

Report From Agency

DEPARTMENT OF HEALTH SERVICES
Office of Legal Counsel
F-02113 (08/2017)

STATE OF WISCONSIN
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RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 20-006

Ch. DHS 105.14

Basis and Purpose of Proposed Rule

Adult day care providers offer services for part of a day, in a group setting, to adults who need an enriched health, supportive or social experience, and who may need assistance with activities of daily living, supervision, or protection. These may include personal care and supervision, meals, medical care, transportation, and activities designed to meet physical, social, and leisure time needs. Adult day care providers do not need to be licensed or certified to operate in Wisconsin. However, certification as an MA provider is required, under both state (s. 49.45 (47) (b), Stats.) and federal (42 C.F.R. 441.352 (a) (1) and (2)) law, for providers that wish to receive reimbursement by MA for adult day care services provided to MA recipients.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The Department accepts the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rule where suggested except as follows:

- s. 4.h: "Section DHS 105.14.31 (1) (c) 2. and 3. each reference the "Wisconsin Food Code". Although the accompanying note includes a link to the Department of Agriculture, Trade and Consumer Protection's website, the department should provide a more specific reference to the parts of the "Wisconsin Food Code" an ADCC operator must satisfy and should identify the specific provisions of the administrative code that apply." The Department did not accept this recommendation because it would have made the rule more difficult for providers to understand, and would not have added any value or protection for participants.
- s. 5.m: "Section DHS 105.14.14 (1) (a) and (b) reference a "health care related field", but do not provide greater clarity to a potential program director for what qualifies as a "health care related field". The department should consider providing a description or examples, or, alternatively, creating a definition to identify acceptable health care related fields." The Department did not accept this recommendation because it would have made the rule more difficult for providers to understand, and would not have added any value or protection for participants.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

No issues were raised by any small business during the public hearing.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

No alternatives were suggested by a small business.

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

The proposed rule will not have an economic impact on small businesses.

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

The proposed rule will not have an economic impact on small businesses.

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

The proposed rule will not have an economic impact on small businesses.

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

As recommended by the Legislative Council Rules Clearinghouse, the following changes were made to the rule's analysis:

- Section 49.45 (2) (a) 11., Stats., was added to the list of statutes interpreted. (CR 20-006 Comments, s. 1.)
- Section 49.45 (47), Stats., was added to the list of statutes interpreted. (CR 20-006 Comments, s. 1.)
- Section 49.45 (10), Stats., was added to the list of statutory authority. (CR 20-006 Comments, s. 1.)
- Section 227.11 (2) (a), Stats., was removed from the explanation of agency authority because it was not cited in the listing of statutory authority and cited provisions in Chapter 45, Stats., provide specific rulemaking authority. (CR 20-006 Comments, s. 1.).
- Supplemental information was added to the "Analysis and supporting documents used to determine effect on small business" section, and a description of the effect on small businesses was added to the "Effect on small businesses" section. (CR 20-006 Comments, s. 2. a.).

Fiscal Estimate/Economic Impact Analysis

No changes were made to the rule's Fiscal Estimate/Economic Impact Analysis.

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on March 30, 2020. A public hearing was held on April 14, 2020, in a virtual public hearing via Zoom. Public comments on the proposed rule were accepted until end of business on April 14, 2020.

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
Elias Tsarovsky	Support
Diana Brown	Support
Jeff Kaphengst	Support
Amy Frost	None taken
Marty from United Community Center	None taken

Summary of Public Comments to the Proposed Rule and the Agency’s response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
DHS 105.14 (10) 1.	The proposed rule states that ADCC participants shall not share outdoor space at the same time as residents of a multi-use facility. Many ADCC participants have friends that live in other facilities on the campus and enjoy walking the grounds with other residents.	The Department amended the proposed rule to allow ADCC participants to share outdoor space with residents from other facilities on the campus.
DHS 105.14 (2) (m) 3.	There are limitations in investigating injuries of unknown source since ADCC is a day program compared to Community-Based Residential Facilities or Adult Family Homes which cares for residents 24 hours a day.	The Department recognizes that the ADCC is only responsible for the participant when at the ADCC.
DHS 105.14 (11)	The proposed rule requires all ADCCs to write an evaluative report summarizing satisfaction surveys and activities each year. The commenter questions the purpose of the report.	The purpose of the annual plan is to evaluate and improve the effectiveness of the program’s operation and services to ensure continuous improvement in service delivery. This is an existing requirement that is being transferred from the current ADCC standards.
DHS 105.14 (2) (a) 3.	Wanted to clarify that if a current ADCC is located on a parcel of land that is zoned for industrial or manufacturing use, the ADCC would be grandfathered at that location.	The Department agrees with this assumption.
DHS 105.14 (3) (c)	Concerns expressed that the rule identified a minimum age for caregivers. A rural ADCC may have difficulty finding caregivers. Persons that are 15 are able to work with a work permit.	The Department kept a minimum age for caregivers of 16 years old to ensure that staff have the emotional level and maturity to care for elders and persons with disabilities. An ADCC may request a waiver of this provision.

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		x	
Department response to Rules Clearinghouse recommendations	x		
Final Regulatory Flexibility Analysis	x		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			x
Public Hearing Summary	x		
List of Public Hearing Attendees and Commenters	x		
Summary of Public Comments and Department Responses	x		
Fiscal Estimate/Economic Impact Analysis		x	
Revised Fiscal Estimate/Economic Impact Analysis			x
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			x
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			x
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			x
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			x