

## Report From Agency

### ADMINISTRATIVE RULES DEPARTMENT OF HEALTH SERVICES REPORT TO THE LEGISLATURE CLEARINGHOUSE RULE 10-146 CH. DHS 1, Uniform Fee System

#### **Basis and Purpose of Proposed Rule**

Section 227.11 (2) (a), Stats., permits agencies to promulgate rules interpreting the provision of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute. In the proposed order, the Department proposes to promote uniformity and cost savings by revising the status and retention period for records of clients who have unpaid liability to the Department or counties. The changes include repealing and recreating rules to more clearly state when a client record may be closed. The changes also include reducing the retention period for closed inpatient mental health records of the Department under s. DHS 1.06 (3) (e) from 10 years to 5 years. The current rules are confusing for Department and county staff and have led to different interpretations. The proposed changes are expected to decrease costs to the Department and should increase uniformity and accountability for counties and the Department. The Department's potential savings may be up to \$1,000 annually.

#### **Responses to Legislative Council Rules Clearinghouse Recommendations**

The Department's responses to Clearinghouse comments are stated below.

Clearinghouse Comment 2: It appears that s. DHS 1.06 (3) (e) creates two new terms, "open client records" and "closed client records." Section DHS 1.06 (3) (d) does include the process for closing a record, but does not define what it means for a client record to be open or closed. The Department should consider defining these terms.

Department Response: The Department considered defining the terms as suggested by the Clearinghouse and has decided that the ordinary meaning of the terms and phrases are sufficient to convey the Department's intent because the proposed rule states the conditions under which records may be closed.

Clearinghouse Comment 5. a.: It is unclear under s. DHS 1.03 (20) what it means for a responsible party to have a "permanent inability or unlikely future ability to pay." The Department should consider defining what this term means and clarifying how the ability to pay is determined.

Department Response: Decisions on discharge of liability and the ability to pay are made under s. DHS 1.02 relating to liability for paying fees, and s. DHS 1.03, billing rates and ability to pay.

Clearinghouse Comment 5. b.: Section DHS 1.06 (3) (e) requires open and closed records to be made available for audit to any person. Is this the intent of the Department? If not, the Department may want to consider clarifying who may be able to audit the records or how the Department determines who may conduct an audit.

Department Response: Making the records available to any person is not the Department's intent. After further review, the Department has determined that the proposed provision relating to record availability is not necessary. The Department and counties are already required under law to make such records available for auditing when necessary.

### **Final Regulatory Flexibility Analysis**

The proposed rules do not affect businesses.

### **Changes to the Analysis or Fiscal Estimate**

#### **Analysis**

No changes were made to the rule's analysis.

#### **Fiscal Estimate**

No changes were made to the fiscal estimate.

### **Public Hearing Summary**

The Department began accepting public comments on the proposed rule via the Wisconsin Administrative Rules website on December 15, 2010. Public comments on the proposed rule were accepted until February 1, 2011. Under s. 227.16 (2) (e), Stats., the Department did not hold a public hearing. As permitted under s. 227.16 (2) (e), Stats., the Department issued notice to the public that the Department intended to adopt the order as proposed without public hearing unless the Department is petitioned by February 1, 2011 for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule. A petition for hearing was not received by the Department.