

This Statement of Scope was approved by Governor Scott Walker on March 29, 2018.

## STATEMENT OF SCOPE

### DEPARTMENT OF HEALTH SERVICES

**Rule No.:** DHS 50

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**Relating to:** Youth Crisis Stabilization Facility

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**Rule Type:** Permanent and Emergency

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**Type of Statement of Scope:** Original

#### 1. Finding/nature of emergency:

Pursuant to 2017 Wis. Act 59, Section 9120, the department is not required to provide a finding of emergency to create rules implementing certification of Youth Crisis Stabilization Facilities, under s. 51.042, Stats.

#### 2. Detailed description of the objective of the proposed rule:

The objective is to create an emergency and permanent rule for the certification and operation of youth crisis stabilization facilities.

#### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

##### Policy Problem

All Wisconsin counties are required to have an emergency mental health services program, which must be available for least 8 hours a day, 7 days a week during those periods of time identified in the emergency mental health services plan when mobile services would be most needed. Counties may, at their option, establish a crisis stabilization component to their emergency mental health program. Stabilization services are defined under s. DHS 34.22(4) to include optional emergency mental health services which provide short-term, intensive, community-based services to avoid the need for inpatient hospitalization. Such services can occur in a variety of settings. For youth, Medicaid-reimbursable residential stabilization sites include group homes, foster homes, and treatment foster homes, which are licensed and regulated by the Department of Children and Families (DCF). However, due to a variety of factors, including the need for DCF resources to serve child welfare consumers, these sites are increasingly unavailable statewide. This has led to greater numbers of youth being detained and committed to more restrictive, inappropriate levels of care in institutes and hospitals through Emergency Detentions, creating a strain on resources at Winnebago Mental Health Institute and a financial strain on counties.

##### New Policy

To address this shortage of youth crisis stabilization sites, 2017 Wisconsin Act 59 contains a provision to create Youth Crisis Stabilization Facilities. These are defined as treatment facilities with a maximum of eight beds that admit a minor to prevent or de-escalate the minor's mental health crisis and avoid admission of the minor to a more restrictive setting, such as mental health institutes or hospitals. The facilities are intended for short term stabilization. Admission is voluntary or by court order, under s.

51.20(13)(a) or 51.13, Stats. The facilities are not to be used for Emergency Detentions. A crisis is defined as a situation caused by an individual's apparent mental disorder that results in a high level of stress or anxiety for the individual, persons providing care for the individuals, or the public, and that is not resolved by the available coping methods of the individual or by the efforts of those providing ordinary care or support for the individual. Youth Crisis Stabilization Facilities are not subject to facility regulation by the Department of Children and Families under the state children's code.

The rule will include provisions on program certification, which will address operations, requirements for admission, assessment, treatment planning, and treatment, as well as staffing, training, and education for consumers. The department may also include provisions regulating the number of facilities, as authorized in s. 51.042(2)(a), Stats.

#### Entities Affected

County emergency mental health services programs will be affected by providing them with an additional resource to serve minors experiencing a mental health crisis which does not rise to the level of needing inpatient care or require an Emergency Detention, but necessitates a therapeutic, short term community-based treatment setting.

Minors experiencing a mental health crisis, and their families, will be affected based on the availability and outcomes of this treatment setting.

Public and private mental health providers will be affected by having greater opportunities to administer, staff, or work with consumers at a youth crisis stabilization facility.

Fiscal entities such as Medicaid and private insurance will also be impacted, by reducing potential inpatient services expenditures, where the youth would probably be served if not in this facility.

#### Existing Policies and Policy Alternatives

Youth crisis stabilization facilities are a new type of entity and there are no administrative rules regulating their certification. There are no reasonable alternatives to the proposed rulemaking, because s. 51.042(2)(a), Stats., requires that Youth Crisis Stabilization Facilities be certified by the department to operate in the state. A pathway to certification is therefore necessary to address the shortage of youth crisis stabilization sites.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

The proposed rulemaking is explicitly authorized by the Legislature in various statutory and non-statutory provisions.

Section 51.042(4) reads:

RULES. The department may promulgate rules to implement this section

2017 Wis. Act 59, Section 9120, reads:

Nonstatutory provisions; Health Services.

(1) EMERGENCY RULES ON YOUTH CRISIS STABILIZATION FACILITIES. The department of health services may promulgate emergency rules under section 227.24 of the statutes implementing certification of youth crisis stabilization facilities under section 51.042 of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until July 1, 2019, or the date on which permanent rules take effect, whichever is sooner.

Section 51.42 (7) (b), Stats., reads:

DUTIES OF THE DEPARTMENT OF HEALTH SERVICES.

(b) The department shall promulgate rules which do all of the following:

1. Govern the administrative structure deemed necessary to administer community mental health, developmental disabilities, alcoholism and drug abuse services.
2. Establish uniform cost record-keeping requirements.
3. Prescribe standards for qualifications and salaries of personnel.
4. Prescribe standards for quality of professional services.
5. Prescribe requirements for in-service and educational leave programs for personnel.
6. Prescribe standards for establishing patient fee schedules.
7. Govern eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay.
- 7m. Define "first priority for services" under and otherwise implement sub. (3) (ar) 4m.
8. Prescribe such other standards and requirements as may be necessary to carry out the purposes of this section.
9. Promulgate rules establishing medication procedures to be used in the delivery of mental health services.
10. Establish criteria for the level of scrutiny for evaluation of community mental health programs.
11. Prescribe requirements for certification of community mental health programs, except as provided in s. 51.032, including all of the following:
  - a. A requirement that, as part of the certification process, community mental health programs must demonstrate that their staff have knowledge of laws, regulations and standards of practice which apply to the program and its clients.
  - b. A requirement that, when conducting certifications, certification staff must use a random selection process in reviewing client records.
  - c. A requirement that certification staff conduct client interviews as part of the certification process.
  - d. A requirement that certification staff provide certification results to the community mental health program reviewed, to subunits within the department responsible for community mental health program monitoring and to the county department under this section in which the community mental health program is located upon completion of certification.

Section 227.11 (2) (a), Stats., reads:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold in the statutory provision.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :**

Department staff will devote 2,000 hours promulgating the rule. No other resources are necessary to develop the rule.

Pursuant to s. 227.13, Stats., the Department's Division of Care and Treatment Services will request authorization to establish an advisory committee, comprised of stakeholders including county human services representatives, youth treatment providers, advocates including parents, and state staff including representatives from the Department of Children and Families and the Office of Children's Mental Health.

**6. List with description of all entities that may be affected by the proposed rule :**

County emergency mental health services programs which serve individuals experiencing a mental health crisis, per DHS 34; minors experiencing a mental health crisis and their families; inpatient facilities and hospitals, including Winnebago Mental Health Institute; community-based behavioral health providers; and law enforcement.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

**8. Anticipated economic impact of implementing the rule :**

The proposed rule may create business opportunities for treatment providers that wish to become newly certified as Youth Crisis Stabilization Facilities.

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