

# State of Wisconsin

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## **Emergency Order #21 Relating to the Department of Health Services Administrative Rule Suspensions and Order**

**WHEREAS**, in December, 2019, a novel strain of the coronavirus was detected, now named COVID-19, and it has spread throughout the world, including every state in the United States;

**WHEREAS**, on March 12, 2020, Governor Tony Evers declared a public health emergency and directed all agencies support the efforts to respond to and contain COVID-19 in Wisconsin, and designated the Department of Health Services as the lead agency to respond to the public health emergency;

**WHEREAS**, on March 13, 2020, President Donald Trump proclaimed a National Emergency concerning COVID-19;

**WHEREAS**, as of April 2, 2020, 895,450 people around the world have tested positive for COVID-19, including 213,144 in the United States and 1,730 in Wisconsin; and

**WHEREAS**, the continued spread of COVID-19 demands that we have the ability to expedite the expansion of our health care and emergency services workforce and that we have regulatory flexibility to allow providers to maximize time and resources dedicated to patient care in order to respond to the changing needs of this public health emergency.

**NOW THEREFORE**, under the authority vested in the Governor and the Department of Health Services by the Constitution and the Laws of the State, including but not limited to Article V, Section 4 of the Wisconsin Constitution and Sections 323.12(4) and 252.02(6) of the Wisconsin Statutes, and the public health emergency declared in Executive Order #72, I, Governor Tony Evers, and I, Secretary-designee Andrea Palm, jointly order a suspension of the following administrative rules and companion directives as follows:

### **I. Emergency Medical Services (EMS)**

<b>Admin. Rule:</b>	<b>Wis. Admin. Code § DHS 110.06(1)(c)1.</b>
Description of Rule:	Establishes timelines for completing training as a precedent to licensure or certification as an EMS professional.
Status:	Suspended in part, as follows: "If trained in Wisconsin, the individual has successfully completed training in the applicable

Wisconsin curriculum ~~within the 24 months immediately~~ preceding submission of the application to the department for an initial license or certificate.”

**Admin. Rule:**

Description of Rule:

Status:

Companion Order:

**Wis. Admin. Code § DHS 110.07(1)(d)**

Establishes precondition for renewal of EMS licensure or certification.

Suspended and companion order.

The Department is prohibited from taking enforcement action under Wis. Admin. Code § DHS 110.54 for failure to maintain certifications pursuant to this suspension.

**Admin. Rule:**

Description of Rule:

Status:

Companion Order:

**Wis. Admin. Code § DHS 110.09 intro and (1)**

Establishes June 30th of even number years as the expiration date of current licenses and certifications of EMS professionals and provides for related fees.

Partially suspended with companion order.

The late fee is suspended. The Secretary of the Department of Health Services may delay the June 30 deadline to later in calendar year 2020 if delay is necessary to respond to COVID-19.

**Admin. Rule:**

Description of Rule:

Status:

**Wis. Admin. Code § DHS 110.09(2)(a)2. and 3.**

Requirements for reinstatement of a license or certificate.

Suspended.

**Admin. Rule:**

Description of Rule:

Status:

Companion Order:

**Wis. Admin. Code § DHS 110.13(5)**

Requires an EMT-intermediate or EMT-paramedic to maintain current certification in advanced cardiac life support.

Partially suspended with companion order.

Any certification that expires during the duration of the public health emergency is extended to 60 days after the termination of the public health emergency. The Department is prohibited from taking enforcement action under Wis. Admin. Code § DHS 110.54 for failure to maintain certifications pursuant to this suspension.

**Admin. Rule:**

Description of Rule:

Status:

Companion Order:

**Wis. Admin. Code § DHS 110.15(3)(c)**

Prohibits renewal of training permits.

Suspended and companion order.

Training permits may be renewed during the public health emergency. A training permit that expires during the public health emergency is to be considered extended until 60-days after the termination of the public health emergency.

**Admin. Rule:**

Description of Rule:

Status:

**Wis. Admin. Code § DHS 110.16(1)(a)**

Provides for late renewal fees.

Suspended.

**Admin. Rule:**

Description of Rule:

**Wis. Admin. Code § DHS 110.18(3)**

Requires EMS training centers to renew certification by June 30<sup>th</sup> of even-numbered years.

Status: Partially suspended with companion order.  
Companion Order: The Secretary of the Department of Health Services may delay the June 30 deadline to later in calendar year 2020 if delay is necessary to respond to COVID-19. The Department is prohibited from taking enforcement action under Wis. Admin. Code § DHS 110.54 for failure to maintain certifications pursuant to this suspension.

**Admin. Rule:** **Wis. Admin. Code § DHS 110.50(1)(d)1, 3, and 4**  
Description of Rule: Requires certain staffing numbers for paramedic ambulances.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 110.50(1)(f)**  
Description of Rule: Requires staffing levels for EMS non-transporting EMT services.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 110.50(3)(a)**  
Description of Rule: Requires specific staffing and equipment levels for reserve ambulances.  
Status: Suspended in part, as follows: “An ambulance service provider may staff and operate reserve ambulances at a lower service level appropriate to the licensure level of the available staff ~~if it obtains approval from the department.~~ The reserve or back-up ambulance shall be stocked and equipped appropriately for the level of service provided. ~~The ambulance service provider shall request approval through submission of an operational plan amendment.”~~

**Admin. Rule:** **Wis. Admin. Code § DHS 110.50(3)(b)**  
Description of Rule: Requires specific staffing levels and scope of practice for reserve ambulances in a two-paramedic system.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 110.28(4)**  
Description of Rule: Requires EMS Instructor II certified professionals to renew the instructor certification by June 30 of even number years.  
Status: Partially suspended with companion order.  
Companion Order: The Secretary of the Department of Health Services may delay the June 30 deadline to later in calendar year 2020 if delay is necessary to respond to COVID-19.

**Admin. Rule:** **Wis. Admin. Code § DHS 110.31(2)**  
Description of Rule: Provides that certifications as an EMS Instructor II expire on June 30 of even-numbered years.  
Status: Partially suspended with companion order.  
Companion Order: The Secretary of the Department of Health Services may delay the June 30 deadline to later in calendar year 2020 if delay is necessary to respond to COVID-19.

**Admin. Rule:** **Wis. Admin. Code § DHS 110.34(16)**  
Description of Rule: Prohibits interfacility transport in situations where a provider is not licensed to provide interfacility transports.  
Status: Suspended.

## II. Home Health Agencies

**Admin. Rule:** **Wis. Admin. Code §§ DHS 133.06(4)(a) & 133.17(4)**  
Description of Rule: Sets Home Health Agencies' (HHA) training and orientation requirements.  
Status: Suspended and companion order.  
Companion Order: Every employee shall be oriented to the agency and the job for which he or she is hired.

**Admin. Rule:** **Wis. Admin. Code §§ DHS 133.18 & 105.16(2)(b)**  
Description of Rule: Requires HHA supervisory visits.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 133.20(3)**  
Description of Rule: Requires review of a patient's plan of care.  
Status: Partially suspended with companion order.  
Companion Order: Any necessary visits from RNs associated with the 60-day review process may be completed via telephone or videoconferencing during the public health emergency.

## III. Hospices

**Admin. Rule:** **Wis. Admin. Code § DHS 131.15**  
Description of Rule: Authorizes hospice inspections, investigations, and enforcement.  
Status: Suspended *except for* cases of immediate jeopardy as defined in Wis. Stat. § 50.01(1ng).  
Companion Order: Requirement under Wis. Stat. § 50.92(3) to inspect hospice prior to issuance of license remains in place.

**Admin. Rule:** **Wis. Admin. Code § DHS 131.22**  
Description of Rule: Requires quality assessment and performance improvement activities.  
Status: Suspended and companion order.  
Companion Order: General requirement in Wis. Admin. Code § DHS 131.31(2) for staff to be oriented to their responsibilities remains in place.

**Admin. Rule:** **Wis. Admin. Code § DHS 131.31(3)**  
Description of Rule: Requires training on orientation program contents.  
Status: Suspended and companion order.  
Companion Order: General requirement in Wis. Admin. Code § DHS 131.31(2) for staff to be oriented to their responsibilities remains in place.

#### IV. Nursing Homes

<b>Admin. Rule:</b>	<b>Wis. Admin. Code § DHS 132.44(1)(a)</b>
Description of Rule:	Requires an orientation program for employees.
Status:	Suspended in part, as follows: "Orientation for all employees. Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. All employees shall be oriented to residents' rights under s. DHS 132.31 and to their position and duties by the time they have worked 30 days." Staff shall be oriented to their responsibilities.
<b>Admin. Rule:</b>	<b>Wis. Admin. Code § DHS 132.53(2)(a)2</b>
Description of Rule:	Authorizes nursing homes to discharge patients due to non-payment.
Status:	Suspended.
<b>Admin. Rule:</b>	<b>Wis. Admin. Code § DHS 132.42(3)(a)</b>
Description of Rule:	Requirement for employee to be certified in writing by a physician, physician assistant or advanced nurse practitioner.
Status:	Partially suspended.
Companion Order:	Employees can also be certified by a facility registered nurse.
<b>Admin. Rule:</b>	<b>Wis. Admin. Code § DHS 132.53(5)</b>
Description of Rule:	Establishes bed-hold requirements.
Status:	Suspended.
<b>Admin. Rule:</b>	<b>Wis. Admin. Code § DHS 132.54</b>
Description of Rule:	Requires notice for the transfer of a patient between rooms or beds within a facility.
Status:	Suspended for transfers due to COVID-19 issues.

#### V. Nurse Aide Training Programs

<b>Admin. Rule:</b>	<b>Wis. Admin. Code §§ DHS 129.05(2)(b)</b>
Description of Rules:	Requires onsite preliminary approvals and reviews of training programs by the Department.
Status:	Suspended.
<b>Admin. Rule:</b>	<b>Wis. Admin. Code § DHS 129.06(1)(a)</b>
Description of Rule:	Provides the standards for instructors of nurse aide training programs.
Status:	Suspended in part, as follows: "The primary instructor for a training program shall be a registered nurse licensed to practice in Wisconsin, who has at least 2 years of experience working as a registered nurse, of which at least one year of experience shall be

~~actual work experience in providing care in a nursing home that meets the requirements of sections 1919(a), (b), (c) and (d) of the Social Security Act.”~~

Companion Order: Wis. Admin. Code § DHS 129.03(37) is commensurately suspended insofar as it conflicts with this suspension.

**Admin. Rule:** **Wis. Admin. Code § DHS 129.06(1)(e)**  
Description of Rule: Sets standards for primary instructors of nurse aide training programs to attend a pre-approved training course.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 129.07(2)(b)**  
Description of Rule: Program standards for 120-hour training program.  
Status: Partially suspended with companion order.  
Companion Order: A minimum of 16 hours of training in topics identified in Wis. Admin. Code § DHS 129.07(2)(b)2. is required before direct contact with clients is authorized.

**Admin. Rule:** **Wis. Admin. Code § DHS 129.03(8)**  
Description of Rule: Defines a clinical setting.  
Status: Suspended and companion order.  
Companion Order: Clinical setting for purposes of this chapter is the equivalent of “supervised practical training” under 42 CFR 483.152(a)(3).

**Admin. Rule:** **Wis. Admin. Code § DHS 129.09(5)(a)**  
Description of Rule: Provides eligibility for inclusion on the registry within 120 days of beginning employment.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 129.03(30)(a)**  
Description of Rule: Definition of nurse aide.  
Status: Suspended in part, as follows: ““Nurse aide” means a person, regardless of the person’s title, who provides routine client-related services ~~under the supervision of a registered nurse or licensed practical nurse.~~ “Nurse aide” includes any of the following: . . .”

**Admin. Rule:** **Wis. Admin. Code § DHS 129.03(30)(a)4.**  
Description of Rule: Definition of nurse aide.  
Status: Suspended in part, as follows: “Any person employed to provide nursing or nursing-related services, or employed within the last 24 months as a nurse aide ~~by a health care provider.~~”

## VI. Feeding Assistant Programs

**Admin. Rule:** **Wis. Admin. Code § DHS 129, Subchapter III**  
Description of Rules: Feeding Assistants.  
Status: Partially suspended.

Companion order: Facilities may utilize non-nurse aides to provide feeding assistance to individuals who do not have complications with eating or swallowing.

## **VII. Community Based Residential Facilities (CBRFs)**

**Admin. Rule:** **Wis. Admin. Code § DHS 83.16(2)**  
Description of Rule: Requires resident care staff to be 18 years old.  
Status: Suspended and companion order.  
Companion Order: “Resident care staff” may be 16 and 17 years of age so long as they meet Wis. Admin. Code ch. DHS 83 training requirements, do not work alone, do not pass medications, and work under supervision.

**Admin. Rule:** **Wis. Admin. Code § DHS 83.47(2)(d) and (e)**  
Description of Rule: Fire drill and other evacuation drill requirements.  
Status: Suspended.

## **VIII. Adult Family Homes (AFHs)**

**Admin. Rule:** **Wis. Admin. Code § DHS 88.05(4)(a)**  
Description of Rule: Annual fire extinguisher inspection.  
Status: Annual inspections are suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 88.05(4)(d)2.c.**  
Description of Rule: Fire drill requirements.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 88.04(1)(b)**  
Description of Rule: Requires resident care staff be 18 years old.  
Status: Suspended and companion order.  
Companion Order: “Resident care staff” may be 16 and 17 years of age so long as they meet DHS Ch. 88 training requirements, do not work alone, do not pass medications, and work under supervision.

## **IX. Narcotic Treatment Service for Opiate Addiction**

**Admin. Rule:** **Wis. Admin. Code § DHS 75.15(4)(a)**  
Description of Rule: Requirements for a programs’ Medical Director accessibility and responsiveness.  
Status: Suspended in part, as follows: “A narcotic treatment service for opiate addiction shall designate a physician licensed under ch. 448, Stats., as its medical director. The physician shall be readily accessible and able to respond in person in a reasonable period of time, ~~not to exceed 45 minutes.~~”

**Admin. Rule:** **Wis. Admin. Code § DHS 75.15(4)(b)**  
Description of Rule: Requires RN be on staff to supervise dosing process and other functions.

Status: Partially suspended with companion order  
Companion Order: The service shall have a registered nurse on staff, either onsite or remotely, to supervise the dosing process and to perform other functions delegated by the physician.

**Admin. Rule:** **Wis. Admin. Code § DHS 75.15(4)(d)**  
Description of Rule: Requires counseling staff to be supervised by a clinical supervisor and sets a maximum counselor-to-patient ratio.  
Status: Suspended in part, as follows: “The service shall employ substance abuse counselors, substance abuse counselors-in training, or clinical substance abuse counselors who are under the supervision of a clinical supervisor ~~on a ratio of at least one to 50 patients in the service or fraction thereof.~~”  
Companion Order: The Secretary of the Department of Health Services may set a maximum counselor to patient ratio.

**Admin. Rule:** **Wis. Admin. Code § DHS 75.15(5)(h)**  
Description of Rule: Requires treatment programs to notify the State authority prior to treating non-residents, self-pay patients.  
Status: Suspended.

**Admin. Rule:** **Wis. Admin. Code § DHS 75.15(13)(b)**  
Description of Rule: Requires OTP programs to monitor a patient’s drug levels in plasma or serum on regular intervals and when doses above 100 milligrams are provided.  
Status: Suspended in part, as follows: “Drawing blood for testing. A service shall determine a patient's drug levels in plasma or serum at the time the person is admitted to the service to determine a baseline. ~~The determinations shall also be made at 3 months, 6 months and annually subsequently.~~ If a patient requests and receives doses above 100 milligrams, serum levels shall be drawn to evaluate peak and trough determinations after the patient's dose is stabilized.  
Companion Order: The Secretary of the Department of Health Services may require plasma and serum drug level determinations for patients with split dosages and who receive additional take-home doses.

**Admin. Rule:** **Wis. Admin. Code § DHS 75.15(17)(a)**  
Description of Rule: Requires tuberculosis (TB) screens.  
Status: Partially suspended with companion order.  
Companion Order: Treatment providers shall screen patients using a risk assessment tool for TB to determine if patients need to be referred for a TB test.

**Admin. Rule:** **Wis. Admin. Code § DHS 75.15(17)(c)**  
Description of Rule: Requires screenings for viral hepatitis and sexually transmitted diseases (STDs) in OTP.  
Status: Partially suspended with companion order.  
Companion Order: Treatment providers shall screen patients using a risk assessment tool for viral hepatitis and STDs to determine if patients need to be referred for appropriate testing and subsequent follow-up.

**X. Additional Orders**

- A. The Department may suspend any fee or assessment provided for in administrative rules related to emergency medical services credentialing where there is a demonstrable need. "Demonstrable need" should be broadly interpreted in favor of increasing the availability of emergency medical services.
- B. Nothing in this Order should be construed to permit a license or credential holder who is currently suspended or revoked to re-enter practice in emergency medical services pursuant to this Order.
- C. Where a suspension above conflicts with existing federal regulation, a waiver may have to be obtained in order for the administrative rule suspension to have its full intended effect.
- D. Violation or obstruction of this Order is punishable by up to 30 days imprisonment, or up to \$500 fine, or both. Wis. Stat. § 252.25.
- E. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
- F. This Order is effective immediately and shall remain in effect for the duration of the public health emergency as declared in Executive Order #72.



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Tony Evers  
Governor  
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4/3/2020

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Date



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04/03/2020

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Date