

# Wisconsin Indoor Smoking Ban: Effective July 5, 2010

contributed by  
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On July 5, 2010, when the Wisconsin indoor smoking ban takes effect, virtually all employers in Wisconsin will need to take steps to ensure that their workplaces are smoke free. 2009 Wisconsin Act 12 prohibits smoking in enclosed public places and places of employment. Noteworthy items:

- A “place of employment” is any indoor place that employees normally frequent during the course of employment, including an office or work area, an employee lounge, a rest room, a conference or meeting room, a classroom, or a hallway.
- Employers are permitted to provide outdoor smoking areas, but these areas must be a “reasonable distance” from any entrance to the facility.
- Employers are in charge of making reasonable efforts to prohibit persons from illegally smoking, including removing all matches, ashtrays and smoking-related equipment and posting warning signs or providing other appropriate notification.

Employers who fail to take required action under the statute, or permit illegal smoking, are subject to a \$100 fine for each violation.

**Important exception:** The legislature also remembered that an assisted living facility is not just a place of employment but home, as well. Therefore, the prohibition for smoking in employment areas has the following limited exceptions regarding smoking in an assisted living facility:

- A room used by only one person in an assisted living facility as his or her residence; or
- A room in an assisted living facility in which two or more persons reside if every person who lives in the room smokes and each of these persons has made a written request of the person in charge of the assisted living facility to be placed in a room where smoking is allowed.

The law does not mandate client smoking, but merely provides for smoking under the circumstances described above. Note that current residents are NOT grandfathered for smoking inside the facility.

Finally, outdoor smoking areas can be made available but they must meet the following criteria:

- The area must be provided with an adequate number of ashtrays made of non-combustible material.
- Oxygen tanks should not be allowed in the area.
- If the area is designated for protection from the weather, the area may not meet the definition of an enclosed space.

Always with regulation comes responsibility. For more information regarding this issue, please contact Tom Godar, a member of the RSA Advisory Board.

**See next page for official DQA Memo**

## Congratulations to the 2010 Award Winners!

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*Lead Support Staff, Agape of Appleton*

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**State of Wisconsin**  
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Karen E. Timberlake  
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**Date:** June 14, 2010

**DQA Memo 10-016**

**To:** Adult Day Care  
Adult Family Homes  
Community-based Residential Facilities  
Residential Care Apartment Complexes

ADC 03  
AFH 06  
CBRF 08  
RCAC 06

**From:** Kevin Coughlin, Director  
Bureau of Assisted Living

**Via:** Otis Woods, Administrator  
Division of Quality Assurance

**Changes in 2010 to WI Clean Indoor Air Act and the Effect on Assisted Living Facilities**

Effective July 5, 2010, an amendment to the Wisconsin Clean Indoor Air Act (Wis. Stat. § 101.123) will prohibit smoking in common and public areas of assisted living facilities in Wisconsin.

As amended, Wis. Stat. § 101.123(2) prohibits smoking in certain enclosed places, including all enclosed places that are places of employment or that are public places. Subsections 101.123(3)(j) and (i) allow the following exceptions to prohibitions against smoking in assisted living facilities<sup>1</sup>:

- a room used by only one person in an assisted living facility as his or her residence; or
- a room in an assisted living facility in which two or more persons reside if every person who lives in the room smokes and each of those persons has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.

After July 5, 2010, smoking will be prohibited in facility offices, work areas, employee lounges, restrooms, and conference and meeting rooms.

<sup>1</sup> Per Wis. Stat §101.123(1)(ab) "assisted living facility" means a community-based residential facility, a residential care apartment complex, or an adult family home.

After July 5, 2010, assisted living facilities may choose to become a smoke-free facility, allow smoking in resident rooms per Wis. Stats. §§ 101.123(3)(i) and 101.123(3)(j), and/or designate an outdoor smoking area.

Assisted living facilities that currently have a policy allowing smoking in designated areas within the facility will need to revise the policy per the above guidelines. Residents will need to be given notice of any changes in accordance with applicable administrative code. Current residents are **not grandfathered** for smoking inside the facility.

Designated outdoor smoking areas must meet the following criteria:

- The area must be provided with an adequate number of ash trays made of non-combustible material.
- Oxygen tanks should not be allowed in the area.
- If the area is designed for protection from the weather, the area may not meet the definition of an “enclosed space”. If the area meets the definition of an enclosed space, smoking would be prohibited within that area.

Wis. Stat. § 101.123(2m) specifies that **no person in charge may allow any person to smoke in violation of the Wisconsin Clean Indoor Air Act.**

Finally, the Clean Indoor Air Act does not limit the authority of any county, city, village or town to enact ordinances complying with the purpose of the Act to protect the health and comfort of the public. Assisted living facilities need to keep in compliance with local regulation as well as state law.

If you have any questions, please contact the Assisted Living Regional Director in your region at: [http://dhs.wisconsin.gov/rl\\_dsl/Contacts/ALSreglmap.htm](http://dhs.wisconsin.gov/rl_dsl/Contacts/ALSreglmap.htm)