the DHS Division of Quality Assurance (DQA) and the Department of Safety and Professional Services (DSPS) – Division of Industry Services for the purpose of:  
Outlining the method by which the State of Wisconsin achieves effective and efficient compliance (within a single agency whenever possible) with the provision of laws, regulations, and administrative rules for construction plan review and inspection for health care facility projects.

**II. Definitions**

Building Division – an unpierced four-hour fire-resistance rated fire wall or “Pedestrian Walkways and Tunnels” in compliance with the Wisconsin Commercial Building Code at Wis. Admin. Code chs. SPS 361 through 366, and International Building Code, section 3104.

Health Care Facility – a building or portion of a building containing a hospital, nursing home, community-based residential facility, facility serving people with developmental disabilities, or hospice as defined in Wis. Stats. §§ 50.01(1g), 50.01(3), 50.33(2), 50.90, and Wis. Admin. Code §§ DHS 131.13(9)(c) and 134.13(13).

Petition for Variance (DSPS) – the procedure outlined in Wis. Admin. Code chs. SPS 361, Subchapter II and SPS 303, which is used to grant an alternative to requirements found within DSPS administrative rules.

Records Disposition Authorization (RDA) – a mechanism for scheduling of consistent retention and disposition of similar types of records related to state agency programs which provides legal authorization to dispose of records governed by it in an appropriate, uniform manner.

Variance (DHS) – granting an alternative requirement in place of the requirements of Wis. Admin. Code chs. DHS 83, 124, 131, 132, and 134.

Waiver (DHS) – an exception from the requirements of Wis. Admin. Code chs. DHS 83, 124, 131, 132, and 134.

### III. Personnel

DHS is the administrative agency of the State of Wisconsin responsible for conducting plan review and inspections of Health Care Facility construction projects. Construction is monitored for adherence to the plans and specifications to the appropriate National Fire Protection Association standard 101 – Life Safety Code, DHS administrative rules, federal regulations, the Wisconsin Commercial Building Code at Wis. Admin. Code chs. SPS 361 through 366, and other regulations that govern the construction. For purposes of this MOA, the DHS representative is the Administrator of the Division of Quality Assurance. The day-to-day contact for responding to questions regarding plan review or inspection activities in DQA is the Director of the Office of Plan Review and Inspection (OPRI).

DSPS has responsibility for promulgating and enforcing Wisconsin Administrative Codes and Statutes as related to the built environment including public buildings and places of employment and providing training and information to its users. For purposes of this MOA, the DSPS representative is the Administrator of the Division of Industry Services. The day-to-day contact responding to questions regarding plan review or inspection activities in DIS is the Director of the Bureau of Technical Services.

### IV. Activities / Timelines

- A. For purposes of this MOA, buildings having a mixed use of Health Care Facility and other commercial building occupancies are to be regulated through plan review and inspection by DHS, unless the commercial building occupancies are separated from the health care occupancies by a Building Division. If there is a Building Division, the Departments will conduct plan review and inspections pursuant to sections VI and VII of this MOA.
- B. Nothing in this MOA limits or restricts regulatory activities of local units of government in regard to local ordinances, issuance of local permits, or related regulatory activities affecting Health Care Facility projects.
- C. This MOA applies to the documents and on-site review of Health Care Facility projects by DHS for the following regulatory areas:
  - i. Wisconsin Commercial Building Code at Wis. Admin. Code chs. SPS 361 through 366
- D. This MOA is not intended to affect other regulatory programs of DHS or DSPS, such as, but not limited to the following:
  - i. DSPS
    - 1. Boilers and Pressure Vessels,
    - 2. Mechanical Refrigeration Systems
    - 3. Elevators
    - 4. Private Onsite Water Treatment components
    - 5. Periodic Fire Inspections by local fire departments
    - 6. Plumbing components and inspections
    - 7. Erosion Control
    - 8. Electrical

ii. DHS

1. State Licensure Program
2. Federal Certification Program
3. Ch. 150 Program – Resource Allocation Program (formerly CON) for Nursing Homes

V. **Financial Component / Impacts, if applicable**

The duties of DHS and DSPS will be carried out without the exchange of monies.

VI. **Plan Review**

- A. Construction documents involving Health Care Facilities projects with the exception of those described under section IV. D. i., shall be submitted to DHS.
- B. DHS will determine whether a Building Division exists that would require review by DSPS for the non-Health Care Facility included within the construction documents.
- C. If a Building Division is indicated on the construction documents, DSPS will review the construction documents for the non-Health Care Facility project component for compliance with applicable DSPS administrative rules. DHS will review the construction documents for the Building Division and the Health Care Facility components of the project. If no Building Division exists, the entire building is considered a Health Care Facility and DHS will conduct the plan review for the facility.
- D. DHS will immediately notify submitter of construction documents needing DSPS review and will return the construction documents to the submitter for submission to DSPS.
- E. DHS will review Health Care Facility project construction documents for compliance with applicable DHS administrative rules, federal regulations, Life Safety Code, and DSPS administrative rules.
- F. If DHS requires construction documents held by DSPS, DHS shall make a request in writing to the Records Management Supervisor. Documents will be maintained consistent with DSPS RDA requirements.

VII. **Inspection**

- A. DHS will conduct inspections of all Health Care Facility construction projects for compliance with applicable DHS administrative rules, federal regulations, Life Safety Code and DSPS administrative rules, with the exception of those listed under section IV. D. i. DSPS or a local code official may conduct inspections and provide a final compliance statement for those components listed under section IV. D. i., or a local ordinance.
- B. Where a Building Division exists, DHS will conduct the inspections for the Building Division and the Health Care Facility portion of the project for compliance with applicable DHS administrative rules, federal regulations, Life Safety Code, and DSPS

administrative rules, with the exception of those components listed under section IV. D. i.

- C. DSPS or its designated local agents will conduct inspections for compliance with applicable DSPS administrative rules for the non-Health Care Facility components of projects for which DSPS conducts plan review.

**VIII. Petitions for Variance (DSPS)**

- A. DSPS will process petitions for variance to DSPS administrative rules for the non-Health Care Facility portions of buildings or building components of projects for which DSPS does plan review.
- B. Wis. Admin. Code ch. SPS 303; Administrative Procedures will be used to consider variances to the DSPS administrative rules that apply to Health Care Facility Projects.
- C. DHS will process Petitions for Variance to DSPS administrative rules for Health Care Facility projects for which DHS does plan review, and will forward the DHS position to DSPS for review and concurrence prior to taking action.
- D. DSPS review of the DHS Petition for Variance position shall be conducted within five (5) business days of receipt. If DSPS does not provide a response within this time frame, DHS may proceed unilaterally with DHS's recommended action. Where DHS and DSPS do not agree on the proposed position, further discussion and review of applicable documents and rules shall be conducted as soon as possible to keep the project moving forward.
- E. Any appeal of an action taken regarding a request for a variance to a DSPS administrative rule will be the responsibility of DSPS. DHS will cooperate in assisting DSPS.

**IX. Waivers/Variations (DHS)**

DHS will process waivers/variances to DHS administrative rules providing the waivers/variances do not result in non-compliance with parallel or similar DSPS administrative rules.

**X. Appeal Process**

Any person owning or occupying a Health Care Facility may appeal a decision or order of DHS in accordance with Wis. Admin. Code ch. SPS 361, subch. II, when the decision or order involves a DSPS rule.

**XI. Administrative Rules, Federal Regulations, Federal Laws, and State Statutes**

- A. DHS and DSPS will review all proposed construction and physical environment rule changes to encourage regulatory continuity.
- B. DHS and DSPS will apprise each other of state and federal statutory and regulatory changes.

**XII. Training**

DHS and DSPS plan review and inspection staff will remain current with all applicable codes and regulations by attending continuing education training as necessary.

**Memorandum of Agreement  
Between the Department of Health Services (DHS)**

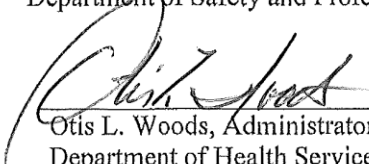
**Division of Quality Assurance (DQA)**

**and**

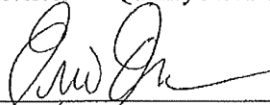
**Department of Safety and Professional Services (DSPS) – Division of  
Industry Services**

**Signature Page and Term of the Memorandum of Agreement**

This signature page applies to Coordination and Areas of Mutual Responsibility for Health Care Facility Construction between the DHS Division of Quality Assurance (DQA) and the Department of Safety and Professional Services (DSPS) – Division of Industry Services .

  
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Otis L. Woods, Administrator  
Department of Health Services (DHS),  
Division of Quality Assurance (DQA)

8/22/18  
Date Signed

  
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Eric J. Esser, Deputy Secretary  
Department of Safety and Professional Services (DSPS) –  
Division of Industry Services

6/8/18  
Date Signed

**Term of the Memorandum of Agreement**

New Original       Renewal/Revision/Amendment

Effective Date: Effective from the date on which the last signature is obtained  
All Previous Effective Date(s): 11/15/1998, 07/01/2002, 10/22/2003, 01/09/2007,  
01/02/2013, 05/09/2016

**Length of Term**

No defined end date; automatically renews on: July 1 of every year  
Expiration Date, if applicable:

**Review Cycle Period**

Review annually on June 30  
Target Review Date, if applicable:

**Termination with Notice**

Either party can terminate this Memorandum of Agreement with a 30-calendar-day notice. Other technical assistance or projects identified by either party during the Memorandum of Agreement will be negotiated and further specified as amendments to this Memorandum of Agreement. These amendments will be written and signed by the proper representatives of each agency and identify the exact nature of the assistance to be provided. Fiscal specifications, if any, need to be identified. These agreements will be attached as amendments or as clarifications to this Memorandum of Agreement.





**REGULATORY AUTHORITY FOR HEALTH CARE CONSTRUCTION PLAN REVIEW**

Department of Health Services / Division of Quality Assurance  
 P-00746 (06/2016)

Department of Health Services Plan Review			Department of Safety and Professional Services Plan Review		
Garage IBC* Group S	Hospital DHS 124 IBC Group I-2 LSC 101	Building Division	Non Health Care IBC Group A, B, F, etc.	Free-Standing Clinic IBC Group B If T18, then LSC 101	
Outpatient / Clinic IBC Group I-2 or B If T18, then LSC* 101				Free-Standing Day Surgery IBC Group B If T18, then LSC 101	
Day Surgery IBC Group I-2 or B If T18, then LSC 101				Free-Standing ESRD DHS 152 IBC Group B	
Residential Care Apartment Complex DHS 89 IBC Group I-1, R-4	Nursing Home DHS 132, 134 IBC Group I-2 LSC 101	Free-Standing Hospice DHS 131 IBC Group I-2, I-1, R If T18, then LSC 101		Free-Standing RCAC DHS 89 IBC Group I-1, R-4	
CBRF* DHS 83 C-Class IBC Group I-2		Free-Standing CBRF DHS 83 C-Class IBC Group I-2			

If a Group I-2 hospital or nursing home exists, DHS will perform the plan review for all attached facility additions up to and including the "building division." The building division can be one of the following:

1. Four-hour fire resistant, unpierced, rated fire wall or
2. Pedestrian walkway (reference IBC section 3104) or
3. Tunnel (reference IBC section 3104).

**\* Abbreviations**

IBC – International Building Code  
 LSC – Life Safety Code  
 CBRF – Community-based Residential Facility