

Report From Agency

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 24-081

Ch. DHS 72, 105, and 107

Basis and Purpose of Proposed Rule

2019 Wis. Act 122 created ss. 49.45 (30j) and 49.46 (2) (b) 14p., which collectively directed the Department to certify "peer recovery coaches" ("PRCs") and provide Medicaid reimbursement for peer recovery coaches who do all of the following: (1) Provide services to recipients who are in treatment for recovery from mental illness or a substance use disorder. (2) Provide services under the supervision of a competent mental health professional. (3) Provide recovery services in accordance with the recipient's individual treatment plan. (4) Complete statutorily identified training requirements.

The rules specify training requirements related to the provision of services by a PRC, supervision by a competent mental health professional, training requirements, and documentation to be certified for reimbursement under Medical Assistance ("MA"). Notably, and based on extensive consultation with the advisory committee, the proposed rules would provide for all of the following: 1. Specifying which services (as indicated in an individual's treatment goals and service plan) a PRC may provide and seek reimbursement for. 2. Specifying that, in addition to the 40 hours of training required under s. 49.45 (30j) (b) 4., a PRC should complete 24 hours of paid or volunteer experience related to advocacy, mentoring and education, recovery and wellness support, or ethical responsibility. 3. Co-supervision by a PRC supervisor (who is an experienced PRC with additional training specified in the rule) working under the direction of a competent mental health professional.

Because the Department certifies and licenses *programs*, and not individual professionals, for reimbursement under MA, the proposed rules identify existing Department licensed or certified programs in which PRC services can be provided and reimbursed under MA. These rules are necessary to effectuate the intent of s. 46.482, Stats., because PRCs are not otherwise licensed by the Department or other state agency (such as the Department of Safety and Professional Services), and they therefore cannot operate as independent practitioners for MA reimbursement. Furthermore, rules to certify and reimburse under MA treatment facilities that offer peer recovery coach services as a component of comprehensive mental health substance use services is consistent with guidance from CMS. See SMDL # 07-11, "Clarifying Guidance on Peer Support Services Policy" (May 1, 2013), available at <https://health.wyo.gov/wp-content/uploads/2016/06/Clarifying-Guidance-Support-Policy-1.pdf>, and "Frequently Asked Questions on Medicaid and CHIP coverage of Peer Support Services" (June 5, 2024), available at <https://www.medicaid.gov/federal-policy-guidance/downloads/faq06052024.pdf>.

Finally, the Department proposes to add provisions to chapter DHS 105 to include providers certified under ch. DHS 72 as appropriate for MA reimbursement, and to amend ch. DHS 107 to identify covered services provided under ch. DHS 72.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The Department accepts the recommendations made by the Legislative Council Rules Clearinghouse and modified the proposed rules where suggested, except with respect to the following:

- Clearinghouse Comment 2.a.
 - *Comment:* "Given that the [proposed rule] applies exclusively to certification of providers and programs under the Medical Assistance program, why is that material (or at least the material in subch. II of ch. DHS 72, given its explicit mention in s. DHS 107.13 (8)) not placed instead entirely within ch. DHS 105, relating to Medical Assistance provider certification? Additionally, more generally, including provider certification provisions outside the Medical Assistance chapters (chs. DHS 101-109, Wis. Adm. Code) could cause confusion for providers
 - *Department response:* Creating a rule chapter for mental health and behavioral services that is separate from MA certification and reimbursement rules is consistent with past practice by the Department. Those separate rule chapters contain clinical standards that are developed and enforced by the Department's Division of Care and Treatment Services, which has the staff and resources to provide clinical guidance and technical assistance to stakeholders; conversely, the Division of Medicaid Services, which oversees chs. DHS 101 to 109, lacks staff with expertise on those topics. Other instances in which specific certification requirements are included in other rule chapters and incorporated into the Department's MA rules regarding certification include: s. DHS 105.22 (1) (c), which provides that a psychotherapy providers are certified under MA when they are certified as an outpatient clinic under ch. DHS 35; and s. DHS 105.23 (1), which provides that alcohol and drug abuse treatment providers are certified under MA when they are certified under specific provisions in ch. DHS 75.
- Clearinghouse Comment 2.g.
 - *Comment:* "Should the proposed rule include an initial applicability provision in addition to an effective date? For example, under the proposed rule, are services provided prior to the effective date of the rule eligible for reimbursement if submitted after that effective date?"
 - *Department response:* In order to enroll in MA and be eligible for reimbursement, a PRC must be certified and provide services in accordance chapter DHS 72. They cannot submit claims before they are fully enrolled in MA, and the applicability date is therefore the same as the effective date.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

No comments were raised by small businesses during the public hearing. One written comment was received that raised concerns about the potential new additional workload posed by supervision requirements in the rule. The Department's response is summarized in the "Summary of Public Comments" section below.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

Not applicable, no changes were made to the rule's analysis.

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

Not applicable.

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

The proposed rule has the potential to impact Medical Assistance behavioral health providers and members. An expanded number of Providers would have the opportunity to provide peer support services within a variety of behavioral health agencies. Providers will be able to provide these expanded services due to Medical Assistance reimbursement of the peer support services. This has the potential to expand provided services beyond what is currently available in traditional services. The impact to providers is the reoccurring cost of program certification which would likely be offset by the provision of the new service to an expanded number of members they serve.

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

Not applicable.

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

The Department did not receive any comments on the economic impact analysis.

Fiscal Estimate/Economic Impact Analysis

No changes were made to the fiscal estimate/economic impact analysis.

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on December 2, 2024. A public hearing was held on December 18, 2024, in Microsoft Teams. Public comments on the proposed rule were accepted until the end of the day on December 18, 2024.

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
Abigail Spanjers, The La Crosse Lighthouse, Inc.	None given
William Humphrey, Essential Skills Peer Support	Support
Kati Heil, Wisconsin Family Ties	None given
Beth Snyder, Lighthouse Recovery Community Center, Inc.	None given
Paula Jolly, Recovery Hub Wisconsin / Mandolin Foundation	Support
Kurt Stapleton, Chrysalis, Inc.	None given
Matt Fure, Sheboygan County Health & Human Services	Support
Carmen Persaud, CORE Treatment Services, Inc.	Support
Greg Winkler, Rock County Human Services	Support
Julie Shew, DHS Area Administration	None given
Megan Edwards, Solutions Recovery, Inc.	None given
Benjamin Mompier, Centers for Inclusive Transition, Education, & Employment at University of Wisconsin Milwaukee	None given
Amy Yonker, Chrysalis, Inc.	None given
Lindsey Bartelt, iCare Health Plan	None given
Bethany Kasprzyk, Milwaukee Health Department	None given
Christopher Zahn, Wisconsin Voices for Recovery – Department of Family Medicine and Community Health, University of Wisconsin Madison	None given
Addie Costello, Wisconsin Watch and Wisconsin Public Radio	None given
Renee Sommer, At the Roots LLC	None given
Sarah Joyce, Meta House	None given
Emilie Nicols, At the Roots LLC	None given
David Zanon, Options for Independent Living in Green Bay	Support
Tracey Ratzburg, ThedaCare	Support
Kangyoua Thao	None given
Kathy Markland, Wisconsin Association of Family & Children's Agencies	None given
Heather Pagel, ThedaCare	None given
John Kettler, Waukesha County Department of Health and Human Services	None given
Mary-Jo Olson, Journey Mental Health Center	None given
Melanie Imhoff, CORE Treatment Services, Inc.	None given
Rufus West, Wisconsin Community Services, Inc.	None given
Imani Jackson, Chrysalis, Inc.	Opposed
Rita Von Haden, Coulee Recovery Center	None given
Jane Depray, Hospital Sisters Health System	None given
Patti Heffernan, Helios LLC.	None given

Cathi Oreto, Recovery Hub Wisconsin	None given
Eugenia Sousa, United Community Center	None given

Summary of Public Comments to the Proposed Rule and the Agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
General	<p>Several commenters expressed confusion about the use of the word "peer" in reference to recovery coaches and noted that "peer" may inadvertently imply certified peer specialists, since recovery coaches generally are not required to have lived experience. Other commenters wanted clarifying language to address differences between peer recovery coaches and certified peer specialists, and requested that the rule specifically address whether peer specialist certification would meet the requirements for peer recovery coaches.</p>	<p>2019 Wisconsin Act 122 was developed by the Legislature, after consulting advocates from the recovery coach field, and specifically identifies these providers as "peer recovery coaches." The language in the proposed rules align with the statutory language. The training requirements for PRCs outlined in the Act were based on the training requirements for certified peer specialists, and therefore are similar. At the same time, advocates from both the recovery coach and peer specialist fields maintain that their work is different, despite these similarities.</p> <p>The proposed rules do not require specific certifications for peer recovery coaches and instead outline the training, experience, and supervision requirements for these services to be reimbursed by Medicaid. The Department will provide technical assistance to help providers assess the training and experience requirements associated with various certifications and how those certifications align with the Medicaid requirements for reimbursement.</p>
General	<p>One commenter disagreed with previous comments about the use of the word "peer" implying "peer specialist," and felt that differentiating further between peer recovery coaches and certified peer specialists may create confusion and detracts from efforts to provide multiple routes to treatment for members who need services.</p>	<p>As described above, the statutory language established in 2019 Wisconsin Act 122 refers specifically to "peer recovery coaches." The Department will maintain the current language and provide further clarification as needed through technical assistance opportunities.</p>
General	<p>Three commenters raised questions about whether DHS 34 (Emergency Mental Health Service Programs) and DHS 63 (Community Support Programs) were included as eligible settings and if not, what the Department's rationale may be for excluding them. Two of these commenters advocate for the inclusion of DHS 34 and DHS 63, emphasizing DHS 63 in particular.</p>	<p>The Department agrees that peer recovery coaches are appropriate for practice in programs certified under ch. DHS 34, ch. DHS 36, or ch. DHS 63. Therefore, these certifications were added to the list of allowable settings exempt from subch. III of proposed ch. DHS 72 (provided the PRC practices according to the service standards in subchapter II of DHS 72).</p>
General	<p>Several commenters stress the importance of adequate reimbursement for peer recovery coaches and other peer roles. Commenters emphasize the importance of these peer recovery coaches and the value they bring to patients in recovery, and note that often, reimbursement rates do not provide a living wage for these workers.</p>	<p>The Department agrees that adequate reimbursement is essential in fostering a robust behavioral health workforce. Administrative rules do not address reimbursement rates, but these comments will be shared with the Medicaid rate setting team.</p>

	Two commenters noted that it may be important to align peer recovery coach reimbursement with reimbursement for certified peer specialists to avoid creating a monetary incentive to hire peer recovery coaches instead of peer specialists.	
General	One commenter at the public hearing identified themselves as a peer support and noted that in this role, they often observe homelessness as a major barrier to treatment, and notes that further resources to assist clients who may be at risk for homelessness would be helpful.	The Department recognizes the importance of addressing housing as a key driver of health. However, creating additional housing-related resources is out of scope for this rulemaking project.
DHS 72.03 (4) (a)	One commenter noted that the definition of “competent mental health professionals” should be broadened to include competent certified addiction medicine physicians.	The Department agrees that the scope of “competent mental health providers” should include addiction medicine physicians. The Department adjusted the definition in proposed s. DHS 72.03 (4) (a) 1. to include “or is certified in addiction medicine.”
DHS 72.04 (2) (a)	Two commenters addressed the inclusion of “experience as a parent or as an adult family member” within requirements for possessing lived experience. One commenter felt that only personal lived experience should apply. The other commenter felt that the rule should include “experience as a parent or as an adult family member.”	The proposed rules retain “experience as a parent or as an adult family member of an individual who has experienced mental health or substance use challenges” as allowable lived experience. This allows for a greater range of provider perspectives and experiences to better address the needs of a diverse member population.
DHS 72.05 (2)	One commenter addressed the training requirements laid out in 72.05 (2) and expressed a desire for more specificity in these requirements. They specifically request information about the contents of the training, the individuals responsible for overseeing training, and the accessibility of the training, as well as whether the training will be provided for free by the state.	The training requirements in sub (2) are based on the express language of s. 49.45 (30j) (b) 4. Additional requirements would exceed the minimum standards established by the proposed rules.
DHS 72.05 (1) and (2)	One commenter noted that the Department should clarify whether the trainings completed during peer specialist certification programs may be acceptable trainings.	Consistent with 2019 Wis. Act 122, the proposed rules do not require a specific certification as a peer recovery coach, and instead outline the training, experience, and supervision requirements for these services to be reimbursed by Medicaid. The Department will provide technical assistance to help providers assess the training and experience requirements associated with various certifications and how those certifications align with the Medicaid requirements for reimbursement.
DHS 72.05 (3)	One commenter raised concerns about the required 24 hours of supervised experience and sought to clarify whether this would apply to both new and existing providers. They note that supervision of this nature can hinder the connection-building needed to provide peer support.	The 24 hours of supervised volunteer or paid experience requirement is required under Act 122, specifically s. 49.45 (30j) (b) 4. b., Stats. Furthermore, the advisory committee agreed that supervised experience is appropriate and necessary for training for all peer recovery coaches. This requirement is specific to peer recovery coaches and does not apply to peer providers.

DHS 72.06 (4) (a)	One commenter advocated for the removal of the option for co-supervision, noting that clinicians may not possess the necessary perspective to supervise peer recovery coaches, whose work cannot be replicated by someone without lived experience.	The proposed rules contain minimum standards, rather than best practice. As such, the Department will maintain the optional co-supervision model in 72.06(4)(a) and allow individual agencies to employ the model that they prefer.
DHS 72.06 (4) (a)	Two commenters supported the option under 72.06(4) for peer recovery coaches to be co-supervised by a peer recovery coach supervisor and a competent mental health professional. One commenter advocated for changing this co-supervision model from optional to required by replacing "may" with "shall" in 72.06(4)(a).	See above comments. The Department will maintain the optional co-supervision model and keep the word "may" rather than "shall" in 72.06(4)(a).
DHS 72.06 (4) (a)	One commenter addressed the suggestion of replacing "may" with "shall" in 72.06(4)(a). This commenter advocated for leaving the language as-is and noted that the current language allows appropriate balance in the supervision requirement. They also noted that requiring co-supervision could pose barriers to expanding peer recovery coach services in some settings.	See above comments. The Department will maintain the optional co-supervision model and keep the word "may" rather than "shall" in 72.06(4)(a).
DHS 72.08	One commenter suggested utilizing a review panel or ethics board to oversee the certification process to maintain the integrity of certification of both peer recovery coaches and certified peer specialists.	2019 Wis. Act 122 did not authorize the Department to independently certify peer recovery coaches, or to create a specific board governing the certification of those individuals. Generally, individual professional certifications fall under the purview of the Department of Safety and Professional Services, not the Department of Health Services.
DHS 72.08	One commenter suggests creating and incentivizing certification pathways for individuals with disabilities to enter the workforce as providers, peer supports, or administrators to better represent the populations these individuals serve. They also note that DHS 107 does not address the need for tailored accommodations or incentives for peer recovery coaches with unique lived experiences or from marginalized backgrounds; they lay out recommendations for addressing these gaps.	The Department notes that the proposed rules are based on 2019 Wis. Act 122, which did not speak to independently certifying peer recovery coaches, or incentivizing certain individuals to obtain certification or provide services to specific individuals. It is out of scope for this rule project to create these types of incentives, and would not be appropriate for the proposed rules.
DHS 72.08	One commenter recommended including explicit language noting that individuals holding a certified peer specialist credential meet the requirements to serve as a peer recovery coach under DHS 72.	2019 Wis. Act 122 details the requirements for MA reimbursement for services provided by "peer recovery coaches"—not certified peer specialists. An individual holding a certified peer specialist credential might nonetheless meet the criteria for PRC service reimbursement under the proposed rules, and the Department will consider providing further guidance or technical assistance on the topic.

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		x	
Department response to Rules Clearinghouse recommendations	x		
Final Regulatory Flexibility Analysis	x		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis	x		
Public Hearing Summary	x		
List of Public Hearing Attendees and Commenters	x		
Summary of Public Comments and Department Responses	x		
Fiscal Estimate/Economic Impact Analysis		x	
Revised Fiscal Estimate/Economic Impact Analysis			x
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			x
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			x
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			x
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			x