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TO: Hospitals, Medical Professionals, Eligible Medical Condition Advocacy groups, and other organizations affected by Act 198

FROM: Mark Wegner, MD, MPH
Chronic Disease Medical Director
Bureau of Community Health Promotion
Department of Health Services

SUBJECT: 2009 Act 198 - Access to Toilet Facilities in Retail Establishments

On May 6, 2010, 2009 Wisconsin Act 198, Wis. Stat § 146.29, *Access to Toilet Facilities in Retail Establishments*, became effective. Under this Act, an individual who suffers from an eligible medical condition or uses an ostomy device, as verified by a physician or an entity approved by the Department of Health Services, must be granted access to a retail establishment's toilet facility designated for use by the establishment's employees under certain conditions. The attached Legislative Council Act memo explains this new legislation.

The Division of Public Health has been assigned the responsibility of implementing 2009 Act 198. The Division has established a web site which contains a copy of 2009 Act 198, the memo from the Wisconsin Legislative Council that describes the Act, an overview of the application process that entities that wish to issue identification cards should follow, an application form for said entities and other pertinent information pertaining to the Act. This information can be found at: <http://www.dhs.wisconsin.gov/localhealth/2009WIact198>.

I hope this information helps you understand 2009 Act 198 and the possible requests that you may receive from patients or individuals who have an eligible medical condition. If you have any questions about Act 198 or its implementation, please go to the following website and type in your question: webmaildph@wisconsin.gov.

Thank you for your assistance.



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 198
[2009 Assembly Bill 709]

**Access to Toilet Facilities in Retail
Establishments**

2009 Wisconsin Act 198 (the Act) requires a retail establishment that has a toilet facility that is designated for use by the establishment's employees to permit a person who suffers from an eligible medical condition or uses an ostomy device to use the toilet facility under certain circumstances.

A "retail establishment" is a store or shop in which retail sales is the principal business conducted, except that retail establishment does not include a motor vehicle fuel retailer's establishment that is a structure that is 800 square feet or less in size.

"Eligible medical conditions" are Crohn's disease, ulcerative colitis, irritable bowel syndrome, or any other medical condition that periodically requires immediate access to a toilet facility.

Under the Act, upon request, a retail establishment must allow a person to use the toilet facility during the retail establishment's usual business hours if all of the following apply:

- The person provides a copy of a physician statement or identification card that indicates that the person suffers from an eligible medical condition or uses an ostomy device.
- Three or more employees are working at the time.
- The toilet facility is not located in an area where access creates an obvious health or safety risk for the person or an obvious security risk for the retail establishment.
- A public toilet facility is not immediately accessible to the person.

The Department of Health Services must approve entities to issue identification cards that may be used to request access to toilet facilities in retail establishments. The department may only approve

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

entities that provide services to, or advocate on behalf of, persons who suffer from an eligible medical condition or use an ostomy device.

Any person who violates the requirements of the Act may be required to forfeit not more than \$200.

Any person who possesses a forged or altered physician statement or identification card, or forges, alters, or improperly transfers an identification card or physician statement may be required to forfeit not more than \$200.

The Act does not require any retail establishment to make physical changes to a toilet facility that is designated for use by its employees.

If an employee of a retail establishment permits a person to use the establishment's toilet facility, as required by the Act, the employee and the establishment are immune from civil liability for the death of or injury to the person, or an individual other than an employee who accompanies the person, that is caused by or during the use of the facility. This liability exemption does not apply if the death or injury was caused by a willful or wanton act or omission of the employee.

Effective date: May 6, 2010.

Prepared by: Mary Matthias, Senior Staff Attorney

May 6, 2010

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