



Carol Roessler
STATE SENATOR

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care

From: Senator Carol Roessler, Chair

Date: August 6, 2004

Re: Clearinghouse Rule 04-025, relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based psychosocial rehabilitation services under the medical assistance program.

Clearinghouse Rule 04-051, relating to the provision and reimbursement of services under the Wisconsin Chronic Disease Program.

Two administrative rules have been referred to the Health, Children, Families, Aging and Long Term Care Committee. I have enclosed the rules for your review.

Clearinghouse Rule 04-025 would complement services provided by existing community support programs by making a fuller array of mental health and substance-use and addiction disorder services potentially available to those in need. In addition, it is anticipated that this order will allow for the creation of a broad range of psychosocial rehabilitation services. The committee has jurisdiction over CR 04-025 until Monday, September 6, 2004.

Clearinghouse Rule 04-051 modifies three chapters of administrative rules in lieu of statutory changes made by the Governor and the Wisconsin legislature in the most recent biennial budget that authorize the Wisconsin Chronic Disease Program (WCDP). Through this rulemaking order, the Department is proposing to reflect changes made by Acts 33 and 198 to the WCDP, as well as clarify certain eligibility for benefits. The committee has jurisdiction over CR 04-051 until Monday, September 6, 2004.

If you would like the committee to hold a hearing on either CR 04-025 or CR 04-051, please contact Jennifer Stegall in my office at 266-5300.



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

July 30, 2004

The Honorable Alan J. Lasee, President
Wisconsin State Senate
17 West Main St., Room 401
Madison, WI 53702

The Honorable John Gard, Speaker
Wisconsin State Assembly
17 West Main St., Room 208
Madison, WI 53702

Re: Clearinghouse Rule 04-025

HFS 36, relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services and other conditions of coverage of community-based psychosocial services under the medical assistance program.

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Dan Zimmerman at 608-266-7072.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helene Nelson'.

Helene Nelson
Secretary

cc Gary Poulson, Assistant Revisor of Statutes
Senator Joseph Liebham, JCRAR
Representative Glenn Grothman, JCRAR
Dan Zimmerman, DDES-DHFS
Ron Hermes, DHFS Secretary's Office

Wisconsin.gov

PROPOSED ADMINISTRATIVE RULES - HFS 36
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (2), STATS.

Basis and Purpose of Proposed Rules

The basis of the Department's authority to create these rules is found in sections 49.45 (30e) (b), 51.42 (7) (b), and 227.11 (2) (a), Stats.

1997 Wisconsin Act 27 created s. 49.45 (30e), Stats., relating to conditions for reimbursement of community-based psychosocial services programs under the medical assistance program and authorized the department to create rules establishing the scope of the psychosocial services that may be provided under s. 49.46 (2) (b) 6. Lm, Stats., standards for eligibility for those services, and certification requirements for community-based psychosocial programs under the medical assistance program. Section 49.45 (30e) (b) requires the Department to promulgate rules.

The Wisconsin Department of Health and Family Services proposes to amend HFS 107.13 (2) (c) 5., and (4) (c) 4.; and to create chapter HFS 36, HFS 105.257, 107.13 (6) (b) 4. and (7), relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based psychosocial rehabilitation services under the medical assistance program.

The Department through this proposed order establishes the scope of community-based psychosocial rehabilitation services programs, standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based psychosocial rehabilitation services under the medical assistance program as authorized by ss. 49.45 (30e) and 51.42 (7) (b), Stats. The Department anticipates that the rules created in this order will complement services provided by existing community support programs under s. 51.421, Stats., by making a fuller array of mental health and substance-use and addiction disorder services potentially available to those in need in each county or tribe. The Department further anticipates that this order will allow for the creation of a broad range of flexible, consumer-centered, recovery-oriented psychosocial rehabilitation services to both minors and adults, including elders, whose psychosocial needs require more than outpatient therapy, but less than the level of services provided by existing community support programs. Certified community-based psychosocial rehabilitation services programs that meet the requirements of s. 49.45 (30e), Stats., and this order may be fully or partially funded by medical assistance with county or tribal match. These programs may also coordinate with other existing funding sources.

Response to Clearinghouse Recommendations

Except as follows, the Department accepted all of the comments made by the Legislative Council's Rules Clearinghouse and modified the order where suggested.

2.a. Comment: In s. HFS 36.03 (7), delete everything after the first sentence. This is substantive material that should not be included in the definition. The additional provisions may be placed elsewhere in the rule.

Response: With most other programs and Medicaid benefits, payment is only permitted for services to the consumer, so the second sentence is essential to convey that family members of a minor or primary caregivers are consumers within the context of this program.

2.m. Comment: In s. HFS 36.16 (7) (b), the last sentence should be placed in a note to the rule.

Response: The last sentence in this paragraph is not meant to be optional. The language was clarified and strengthened to better convey the intent.

5.g. Comment: In s. HFS 36.05 (2), insert the phrase "if any," after "operational policies" in the fourth line, since it is implied in s. HFS 36.04 (2) (c) that operational policies are optional.

Response: The word "any" will be struck from s. HFS 36.04 (2) (c) to clarify that operational policies are required.

5.k. Comment: In s. HFS 36.10 (2) (a), the description of prohibited discrimination is not consistent with the description contained in s. HFS 36.13 (4).

Response: State and federal statutes and regulations protect certain classes or categories of persons from discrimination, but the listing of protected categories is different for employment versus persons who are receiving treatment and services. The lists of protected categories were checked by the Department's Affirmative Action Office.

5.q. Comment: In s. HFS 36.10 (3), it is not clear from the text how a volunteer will be supervised by a staff member.

Response: The nature of the work volunteers may perform will vary widely (e.g., assisting with leisure recreation activities, providing peer support, transportation, etc.), so the nature and frequency of the supervision should be flexible enough to ensure appropriate services and outcomes and consumer protection while not unnecessarily burdening the volunteer or the CCS program.

5.r. Comment: In s. HFS 36.11 (3), are the staff members referred to in this subsection providing the supervision? If so, this should be specified.

Response: This requirement allows the CCS program to choose to provide a traditional-type of supervision (i.e., department/clinical supervisor to employee/professional) or a clinical collaboration process in which professionals are seen as peers who provide quality assurance and improvement reviews for one another.

5.x. Comment: In s. HFS 36.16 (2) (a), the provision would be clarified if a cross-reference to the requirements of the assessment process were included.

Response: Given that the requirement for facilitation is within the section of the rule addressing the assessment process, it is felt that a cross-reference is unnecessary.

5.y. Comment: In s. HFS 36.16 (5) (a) (intro.), should the cross-reference be expanded to include sub. (4)?

Response: It is not necessary to include sub. (4) as a cross-reference because sub. (3) states "the assessment shall be conducted within the context of the domains listed in sub. (4), and any other domains identified by the CCS..."

5.aa. Comment: In s. HFS 36.17 (1), how can the written service plan be completed within 30 days of the consumer's application for services when s. HFS 36.16 (2) (a) requires that the assessment be completed within 30 days of receipt of an application for services?

Response: Within 30 days the CCS program is to complete the initial service plan based on the available assessment information to date. If the CCS program is able to complete the comprehensive assessment earlier, the CCS program will have greater flexibility to arrange for a planning meeting to develop the service plan with the recovery team members.

Effect on Small Businesses (Final Regulatory Flexibility Analysis)

There will be no adverse affect on small businesses. If psychosocial rehabilitation services currently are being provided, then the individual consumer or the county of responsibility is paying for the cost of the services. This rule will permit the county of responsibility to use their existing funds that are being expended for these services as the required match to the federal portion of Medicaid funding (federal financial participation or FFP). The increase in available funding may result in an increase in revenues for a local small business if the county and the consumer select the business as a provider of a component of the psychosocial rehabilitation services for the consumer.

Changes to the Analysis or Fiscal Estimate

Analysis

Corrections relating to clarity and grammar were made in the analysis section of the rulemaking order in response to Clearinghouse comments 5 a. 1 to 3.

Fiscal Estimate

No changes were made to the Fiscal Estimate.

Public Hearing and Written Comment Summary

The Department held three public hearings on the proposed rules. The hearings were in Madison, July 6, 2004; Eau Claire, July 7, 2004; and Green Bay, July 8, 2004. The hearings were held for two rules governing comprehensive community services, the emergency rule and the permanent rule of HFS 36. Modifications were made to the rules based on the written and oral testimony provided. The following staff was in attendance:

Dan Zimmerman, Hearing Officer, Bureau of Mental Health and Substance Abuse Services, (July 6 to July 8)
 Jeff Hinz, Section Chief, Bureau of Mental Health and Substance Abuse Services, (July 6 to July 8)
 Sally Raschick, Resource Staff, Bureau of Mental Health and Substance Abuse Services, (July 6 to July 8)
 Jane Walters, DDES, Bureau of Quality Assurance (July 6)
 Mark Hale, DDES, Bureau of Quality Assurance (July 6)
 Cindy Lindgren, DDES, Bureau of Quality Assurance (July 6)
 Rick Ruecking, DDES, Bureau of Quality Assurance (July 6)
 Susan Schroeder, DDES, Bureau of Quality Assurance (July 6)
 Rod Senn, DDES, Bureau of Quality Assurance (July 7)
 Steve Ojibway, DDES, Bureau of Quality Assurance (July 7)
 K. L. Polly Wong, DDES, Bureau of Quality Assurance (July 7)
 Frank Bellaire, DDES Bureau of Quality Assurance (July 8)
 Cori McFarlane, OSF Regional Area Administration (July 8)

The hearing record was left open until July 13, 2004, for receipt of written comments. Participation in the hearings is tabulated below. The positions indicated on the registrations or written statements filed by the hearing participants regarding the participants support or opposition are tabulated below.

Registered: 31

36 persons provided input to the rule or observed a hearing for the rule	
2 persons provided oral testimony	2 persons supported the rule
7 persons provided written testimony	12 persons supported the rule with changes
3 persons provided both oral and written testimony	0 persons opposed the rule
24 persons observed the proceeding	22 persons did not indicate their position

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended a public hearing or submitted written comments on the proposed HFS 36 permanent rules. With each individual's name and affiliation is an indication of the individual's position on the proposed rules and whether or not the individual testified or provided written comments. The number preceding the name corresponds to the specific comment made in the attached summary of hearing comments.

Name and address	Position	Action
1. Dianne Greenley Wisconsin Coalition for Advocacy 16 N. Carroll Street, Suite 400 Madison, WI 53703	Supported the rule with changes – both the emergency and the permanent rule	Oral presentation and written comments
2. Gail Marker Yahara House 802 E. Gorham Street Madison, WI 53703	Supported the rule with changes	Oral presentation and written comments

3. Lynn Brady Mental Health Center of Dane County, Inc. 625 W. Washington Street Madison, WI 53703	Supported the rule with changes	Oral presentation
4. Linda Hall WI Association of Family & Children's Agencies 131 W. Wilson Street, Suite 901 Madison, WI 53703	Not indicated	Observation only
5. Xa Xiong Mental Health Center of Dane County – Kassiab House 3518 Memorial Drive Madison, WI 53704	Not indicated	Observation only
6. Bernadette Conley Yahara House 802 E. Gorham Street Madison, WI 53703	Not indicated	Observation only
7. Scott S. Strong Community Partnerships 1334 Dewey Court Madison, WI 53703	Not indicated	Observation only
8. Kellianne O'Brien NAMI – Wisconsin 4233 W. Beltline Highway Madison, WI 53711	Not indicated	Observation only
9. Robert L. Beilman NAMI – Wisconsin 4233 W. Beltline Highway Madison, WI 53711	Support	Observation only
10. Doug Vang Mental Health Center of Dane County – Kassiab House 3518 Memorial Drive Madison, WI 53704	Not indicated	Observation only
11. Mary Thornton 3728 Orin Road Madison, WI 53704	Not indicated	Observation only
12. Jennifer Lowenberg NAMI – WI 4233 W. Beltline Highway Madison, WI 53711	Not indicated	Observation only
13. Brad Munger NAMI – Rock County 2823 Harvard Drive Janesville, WI 53548	Supported the rule with changes	Written comments

14. Sybil Roberts 105 Marinette Trail Madison, WI 53705	Not indicated	Oral presentation
15. Catherine Swanson-Hayes For Jean DeJong SOAR 53 Craig Avenue Madison, WI 53705	Supported the rule with changes	Oral presentation and written comments
16. Mike Bachhuber Access to Independence 2345 Atwood Avenue Madison, WI 53704	Supported the rule with changes	Written comments
17. Mary Zachau Eau Claire County Department of Human Services 721 Oxford Avenue Eau Claire, WI 54703	Not indicated	Observation only
18. Bruce Retzlaff Oconto County Human Services 501 Park Avenue Oconto, WI 54153	Not indicated	Observation only
19. Diana Brown New Curative Rehabilitation 5059 Glenview Road Denmark, WI 54208	Not indicated	Observation only
20. Amy Nelson New Curative Rehabilitation 2900 Curry Lane Green Bay, WI 54308	Not indicated	Observation only
21. Kim Chong New Curative Rehabilitation 2900 Curry Lane Green Bay, WI 54308	Not indicated	Observation only
22. Lisa Steffen New Curative Rehabilitation 2900 Curry Lane Green Bay, WI 54308	Not indicated	Observation only
23. Dave Baldwin New Curative Rehabilitation 2900 Curry Lane Green Bay, WI 54308	Not indicated	Observation only
24. Kathryn C. Barry Options for Independent Living PO Box 11967 Green Bay, WI 54307	Not indicated	Observation only

25. Joan Groessi Brown County Human Services 111 N. Jefferson, PO Box 22188 Green Bay, WI 54305-2188	Not indicated	Observation only
26. John Kelhoven North Central Health Care 1100 Lake View Drive Wausau, WI 54403	Support	Observation only
27. Vickie Benes North Central Health Care 1100 Lake View Drive Wausau, WI 54403	Not indicated	Observation only
28. Michael Rhea North Central Health Care 1100 Lake View Drive Wausau, WI 54403	Not indicated	Observation only
29. Kay Cram North Central Health Care 1100 Lake View Drive Wausau, WI 54403	Not indicated	Observation only
30. Jill Forer North Central Health Care 540 S. 3 rd Avenue Wausau, WI 54401	Not indicated	Observation only
31. Marcia Baeten Villa Hope CSP 1100 Guns Road Green Bay, WI 54311	Not indicated	Observation only
32. Nancy Phythyon NAMI – WI 4233 W. Beltline Highway Madison, WI 53711	Supported the rule with changes	Written comments
33. Pat Anderson pat.anderson@mail.mhcdc.org	Supported the rule with changes	Written comments
34. Shel Gross Mental Health Association in Milwaukee County 133 S. Butler St., LL Madison, WI 53703	Supported the rule with changes	Written comments
35. Marlene Dreissen msmd@cheqnet.net	Supported the rule with changes	Written comments
36. Jane Alexopoulos Jalexopoulos@milwaukeecounty.com	Supported the rule with changes	Written comments

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING AND CREATING RULES

To amend HFS 107.13 (2) (c) 5., and (4) (c) 4.; and to create chapter HFS 36, HFS 105.257, 107.13 (6) (b) 4. and (7), relating to standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based psychosocial rehabilitation services under the medical assistance program.

Analysis Prepared by the Department of Health and Family Services

Statutes Interpreted: Sections 49.45 (30e), 49.46 (2) (b) 6. Lm, 51.04, 51.42 (7) (b), and 51.61, Stats.

Statutory Authority: Sections 49.45 (30e) (b), 51.42 (7) (b), and 227.11 (2) (a), Stats.

Explanation of agency authority: 1997 Wisconsin Act 27 created s. 49.45 (30e), Stats., relating to conditions for reimbursement of community-based psychosocial services programs under the medical assistance program and authorized the department to create rules establishing the scope of the psychosocial services that may be provided under s. 49.46 (2) (b) 6. Lm, Stats., standards for eligibility for those services, and certification requirements for community-based psychosocial programs under the medical assistance program. Section 49.45 (30e) (b) requires the Department to promulgate rules.

Related statute or rule: Sections 49.45 (30e), 49.46 (2) (b) 6. Lm, 51.42 (7) (b), Stats., chs. HFS 105 and 107.

Plain language analysis:

The Department through this proposed order establishes the scope of community-based psychosocial rehabilitation services programs, standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community-based psychosocial rehabilitation services under the medical assistance program as authorized by ss. 49.45 (30e) and 51.42 (7) (b), Stats. The Department anticipates that the rules created in this order will complement services provided by existing community support programs under s. 51.421, Stats., by making a fuller array of mental health and substance-use disorder services potentially available to those in need in each county or tribe. The Department further anticipates that this order will allow for the creation of a broad range of flexible, consumer-centered, recovery-oriented psychosocial rehabilitation services to both minors and adults, including elders, whose psychosocial needs require more than outpatient therapy, but less than the level of services provided by existing community support programs. Certified community-based psychosocial rehabilitation services programs that meet the requirements of s. 49.45 (30e), Stats., and this order may be fully or partially funded by medical assistance with county or tribal match. These programs may also coordinate with other existing funding sources.

Summary of, and comparison with, existing or proposed federal regulation:

The federal regulations at 42 CFR 440.130 (d) state, "Rehabilitative services," except as otherwise provided under this subpart, includes any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under State law, for maximum reduction of physical or mental disability and restoration of a consumer to his best possible functional level." The Center for Medicare and Medicaid Services (CMS) has interpreted this section of the regulations to include psychosocial rehabilitation services and permit development of such services as an optional Medicaid benefit in a State Medicaid plan. CMS makes a distinction in various documents between rehabilitative services of physical therapy, occupational therapy, speech therapy, etc. and psychosocial rehabilitative services.

Comparison with rules in adjacent states:

Illinois

Sources:

Mental Health Program Book, Office of Mental Health, Department of Human Services: Chapter 300: Rehabilitation and Support Program I (Psychosocial Rehabilitation and Support Core Services; Day Rehabilitation Program Services; Care Management Core Services; and Residential Core Services)

1. 59 Illinois Administrative Code, Chapter IV, Subpart E: Rehabilitative Services

Similarities:	Differences:
1. Predicated on recovery, consumer-centered, psycho-educational model	1. Illinois's requirements are more prescriptive (e.g., minimum staff-to-consumer ratios and minimum number of consumers per provider/program)
2. Training and services occur in the community (i.e., in situations in which the consumer has impediments to independent functioning)	2. Community Resource Development is a core service (e.g., job banks, employer councils, innovative housing initiatives)
3. Provides social skills, vocational and leisure/recreation training	3. Requirements for determining the need for services do not mention children or elders, although there is a core service for children 17 and older to transition to adult services (note: the regulations do indicate that children and their families are eligible for services if the child requires in-home or other intensive therapeutic interventions)
4. Permit peer-support and clubhouse models of delivery of services	4. Involvement of natural supports is not discussed in Illinois's requirements
5. Providers are expected to have consumer representation on their governing/advisory boards	5. Illinois has a regional system of mental health delivery
	6. Illinois has a "client transitional subsidy" for persons being discharged from a hospital, or long-term care facility that can fund

Similarities:	Differences:
	basic needs (e.g., housing, food, medications) for up to three months to a total of \$600---persons receiving these services must be enrolled in a CSP or case management
	7. The expectations for residential core services are comparable to the requirements under HFS 82 and 83
	8. Criteria for determining the need for psychosocial rehabilitation services varies based on the core service, although overall is as broad as our criteria
	9. There are general termination criteria for extended and rehabilitation services and psychosocial rehabilitation day program services that permit discharge if the consumer fails to make progress towards stated goals
	10. Providers are expected to coordinate with other mental health services, but providers are responsible only for their services; our CCS rule requires an overall county plan for mental health services
	11. Illinois's regulations are not integrated across the core services, but rather are specific to each core service

Iowa

Source:

1. Iowa Administrative Code – Chapter 24: Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities
2. A conversation with James Overland, Chief of the Bureau of Community Services, Division of Behavioral, Developmental and Protective Services, Department of Human Services

The State of Iowa has a managed care system that addresses mental health, as well as physical health, needs. As a result, the administrative code addressing mental health issues is extremely brief. Their rules consist of performance benchmarks (e.g., individualized and appropriate intervention services and treatments are provided in ways that support the needs, desires, and goals identified in the service plan, and that respect the rights and choices of the individual using the service) and performance indicators (e.g., staff document in the narrative the individual's participation in the treatment program).

These performance benchmarks and indicators are globally stated and are meant to evaluate a managed care delivery system. Funding may be withheld for failure to meet the performance benchmarks or indicators. In a fee-for-service system, such as Wisconsin's, the administrative code must indicate failure to meet the requirements based on the scope

and severity of deficiencies noted by a licenser, which then results in the possibility of termination or non-renewal of the provider's license's. Therefore, a comparison between Iowa and Wisconsin's psychosocial rehabilitation services has marginal utility.

Michigan

Sources:

1. State of Michigan Administrative Code, R 330.2005 – 330.2814, which address community mental health programs of emergency intervention services, prevention services, outpatient services, aftercare services, day program and activity services, public information services, inpatient services, and community/caregiver services.

The State of Michigan has a managed care system that addresses mental health, as well as physical health, needs. As a result, the administrative code addressing mental health issues is extremely brief. For example, the requirements for day program and activity services is only five lines long and states that these services shall include providing habilitative and rehabilitative treatment and training activity. The administrative code does not reference recovery, involvement of consumers on a governing/advisory board, etc.

Minnesota

Sources:

1. Minnesota Statutes, s. 256B.0623, Covered service: adult rehabilitative mental health services.
2. A conversation with Richard Seurer, Planning Analyst in the Mental Health Division, Department of Human Services

Similarities:	Differences:
1. We borrowed language from the Minnesota statutes regarding the mental health rehabilitation worker, which provided a definition of "peer support".	1. Minnesota avoided the rule writing process by getting the legislature to incorporate into the statutes the language necessary to establish the benefit and provider requirements.
2. Requirements for determining the need for psychosocial rehabilitation services are comparable; however, they do not require a diagnosis of a mental illness, per se.	2. As indicated in the title for this section of their statutes, the benefit does not cover children.
3. Staff training and supervision requirements are comparable, although our rule contains specific training areas that the CCS must provide and our rule is less prescriptive regarding supervision.	3. The statutes do not contain any mention of "elders" or any specific requirements for elders.
4. The scope of services permitted under the benefit are comparable.	4. While Minnesota does a site review every three years for recertification, they only pull a small sample of records (i.e., three) and do not meet with consumers.
	5. There is no specific mention of "recovery" or "strength-based assessments" in Minnesota's requirements.
	6. Minnesota excludes some specific services

Similarities:	Differences:
	from Medicaid reimbursement that we want to offer (e.g., outreach services to potential consumers and transportation services).

Summary of factual data and analytical methodologies:

If psychosocial rehabilitation services currently are being provided, then the individual consumer or the county of responsibility is paying for the cost of the services. Counties report data to the department regarding county delivered services, but only for areas of services that currently exist. Therefore, there is no data pertinent to psychosocial rehabilitation services available to the department for any analysis of services or expenditures related to the services.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The rule language was developed with input from an advisory committee comprised of county representatives, mental health advocates, consumer representatives, and mental health provider representatives. Also, a review of statutory and regulatory requirements for similar programs in surrounding states was completed, which assisted in the development of the rule.

Anticipated costs incurred by private sector:

If psychosocial rehabilitation services currently are being provided, then the individual consumer or the county of responsibility is paying for the cost of the services. This rule will permit the county of responsibility to use their existing funds that are being expended for these services as the required match to the federal portion of Medicaid funding (federal financial participation or FFP). The increase in available funding may result in an increase in revenues for a local small business if the county and the consumer select the business as a provider of a component of the psychosocial rehabilitation services for the consumer.

Effect on small business:

There will be no adverse affect on small businesses. If psychosocial rehabilitation services currently are being provided, then the individual consumer or the county of responsibility is paying for the cost of the services. This rule will permit the county of responsibility to use their existing funds that are being expended for these services as the required match to the federal portion of Medicaid funding (federal financial participation or FFP). The increase in available funding may result in an increase in revenues for a local small business if the county and the consumer select the business as a provider of a component of the psychosocial rehabilitation services for the consumer.

Agency contact person:

Sally Raschick
Bureau of Mental Health and Substance Abuse Services

1 West Wilson Street
P.O. Box 7851
Madison, WI 53707-7851
(608) 261-9313 or, if you are hearing impaired, (608) 261-9314 (TTY)
raschsc@dhfs.state.wi.us

Place where comments are to be submitted and deadline for submission:

Public hearings will be held:

<u>Date & Time</u>	<u>Location</u>
July 6, 2004 Tuesday 10:00 a.m. to 1:00 p.m.	SRO Room 176 2917 International Lane Madison, WI
July 7, 2004 Wednesday 10:00 a.m. to 1:00 p.m.	WRO Room 123 610 Gibson Street Eau Claire, WI
July 8, 2004 Thursday 10:00 a.m. to 1:00 p.m.	NERO Room 152 A 200 N. Jefferson Street Green Bay, WI

Written comments, on both the proposed permanent rules and the emergency rules, may be submitted in lieu of attending a public hearing by regular mail or email to the contact person listed above. Written comments for the proposed permanent rules and the emergency rules may also be submitted using the Wisconsin Administrative Rules website at the Internet address listed below. The **deadline for comment submission** on both the proposed permanent rules and the emergency rules is **4:30 p.m., July 13, 2004**.

ORDER

SECTION 1. HFS 36 is created to read:

CHAPTER HFS 36

**COMPREHENSIVE COMMUNITY SERVICES FOR
PERSONS WITH MENTAL DISORDERS
AND SUBSTANCE-USE DISORDERS**

SUBCHAPTER I GENERAL PROVISIONS

HFS 36.01 Authority and purpose
HFS 36.02 Applicability
HFS 36.03 Definitions

SUBCHAPTER II CERTIFICATION

- HFS 36.04 Certification requirements
- HFS 36.05 Certification process
- HFS 36.06 Enforcement actions
- HFS 36.065 Waivers and variances

SUBCHAPTER III COMPREHENSIVE COMMUNITY SERVICES PROGRAM

- HFS 36.07 Comprehensive community services plan
- HFS 36.08 Quality improvement
- HFS 36.09 Coordination committee

SUBCHAPTER IV PERSONNEL

- HFS 36.10 Personnel policies
- HFS 36.11 Supervision and clinical collaboration
- HFS 36.12 Orientation and training

SUBCHAPTER V CONSUMER SERVICES

- HFS 36.13 Consumer application
- HFS 36.14 Criteria for determining the need for psychosocial rehabilitation services
- HFS 36.15 Authorization of services
- HFS 36.16 Assessment process
- HFS 36.17 Service planning and delivery
- HFS 36.18 Consumer service records
- HFS 36.19 Consumer rights

SUBCHAPTER I GENERAL PROVISIONS

HFS 36.01 Authority and Purpose. This chapter is promulgated under the authority of ss. 49.45 (30e) (b) and 51.42 (7) (b), Stats., to establish the scope of psychosocial service programs, standards for certification and criteria for determining the need for psychosocial rehabilitation services, and other conditions of coverage of community based psychosocial services under the medical assistance program pursuant to ss. 49.45 (30e) and 49.46 (2) (b) 6. Lm, Stats.

HFS 36.02 Applicability. (1) This chapter applies to the department and to county departments and tribes that apply for certification or are certified to provide comprehensive community services under ss. 49.45 (30e) and 51.42 (7) (b), Stats.

(2) Programs operating under this chapter shall do business as comprehensive community services programs.

(3) This chapter regulates only comprehensive community services programs. This chapter is not intended to regulate other mental health or substance-use disorder programs.

(4) Persons covered under the comprehensive-community services programs include children and adults, including elders, with mental disorders or substance-use disorders.

HFS 36.03 Definitions. In this chapter:

(1) "Adult" means an individual 18 years of age or older.

(2) "Assessment" means the process used to identify the strengths, needs and desired outcomes of a consumer and to evaluate progress toward desired outcomes.

(3) "Certification" means the approval by the department of a comprehensive community services program.

(4) "Comprehensive community services program" or "CCS" has the same meaning as "community-based psychosocial service program" under s. 49.45 (30e), Stats., namely a county-wide or tribal community-based psychosocial rehabilitation program that is operated by a county department or tribe to provide or arrange for the provision of psychosocial rehabilitation services.

(5) "Coordination committee" means a group of individuals appointed by the county department or tribal government to advise and assist the county department or tribal government in the development and quality improvement of psychosocial rehabilitation services.

(6) "Comprehensive community services plan" means the plan developed under s. HFS 36.07.

(7) "Consumer" means an individual who has been determined to need psychosocial rehabilitation services.

Note: Family members of the consumer or the consumer's primary caregivers also are considered to be consumers, and therefore, may receive services related to the consumer's disorder.

(8) "Co-occurring disorder" means any combination of a substance-use disorder and a mental disorder identified in the Diagnostic and Statistical Manual of Mental Disorder – Fourth Edition - Text Revision (DSM-IV-TR) published by the American Psychiatric Association.

(9) "County department" means a county department of human services under s. 46.23, Stats., or a county department of community programs established under s. 51.42, Stats., to administer community mental health and alcohol and drug abuse programs on a single-county or multi-county basis.

(10) "Department" means the Wisconsin department of health and family services.

(10m) "Elder" means a person who is age 60 or older or who is subject to the infirmities of aging.

(11) "Family member," means a parent, legal custodian, sibling, spouse, child, or primary caregiver of a consumer.

(11m) "Infirmities of aging" has the meaning given in s. 55.01 (3), Stats.

(12) "Legal custodian" means an individual to whom legal custody of a minor has been granted by a court in an action under ch. 48 or 767, Stats.

(13) "Legal representative" means any of the following:

(a) A guardian as defined under s. 880.01 (3), Stats.

(b) A health care agent as defined in s. 155.01 (4), Stats., if the principal has a finding of incapacity pursuant to s. 155.05 (2), Stats.

(14) "Medical assistance" means the assistance program under 42 USC 1396 and ss. 49.43 to 49.475 and 49.49 to 49.497, Stats.

(15) "Mental disorder" means a diagnosis meeting the criteria in the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition – Text Revision (DSM-IV-TR) excluding the categories of dementia, substance-related disorders, and developmental disability as defined in 42 CFR 435.1009.

Note: DSM-IV-TR is published by the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2000. DSM-IV-TR may be ordered through <http://www.appi.org/book.cfm?id=2024> or other sources.

(16) "Mental health professional" means a staff member who is qualified under s. HFS 36.10 (2) (g) 1. to 8.

(17) "Minor" means an individual under the age of 18 years.

(18) "Natural supports" means a friend, or other person available in the community who may assist consumers seeking stability and independence.

(19) "Outreach" means identifying and contacting individuals with mental disorders or substance-use disorders to directly engage and link with individuals who need psychosocial rehabilitation services or other mental health or substance-use disorder services, and making referral agreements with psychiatric inpatient units, residential treatment facilities, outpatient treatment clinics and other community treatment and service providers as appropriate.

(20) "Parent" means a biological parent; an adoptive parent; a husband who has consented to the artificial insemination of his wife under s. 891.40, Stats.; a male who is presumed to be the father under s. 891.41, Stats.; or a male who has been adjudicated the child's father either under s. 767.51, Stats., or by final order or judgment of a court of competent jurisdiction in another state. "Parent" does not include individuals whose parental rights have been terminated.

(21) "Primary care giver" means an individual who provides a majority of a consumer's day-to-day support, shelter, sustenance or nurturing.

(22) "Psychosocial rehabilitation services" has the same meaning as "psychosocial services" under s. 49.45 (30e), Stats., namely the medical and remedial services and supportive activities provided to or arranged for a consumer by a comprehensive community services program authorized by a mental health professional to assist individuals with mental disorders or substance-use disorders to achieve the individual's highest possible level of independent functioning, stability and independence and to facilitate recovery.

(23) "Recovery" means the process of a person's growth and improvement, despite a history of mental or substance use disorder in attitudes, values, feelings, goals, skills and behavior and is measured by a decrease in dysfunctional symptoms and an increase in maintaining the person's highest level of health, wellness, stability, self-determination and self-sufficiency.

(24) "Recovery team" means the group of individuals who are identified to participate in an assessment of the needs of the consumer, service planning and delivery, and evaluation of desired outcomes.

(25) "Service facilitation" means any activity that ensures the consumer receives assessment services, service planning, service delivery and supportive activities in an appropriate and timely manner.

(26) "Service facilitator" means a staff member who is qualified under s. HFS 36.10 (2) (g) 1. to 21. and who has the overall responsibility for service facilitation.

(27) "Service plan" means a written plan of psychosocial services to be provided or arranged for a consumer that is based on an individualized assessment of the consumer.

(28) "Service provider" means an agency or individual that provides one or more mental health or substance-use treatment or services.

(29) "Staff member" means a person employed by a county department, tribe, or contracted agency.

(30) "Substance abuse professional" means a person who meets the requirements of s. HFS 75.02 (84), a physician knowledgeable in addiction treatment, or a psychologist knowledgeable in psychopharmacology and addiction treatment.

(31) "Substance-use disorder" means a condition related to the use of alcohol or a drug of abuse listed in the DSM IV-TR.

(32) "Supportive activities" means actions and events that help address the needs and recovery goals of a consumer.

(33) "Tribe" means a federally recognized American Indian tribe or band.

SUBCHAPTER II CERTIFICATION

HFS 36.04 Certification requirements. (1) APPLICATION. (a) A county department or tribe seeking to operate a certified comprehensive community services program shall apply to the department for certification on an application form provided by the department.

Note: An application for certification may be obtained by writing to the Program Certification Unit, Division of Disability and Elderly Services, 2917 International Lane, Suite 300, Madison, WI 53704.

(2) APPLICATION MATERIALS. The application shall be accompanied by all of the following:

(a) Required fees.

(b) A copy of the comprehensive community services plan developed under s. HFS 36.07.

(c) A copy of the personnel policies and procedures developed under s. HFS 36.10 and operational policies developed.

(d) A copy of any previously approved waiver or variance and information on the current status.

(e) Any other information required by the department.

HFS 36.05 Certification process. (1) In this section:

(a) "Deficiency" means the failure to meet a requirement of this chapter.

(b) "Major deficiency" means a determination by the department that an aspect of the CCS program or the conduct of its personnel does any of the following:

1. The psychosocial rehabilitation services substantially fail to meet the requirements of this chapter.

2. Creates a risk of harm to a consumer or violates a consumer right created by this chapter or other state or federal statutes or rules, which may include any one of the following of the following:

a. A staff member has had sexual contact or intercourse, as defined in s. 940.225 (5) (b) or (c), Stats., with a consumer.

b. A staff member of the CCS has been convicted of consumer abuse under s. 940.285, 940.29 or 940.295, Stats.

c. The health or safety of a consumer is in imminent danger because of a failure of the CCS or a CCS staff member to comply with requirements of this chapter or any other applicable local, state or federal statute or regulation.

3. The CCS has submitted, or caused to be submitted, one or more statements for purposes of obtaining certification under this chapter which the CCS knew or should have known to be false.

4. A license, certification or required local, state or federal approval of the CCS has been revoked or suspended or has expired.

5. A staff member has signed a billing statement or other document that represents the CCS staff member as the provider of service when the staff member did not provide the service.

6. A staff member impedes or has impeded monitoring of the program by the department.

7. An action or inaction by a staff member constitutes grounds for involuntary termination or suspension from program participation under s. HFS 106.06.

(2) INITIAL APPLICATION. Upon receipt of a complete application for initial certification, the department shall review the application and accompanying materials required under s. HFS 36.04 (2). The department's designated representative responding to a request for an initial certification shall review CCS personnel policies and procedures and operational policies, and the community services plan developed under s. HFS 36.07.

(3) APPLICATION FOR RENEWAL. (a) The department shall send written notice of the expiration of certification and an application for renewal of certification to a certified CCS at least 90 days before expiration of the certification. If the department does not receive a complete application for renewal of certification before the expiration date, the certification shall terminate on the expiration date of the certification. A CCS that wishes to renew an expired certification shall apply as required in s. HFS 36.04.

(b) Before applying for renewal of certification, a CCS shall review the continuing appropriateness of its comprehensive community services plan. The CCS shall revise the plan based on feedback of department representatives and consultation with and input received from staff members, consumers, family members, service providers and interested members of the public. The revised plan shall include responses to information derived from the quality improvement activities under s. HFS 36.08, and the coordination committee under s. HFS 36.09.

(c) Upon receipt of a complete application for renewal of certification, the department shall review the application and designate a representative to conduct an on-site survey of the CCS.

(d) The survey conducted under par. (c) shall be used to determine whether the CCS is in compliance with the standards specified in this chapter.

(e) The CCS shall make available for review by the department's designated representative any documentation requested to determine whether the CCS is in compliance with the standards of this chapter, including all of the following:

1. The CCS plan, policies and procedures.
2. Staff member work schedules.
3. CCS appointment records.
4. Staff member credentials and service records, and supervision records.
5. Additional information that the CCS believes will help surveyors understand the CCS operations, policies, and procedures.
6. The results of consumer satisfaction surveys, coordination committee recommendations, and descriptions of any modification of the CCS program shall be made available for review by the department.
7. Any other information requested by the department.

(f) Any designated representative of the department who reviews documents or who conducts an interview under this chapter shall preserve the confidentiality of the information reviewed or obtained in compliance with s. 51.30, Stats., ch. HFS 92, Health Insurance Portability and Accountability Act (HIPAA), and as applicable, 42 CFR Part 2.

(4) TRANSFERABILITY OF CERTIFICATION. Certification may only be issued to the CCS specified in the application. A CCS may not transfer or assign its certification to another entity. An applicant or certified CCS shall notify the department of any change in administration, location, name, offered services or any other change that may affect compliance with this chapter no later than the effective date of the change.

(5) EFFECTIVE DATE OF CERTIFICATION. (a) The date of certification shall be the date that the department determines that an applicant is in compliance with this chapter.

(b) The department may change the date of certification if the department has made an error in the certification process. A date of certification that is adjusted under this paragraph may not be earlier than the date the department receives a written application under sub. (2) or (3).

(6) FEES FOR CERTIFICATION. Fees for certification shall be established by the department.

(7) ISSUANCE OF CERTIFICATION. (a) *Action on application.* Within 60 days after receiving a completed application for initial certification or for renewal of certification, the department shall do one of the following:

1. Approve the CCS if no deficiencies are found and all of the requirements for certification are met.

2. Issue a provisional certification under sub. (8), if the applicant has one or more deficiencies, that do not meet the definition of a major deficiency.

3. Deny certification under sub. (9), if the department finds one or more major deficiencies.

(b) *Duration of certification.* The department may limit the initial certification of a CCS to one year. Certification may be renewed for up to 3 years provided the CCS has applied for renewal and the CCS continues to meet the requirements for certification. Certification is subject to suspension, revocation, or refusal to renew as specified in s. HFS 36.06.

(8) **PROVISIONAL CERTIFICATION.** (a) If the department determines that the CCS has one or more deficiencies that do not meet the definition of a major deficiency, the department shall issue a notice of deficiency to the CCS and offer the CCS provisional certification.

(b) If a CCS wishes to operate under a provisional certification, the CCS shall submit a plan of correction to the department within 30 days of the date of the notice of deficiency. The plan of correction shall identify the specific steps the CCS will take to correct the deficiency and the timeline within which the corrections will be made. If a CCS does not wish to operate under a provisional certification, the department shall issue a denial of certification under sub. (9).

(c) If the department approves the plan of correction it shall provisionally certify the CCS and establish an expiration date for the provisional certification.

(d) Before a provisional certification expires, the department may conduct an on site inspection of the CCS to determine whether the proposed corrections have been made. Upon completion of an inspection, or in place of an inspection, the department shall do one of the following:

1. If the CCS has accomplished the goals of the plan of correction and made the required corrections, withdraw the notice of deficiency and certify the CCS under sub. (7) (a) 1.

2. Extend the provisional certification if substantial progress is made towards correcting deficiencies previously cited.

3. If a deficiency cited in the notice of deficiency has not been corrected, the goals of the plan of correction have not been accomplished, or a major deficiency is found, deny certification under sub. (9).

(9) **DENIAL OF CERTIFICATION.** A denial of certification shall be in writing and shall contain the reason for the denial and notice of opportunity for a hearing under s. HFS 36.06 (3).

HFS 36.06 Enforcement actions. (1) **REVOCAION AND SUSPENSION.** The department may revoke or suspend certification at any time upon written notice to the CCS. The notice shall state the reason for the action and inform the CCS of the opportunity for a hearing under sub. (3).

(2) INSPECTIONS. (a) The department may make announced and unannounced inspections of a certified CCS to verify compliance with this chapter, to investigate complaints received regarding the services provided by the CCS, or as part of an investigation into the cause of death of a consumer.

(b) In making inspections, the department shall seek to minimize any disruption to the normal functioning of the CCS.

(c) Any authorized officer, employee or agent of the department shall have access to all CCS documents, open and closed consumer records, staff members and consumers at any time to ensure compliance with the requirements of this chapter and other applicable federal and state statutes and regulations.

(3) APPEALS. (a) If the department denies, revokes, suspends, or refuses to renew certification, the CCS may request an administrative hearing under ch. 227, Stats. If a timely request for hearing is made on a decision to suspend or revoke or not renew a certification, that action is stayed pending the decision on the appeal except when the department finds that the health, safety or welfare of patients requires that the action take effect immediately. A finding of a requirement for immediate action shall be made in writing by the department.

(b) A request for hearing shall be submitted in writing to the department of administration's division of administrative hearings within 30 days after the date of the notice of the department's action.

Note: A request for hearing may be delivered in person or mailed to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53707-7875. An appeal may be sent by fax to the Division's facsimile transmission number at (608) 264-9885.

(4) ACTIONS BARRING SERVICE IN A CCS. Any person having direct management responsibility for a CCS who was involved in any one of the following may not provide service in or for a certified CCS for a period not to exceed 5 years:

(a) An act that results in termination of a health care provider certification under s. HFS 106.06.

(b) An act that results in conviction for a criminal offense related to services provided under s. 632.89, Stats., whether or not the conviction is under appeal.

(c) An act involving a staff member who removes or destroys consumer service records.

HFS 36.065 Waivers and variances. (1) DEFINITIONS. As used in this section: (a) "Waiver" means the grant of an exemption from a non-statutory requirement of this chapter.

(b) "Variance" means the granting of an alternate requirement in place of a non-statutory requirement of this chapter.