

Clearinghouse Rule 25-055

WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services proposes an order to: **repeal** DHS 36.03 (15) (Note), 36.19 (1) (c), 61.021 (5) (a), 62.07 (5) (d) 1., 62.07 (5) (d) 3., 92.04 (2) (e) (Note) 96, 103.06 (4) (b) 1., (7) (a) 4., 103.063, 103.065, 107.10 (1) (Note 2), 107.113 (5) (e), 118 Appendix A rows 2. (m) and 11. (z), 124.06, 129.04 (3) (a) 1. to 3., 133.05 (2), 163.10 (8) (c) 5. and (Note), 252.02 (13), (25) (Note), 252.04 (1) (Note), 252.09 (2) (d) (Note), 252.10 (1), 252.11(1) (a) (Note) 252.25 (2); **renumber** DHS 60.01 (10) (a), 75.14 (6) (b) 1. to 7.; **renumber and amend** DHS 103.06 (7) (a) 1. to 3., 107.13 (1) (b) 8. b., 109.31 (1), 129.04 (3) (a) (intro.), 252.02 (15), 252.11 (1) (b); **consolidate, renumber, and amend** DHS 61.021 (5) (intro.) and (b), 75.14 (6) (a) and (b) (intro.), 103.06 (4) (b) (intro.) and 2., (7) (title) and (a) (intro.), 107.13 (1) (b) 8. (title) and (a); **amend** DHS 34.02 (14), 34.03 (2) (b) 2., 34.21 (3) (b) 18., 35.03 (1m) and (Note), 35.03 (5) (a), 36.03 (8), 36.03 (15), 36.03 (30) and (31), 36.10 (2) (g) 8. a., 9., DHS 36.14 (intro.) and (3) (b) (Note), 36.16 (3) (b), 36.18 (3) (f) 7m., 40.03 (38), 61.11, 61.12, 62.03 (1), (12) (a), (17), (21), (22), and (24), 62.05 (2) (a) 1. a. and b., 62.06 (1), (2), and (4), 62.07 (1) (h), (5) (a) 1. c., 2. c., and (b) 1. to 3., (5) (d) 2., (6) (c) 2. (intro.) and a., 63.06 (2) (c) and (4) (a) 9., 75.03 (33), 75.07 (2) (e), 75.14 (4) 75.14 (4) (a) 3. b. and (b), 75.15 (5) (b), 75.24 (11) (d) 6. (intro.), 75.48 (2) (table) row (j), 75.60 (6) (b), 90.11 (6) (a) 7., 92.01 (1), 92.02 (7), (13) and (16), 92.03 (1) (g), 92.04 (11) (b) and (d), and (15) (b) 1., 92.05 (1) (c.), 92.06 (2) and (Note), 92.07 (Note), 94.01 (1) and (2) (a), 94.02 (24) and (45), 94.03 (1) (intro.), 94.04 (5) (Note), 94.05 (4) (b) (Note), 94.40 (1), 94.42 (5) (a), 94.43 (1) (b), 94.44 (6) (b) 1. a. and b., 97.01, 97.04 (2) (a) and (b), 105.05 (2), 105.16 (1), 105.22 (3), 107.02 (2m) (tile) and (a) (intro.), 107.08 (4) (a) 6., 107.09 (2) (intro.) and (4) (a) 1. a. to c. and 2. a. to e., (4) (e) 1. to 3., (f) 2. a. and b., (g) 1. a., 2. (intro.) and a. and b., 3. (intro.) and a. to e., and 4., (j) 1. a. to f., (m) (title), 1., 2. (intro.) and a. and b., (n) 1. (intro.), a., and 3., (q) (title) and 1. to 4., (r) (intro.) and 1., 107.10 (3) (e), 107.11 (2m) (b) and (d), and (4) (e), (6) (a) and (b) 1, 2., 3. (intro.) and a. to d., 4., and 5. a., 107.112 (1) (a), (3) (b) (intro.), 1. to 3., and (c), 107.113 (1) (a), 107.122 (1) (intro.), 107.13 (1) (a), (b) 1. and 2. (intro.) and a., 3. a. and b., 5. d., 6. a., 7. (title) and a., (f) 5., (3) (title), (a) 1. to 6., and (c) 1. and 3., (4) (a) (intro.), (b) 1. a. to d., and (d) 1. to 7., (6) (a) (intro.), 107.16 (1) (a), (3) (a) (intro.) and 1. and 2., 107.17 (1) (intro.), (3) (a) (intro.) and 1. and 2., 107.18 (1) (a), (3) (a) (intro.), 1. and 2., 107.19 (1) (intro.), (3) (a) (intro.), 1. and 2., 107.21 (1) (a), DHS 107.24 (2) (a) 1. and 2., (b), (3) (h) 1. (intro.), and (4) (c) 2. (intro.), 107.25 (1) and (2) (a), 118 Appendix A rows 6. (c) (1), 7. (e) 1., 8. (i) (l), 9. (i) (l), 10. (b) (18), 11. (xm), 127.02 (3), 129.03 (30) (a) 2. and (30m), DHS 129.04 (3) (intro.), 129.08 (4), 133.02 (9m), 133.07 (1), 134.83 (7) (b) (intro.), (8) (b), 163.12 (3) (a) 1. e., 252.01, 252.02 (1), (3), (5), (6), (8), (9), (11) (12), (17), (18), (20), 252.03, 252.04 (1), 252.06, 252.07, 252.08 (1), 252.11 (intro.), (1) (a) and (b), (3), 252.12 (1) and (2) (a), 253.13 (1) and (2), 252.15 (2) (d), 252.16 (1) (Note) and (2), 252.19 (1) (a) and (b), and (2), 252.20, 252.23, 252.25 (intro.) and (1), (3) and (4), 254.04 (1) (d) 2., 254.07 (1); **repeal and recreate** DHS 36.10 (2) (g) 7. and 20., 36.17 (5) (am) 3., 107.24 (1), 252.02 (10); **create** DHS 36.03 (10g), 60.01 (1) (a), 101.03 (137m), 104.01 (12) (a) 1. dm., 107.13 (1) (b) 8. a. to f., 107.16 (1) (b) 40., 109.31 (1) (a) to (g), (1m), 252.02 (15) (a) and (b), (24m), 252.11 (1) (b) 1. to 3., (c); **relating to** the 2023 biennial review of rules under s. 227.29, Stats.

RULE SUMMARY

Statutes interpreted

Sections 46.03 (1) and (2), 46.277 (3) (c) and (5) (d) 1n., 46.056, 46.973, 51.04, 51.4224, 51.45 (1) and (3), 146.40 (2m), (3) and (3g),

Statutory authority

In accordance with s. 227.11(2), Stats., the following rule chapters are expressly authorized by the applicable statutes cited therein:

DHS 10: Sections 46.281 (1n) (b) 1., 46.286 (4) to (7), 46.287 (2) (a) 1. (intro.), 46.288, 50.02 (2) (d), and 227.11 (2), Stats

DHS 34: Section 51.42 (7) (b), Stats.

DHS 35: Sections 49.45 (2) (a) 11., 51.42 (7) (b) 11., Stats.

DHS 36: Sections 49.45 (30e) (b) and 51.42 (7) (b), Stats.

DHS 40: Section 51.42 (7) (b), Stats.

DHS 60: Sections 46.03(1) and (2), Stats.

DHS 61: Sections 51.42 (7) (b) 11. and 51.421 (3) (a), Stats.

DHS 62: Sections 343.30 (1q) (c) 2. And 343.305 (1) (c) 2., Stats.

DHS 63: Sections 51.42 (7) (b) and 51.421 (3) (a) and (c), Stats.

DHS 75: Sections 51.42 (1) and (7), and 51.45 (8) and (9), Stats.

DHS 90: Section 51.44 (5) (a), Stats.

DHS 92: Section 51.30 (12), Stats.

DHS 94: Section 51.61 (5) (b) and (9), Stats.

DHS 96: Section 302.11 (8), Stats.

DHS 97: Section 46.056 Stats.

DHS 101, 103, 104, 105, and 107: Sections 49.45 (10), 49.665 (4) and (5), and 49.471 (12), Stats.

DHS 109: Section 49.688 (3m), (4), (7), (9) (a), and (10m), Stats.

DHS 118: Section 256.25 (2), Stats.

DHS 124: Section 50.36 (1), Stats.

DHS 127: Section 50.51 (2), Stats.

DHS 129: Section 146.40 (3m) and (5) (a) and (b), Stats.

DHS 133: Section 50.49 (2), Stats.

DHS 134: Section 50.02 (2) and (3), Stats.

DHS 163: Sections 254.15 (1), 254.167, 254.172, 254.176 (1) and (3), 254.178 (2), and 254.179, Stats.

DHS 252: Section 49.797 (7), Stats.

DHS 254: Section 49.78 (3), Stats.

Explanation of agency authority

Under s. 227.29 (1) (a) to (e), Stats., the Department is required to complete an agency review of rules and enactments on a biennial basis and make changes to: unauthorized rules, as defined in s. 227.26 (4) (a), together with a description of the legislation that eliminated the agency's authority to promulgate any such rule; rules for which the authority to promulgate has been restricted, together with a description of the legislation that restricted that authority; rules that are obsolete or that have been rendered unnecessary, together with a description of why those rules are obsolete or have been rendered unnecessary; rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction, together with a citation to or the text of any such statute, regulation, or ruling; or rules that the agency determines are economically burdensome.

Explanation of agency authority for each rule chapter in the proposed rules is as follows:

DHS 10: Sections 46.286 (4) to (7), 46.287 (2) (a) 1. (intro.), 46.288, 50.02 (2) (d) direct the Department to implement rules for the family care, which is a Medicaid long-term care program that helps families arrange for appropriate long-term care services for family members for adults with physical or developmental disabilities. The rules include financial eligibility criteria and cost sharing requirements

DHS 34: Section 51.42 (7) (b), Stats., directs the Department to establish standards and procedures for certification of county and multi-county emergency mental health service programs. Section 51.42 (1) (b), Stats., requires every county to provide emergency mental health services to persons within the county in need of those services. The persons who need those services are persons who are experiencing a mental health crisis or are in a situation likely to turn into a mental health crisis if supportive services are not provided. A county may comply with s. 51.42 (1) (b), Stats., by operating or contracting for the operation of an emergency mental health program certified under this subchapter and either subch. II or III of ch. DHS 34.

DHS 35: Sections 49.45 (2) (a) 11., 51.04, 51.42 (7) (b) 11., Stats., direct the Department to establish minimum standards for certification of outpatient mental health clinics that receive reimbursement for outpatient mental health services from the Wisconsin medical assistance and BadgerCare Plus programs or private insurance under s. 632.89 (2) (d), Stats., or that utilize federal community mental health services block grant funds or receive state community aids funds under s. 51.423 (2), Stats.

DHS 36: Sections 49.45 (30e) (b) and 51.42 (7) (b), Stats., direct the Department 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. Section 51.04, Stats., requires a treatment facility to apply for certification in order to be reimbursed under MA, and allows the Department to charge an annual fee for certification.

DHS 40: Section 51.42 (7) (b), Stats., directs the Department to promulgate rules governing the provision of community mental health services. The Department determines and monitors standards and requirements to administer services for community mental health, developmental disabilities, alcoholism, and drug abuse.

DHS 60: Sections 46.03(1) and (2), Stats., directs the Department to “maintain and govern” state treatment institution property, and to “[s]upervise, manage, preserve and care for the buildings, grounds and other property pertaining to said institutions.” In accordance with 227.11 (2), Stats., the Department

determined that rules regarding traffic and conduct on state institution property were necessary to effectuate ss. 46.03 (1) and (2), Stats.

DHS 61: Section 51.437 (16), Stats., provides that rules promulgated under s. 51.42 (7) (b) apply to services provided through by boards established under s. 51.42, 51.437, or 46.23, Stats, and services provided by agencies under contract with the boards. In accordance with s. 227.11 (2), Stats., the department interpreted ss. 51.42, 51.437, and 51.45 to require rules to establish a basis to assure adequate services were provided.

DHS 62: Sections 343.30 (1q) (c) 2. and 343.305 (10) (c) 2., Stats., direct the Department to establish rules containing standards for assessment and driver safety plans for persons who operate a motor vehicle while under the influence of intoxicants or other drugs and who voluntarily, or by court order or by order of the Wisconsin department of transportation undergo an intoxicated driver assessment and complete a driver safety plan.

DHS 63: Sections 51.42 (7) (b) and 51.421 (3) (a) and (c) authorize the Department to establish rules for community support programs under s. 51.421, Stats., that are for chronically mentally ill persons living in the community.

DHS 75: Section 51.42 (7) (b), Stats., directs the Department to promulgate rules which govern the structure and procedures to administer community alcoholism, substance use disorder, and mental health services, and to “prescribe any such other standards and requirements as may be necessary to carry out the purposes of this section,” and provide “a continuum of treatment” to Wisconsin residents in accordance with s. 51.45 (1) and (3), Stats. Section 51.4224, Stats., requires that the Department, through the state methadone authority, approve and certify opioid treatment facilities, and the Department determined that rules were necessary to effectuate that section. Section 51.45 (8) and (9), Stats., require the Department to establish minimum health and modes of treatment standards for treatment facilities to be approved as a public or private treatment facility, and to “promulgate rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, persons who are drug dependent, and intoxicated persons.” The Department interpreted s. 46.973 (2) (c), Stats., which directs the Department to develop “standards and provision of consultation for local drug dependence and drug abuse programs” to require rules.

DHS 90: Section 51.44 (5), Stats., requires that the Department promulgate rules to implement a statewide birth-to-3 program for children with significant delays in physical development, cognition, communication, social and emotional development, adaptive behavior and self-help skills.

DHS 92: Section 51.30 (12), Stats., directs the Department to promulgate rules to implement s. 51.30, Stats., relating to records of persons who are receiving, or have received, treatment at any time for mental illness, developmental disabilities, or behavioral health from the Department, a board established under s. 46.23, 51.42 or 51.437, Stats., or treatment facilities and persons providing services under contract with the Department.

DHS 94: Section 51.61 (5) (b) and (9), Stats., direct the Department to establish, by rule, standards for grievances and rights for individuals receiving services for mental illness, developmental disabilities, behavioral health, including any individual who is: (1) admitted to a treatment facility in accordance with ch. 48, 51 or 55, Stats.; (2) detained, committed or placed under ch. 48, 51, 55, 971, 975 or 980, Stats.; (3) transferred to a treatment facility under s. 51.35 (3) or 51.37; or (4) receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437, Stats., or in a private treatment facility.

DHS 96: Section 302.11 (8), Stats., authorizes the Department to promulgate rules establishing guidelines and criteria relating to waiver by forensic patients of good time or entitlement to mandatory release for individuals committed under ch. 975, Stats.

DHS 97: Section 46.056 Stats., authorizes the Department to establish the Wisconsin Resource Center (“WRC”) and to administer WRC as a correctional institution. In accordance with s. 227.11 (2) (a), Stats., the Department promulgated rules for complaint procedures for inmates at WRC in order to effectuate the purpose of a statute.

DHS 101–108: Section 49.45 (10) Stats., permits the Department to establish rules for the purpose of administering medical assistance in Wisconsin. Eligibility for BadgerCare under s. 49.665, Stats., was superseded by BadgerCare Plus under s. 49.471(3) (a), Stats. Section 49.471, Stats., includes requirements for implementing BadgerCare Plus, and s. (12) (a) 1., Stats., permits the Department to “promulgate any rules necessary for and consistent with its administrative responsibilities under this section, including additional eligibility criteria.”

DHS 109: Section 49.688, Stats., directs the Department to implement the SeniorCare program that is designed to provide prescription drug assistance for Wisconsinites aged 65 years or older. Subsections (3m), (4), and (9) direct the Department to create rules for administering the SeniorCare program. Subsections (7) and (10m) allow the Department to apply the same utilization and cost control procedures that apply under rules promulgated by the department for MA under subch. IV of ch. 49, Stats.

DHS 118: Section 256.25 (2), Stats., directs the Department to promulgate rules to develop and implement a statewide trauma care system.

DHS 124: Section 50.36 (1), Stats., requires that the Department use and enforce the conditions for Medicare participation for hospitals as the minimum standards that apply to hospitals, and permits the Department to promulgate, adopt, amend, and enforce additional rules and standards for the construction, maintenance, and operation of hospitals that are necessary to provide safe and adequate care and treatment of hospital patients and to protect the health and safety of patients and employees.

DHS 127: Section 50.51 (2), Stats., directs the Department to establish rules for the construction, maintenance, and operation of rural medical centers.

DHS 129: Section 146.40 (3m) and (5) (a) and (b), Stats., direct the Department to provide conditions of approval for training programs and competency evaluation programs for persons who work as nurse aides, medication aides, or feeding assistants in hospitals, nursing homes, facilities for the developmentally disabled, home health agencies, or hospices. The Department is also required to promulgate rules for including person in the Department’s registry of nurse aides.

DHS 133: Section 50.49 (2), Stats., permits the Department to promulgate rules establishing minimum standards for the care, treatment, health, safety, welfare, and comfort of patients by home health agencies and for the maintenance and operation of home health agencies.

DHS 134: Sections 50.02 (2) and (3), Stats., direct the Department to promulgate rules to provide conditions of licensure for facilities that primarily serve people with developmental disabilities who require active treatment.

DHS 163: Section 254.15 (1) directs the Department to develop “a comprehensive statewide lead poisoning or lead exposure prevention and treatment program that includes . . . any lead investigation requirements under rules promulgated under ss. 254.167 . . . ; any lead hazard reduction requirements under rules promulgated under s. 254.172; certification, accreditation and approval requirements under ss. 254.176 and 254.178; [and] any certification requirements and procedures under rules promulgated under

s. 254.179” Section 254.167, Stats., allows the Department to promulgate rules specifying procedures for conducting lead investigations of dwellings and premises. Section 254.172, Stats., permits the Department to promulgate rules governing lead hazard reduction that the Department determines are consistent with federal law. Section 254.176, Stats., allows the Department to establish by rule certification requirements for any person who performs lead hazard reduction or lead management activity or who supervises the performance of any lead hazard reduction or lead management activity. Section 254.178, Stats., requires that the Department promulgate rules establishing requirements for the accreditation of lead training courses and approval of lead instructors. Section 254.179, Stats., requires the Department to promulgate rules for certifying dwellings as lead-safe.

DHS 252: Section 49.797 (7), Stats., directs the Department to promulgate rules for administering an electronic benefit system for delivery of food stamp benefits.

DHS 254: Section 49.78 (3), Stats., directs the department to promulgate rules establishing standards of competency, including training requirements, for income maintenance workers employed by a county or tribal agency.

Related statute or rule

Sections 227.11 (2) and 227.29, Stats. Related state and federal statutes or rules are cited, as applicable, in the plan language analysis for each rule chapter.

Plain language analysis

The Department has identified needed administrative rule changes under s. 227.29, Stats., and based on information provided to the Department by the Legislative Reference Bureau. The Department proposes to make all of the following changes:

DHS 10 – relating to family care: DHS 10.32 (1) (b) 2. and 10.36 (1) (c) cite to s. DHS 10.33(3), which was repealed by Clearinghouse Rule CR 22-026. These cross-references should be removed.

DHS 34 – relating to emergency mental health service programs:

- DHS 34.02 (14), which includes references an out-of-date edition of the Diagnostic and Statistical Manual of Mental Disorders (“DSM”) and should be amended to refer to the most recent edition of the DSM.
- DHS 34.21 (3) (b) 18., which conflicts with MA rules because it does not include peer specialists, parent peer specialists, and recovery coaches in the list of program staff qualified to provide mental health crisis services. This provision should be updated for consistency with MA rules.

DHS 35 – relating to outpatient mental health clinics:

- DHS 35.03 (1m) refers to the “the Wisconsin Uniform Placement Criteria,” which the Department no longer uses. This reference is obsolete and should be removed from the subsection.
- DHS 35.03 (5) (a) is obsolete because it includes clinical supervision requirements which are inconsistent with the Department of Safety and Professional Services (“DSPS”) rules for clinical supervision.

DHS 36 – relating to comprehensive community services for persons with mental disorders and substance-use disorders.

- Various provisions in DHS 36.03 reference an out-of-date edition of the DSM and should be amended to refer to the most recent edition of the DSM.
- DHS 36.03 (30) uses the phrase “substance abuse professional,” which is inconsistent with recently amended DHS 75, which uses the phrase “substance use professional.” Citations to DHS 75 are also outdated. This subsection should be amended for consistency with DHS 75.

- DHS 36.10 (2) (g) 7. is obsolete because it refers to outdated accrediting bodies and standards for nurse practitioners. This subdivision should be revised to refer to statute and national accrediting bodies.
- DHS 36.10 (2) (g) 8. a. is obsolete because it refers to outdated accrediting bodies and standards for advanced practice nurse prescribers. The subdivision paragraph needs to be revised to refer to statute, DSPS code, and national accrediting bodies.
- DHS 36.10 (2) (g) 9. conflicts with ss. 457.11 and 457.13, Stats., and Medicaid Policy (Topic #17237) because it does not include licensed professional counselors in-training or licensed marriage and family therapists in-training as personnel who may work at comprehensive community services programs. This subdivision should be updated accordingly.
- DHS 36.10 (2) (g) 20. is outdated because it only includes certified peer specialists. The Department also certifies parent peer specialists, who may also work in comprehensive community services programs. This provision should be amended to include parent peer specialists.
- DHS 36.14 is obsolete and needs to be amended to reflect the requirement for initial and annual functional screens. Comprehensive community service programs are Medicaid-funded and functional screens are necessary to determine eligibility for the program and that individuals in the program remain eligible. The current rule does not expressly require initial or annual functional screens.
- DHS 36.16 contains assessment procedures that are outdated and inconsistent with best practices—namely that assessments and service plans be reviewed and updated at least every six months. This section should be updated to reflect best practices.
- DHS 36.17 (5) (am) and 36.19 (1) contain provisions that are obsolete and in conflict because they refer to fair hearings that are inconsistent with DHS 104.01 (5). These references appear to apply to clinical decisions to discharge an individual from comprehensive community service programs, but the fair hearing process is not intended for recipients who wish to lodge complaints against providers concerning quality of services received or discharge from a program. *See* s. DHS 104.01 (5) (b). These provisions should be updated accordingly.
- DHS 36.18 (3) (f) 7m. is obsolete because it refers to a Department approved drug administration course, and there is no Department-approved training.

DHS 40 – relating to mental health day treatment services for children:

- DHS 40.03 (38) needs to be amended because it cites to a repealed statute, s. 448.01(6), when defining “physician assistant.” This subsection should be amended to cite to s. 448.971 (2), Stats.

DHS 60 – relating to traffic and conduct on state treatment institution property:

- DHS 60.01 (10), conduct on institution grounds, lacks a requirement that individuals comply with all posted signs on the property. The current rule is therefore obsolete as posted signs are approved by the administration and enforced by security staff. The rule should be amended to include this requirement.

DHS 61 – relating to community mental health and developmental disabilities:

- DHS 61.021 (5) (a) and 61.79 (2) (a) are obsolete. Section 61.021 (5) (a) provides that children may be placed in adult inpatient mental health services for limited periods of time, conflicts with other rules and best practices.. This conflicts with best practices from the American Academy of Children and Adolescent Psychiatry, which state that children and adolescents should only be admitted to programs designed for children and adolescents. DHS 61.79 (2) (a) includes a requirement that “[n]o child or adolescent shall be admitted to any inpatient facility more than 60 miles from home without permission of the department.” Stakeholders reported that obtaining permission for an inpatient admission in these circumstances places unnecessary administrative strain on clinicians seeking to arrange timely inpatient psychiatric care, and it unnecessarily delays placement, thereby impacting patients seeking those services. These obsolete rules should be repealed.

- DHS 61.11 and 61.12 are obsolete and in conflict with client rights provisions in DHS 94. These sections should be updated for consistency with ch. DHS 94.

DHS 62 – relating to assessment of drivers with alcohol or controlled substance problems:

- Various provision in this chapter contain are outdated in one or both of the following ways:
 - They contain incorrect citations to Ch. DHS 75, which was repealed and recreated by CR 20-047 and took effect on October 1, 2022.
 - They use the phrase "substance abuse," which has been replaced with "substance use" in federal regulations and ch. DHS 75.

These citations need to be amended to include accurate citations to the new version of Ch. DHS 75 and revise outdated language

- DHS 62.07 (5) (d) 1. provides that a driver safety plan may recommend involvement in a victim impact panel ("VIP"). This component of the driver safety plan is obsolete and economically burdensome. Only 15 to 20 percent of counties require attendance at VIPs, and VIPs add costs to a conviction that already includes significant costs and fees. Additionally, courts can still order VIPs. This subsection should be repealed.
- DHS 62.07 (5) (d) 3. contains an obsolete reference to "intensive supervision under s. DHS 75.16 (7)." CR 20-047 repealed and recreated Ch. DHS 75, and s. DHS 75.16 (7) no longer exists. There are no other provisions in statutes or rules that provide for intensive supervision for non-incarcerated adults, and this subsection should be repealed.

DHS 63 – relating to community support programs ("CSP") for chronically mentally ill persons:

- DHS 63.06 (2) (c) conflicts with DSPS rules. Specifically, s. DHS 63.06 (2) (c) needs to be amended to include that a clinical coordinator shall be a psychiatrist, or a licensed mental health professional authorized to practice psychology, marriage and family therapy, professional counseling, or clinical social work, pursuant to ch. 455 or 457, Stats.
- DHS 63.06 (4) (a) 9. is obsolete and needs to be amended to include peer specialists or recovery coaches as qualified CSP staff. Peer specialists and recovery coaches are promoted as best practice by the Substance Abuse and Mental Health Services Administration and shown to help people become and stay engaged in the recovery process and reduce the likelihood of relapse, and current exclusion in the rule doesn't reflect agency standards. Peer support is already a covered service in the state's other psychosocial rehabilitation programs of Community Support Programs and Comprehensive Recovery Services and in Crisis Services.

DHS 75 – relating to community substance use service standards:

- DHS 75.03 (33) references an out-of-date edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"). This provision should be amended to refer to the most recent edition of the DSM.
- DHS 75.07 (2) (e) needs to be amended to correct a typographical error. Specifically, it should say a "client," and not "clients."
- DHS 75.14 (4) (b), 75.15 (5) (b), and 75.60 (6) (b) include citations to DHS 12 Appendix A, which was repealed by CR 10-091. These references should be removed.
- DHS 75.14 (6) (a) and (b) are economically burdensome and should be amended. As currently written, the rule appears to require that a prevention service implement all seven of the best practice strategies listed in par. (6) (b). The intention of rule was to require use at least one of the best practices, and it did not intend to require a provider to utilize all the best practices listed. Requiring all seven strategies increases costs for providers and creates a barrier to providing prevention services. These paragraphs should be amended and modified to require use of at least one, but not all, of the practices listed.
- DHS 75.24 (11) (d) 6. needs to be amended to correct a typo. Specifically, "of" should be replaced with "or."

- DHS 75.48 (2) (j) (table) contains language that conflicts with other rules. In row (j) of the table, it provides that a physician in a DHS 75.54 medically monitored residential treatment service and a prescriber in a DHS 75.55 medically managed inpatient treatment service must co-sign assessments. However, the plan language of ss. DHS 75.54 and 75.55 only require a single signature, and the table should be amended to strike “co-” from the requirements.

DHS 90 – relating to early intervention services for children from birth to age 3 with developmental needs:

- DHS 90.11 (6) (a) 7. refers to s. 448.05 (5), which was repealed and replaced with ch. 448, subch. IX, Stats. This subdivision should be amended to remove outdated language, and to update the statutory citation.

DHS 92 – relating to confidentiality of treatment records:

- DHS 92.01 (1), 92.02 (7), (13), (15) and (16), 92.03 (1) (g), 92.04 (11) (b) and (d), (15) (b) 1., 92.05 (1) (c), 92.06 (2) and (Note), and 96.07 (Note) conflict with other rules and regulations. These provisions use outdated phrases like “alcohol and drug addiction/dependency/abuse” which have been replaced by “substance use” or “substance use disorder” in federal regulations and ch. DHS 75. These provisions should be amended to replace the outdated terminology.

DHS 94 – relating to patient rights and resolution of patient grievances:

- DHS 94.01 (1), (2) (a), 94.02 (24) and (45), 94.03 (1) (intro.), 94.04 (5) (Note), 94.05 (4) (b) (Note), 94.40 (1), 94.42 (5) (a), 94.43 (1) (b), and 94.44 (6) (b) 1. a. and b. contain obsolete terminology (such as “alcohol and drug addiction/dependency/abuse”) and outdated facility or division names. These provisions should be amended to include updated terminology and facility or division names.

DHS 96 – relating to waiver by forensic patients of good time or entitlement to mandatory release for individuals committed under ch. 975, Stats.:

- Section 975.01 (1), Stats., provides that no one may be committed under Chapter 975 after July 1, 1980. There is no one to whom the rule applies, and there will be no individuals in the future to whom this rule could apply as people are now committed under ch. 980, Stats. This entire rule chapter is obsolete and should therefore be repealed.

DHS 97 – relating to complaint procedures for inmates of the Wisconsin resource center:

- DHS 97.01 cites to s. 46.056 (1), Stats., as authority for the rule, but 2023 Wis. Act 19 renumbered subsection (1) as 46.056 and deleted all other subunits. Accordingly, the citation to subsection (1) should be removed.
- DHS 97.04 (2) (a) conflicts with existing rules because it incorrectly refers to s. DOC 310.04 (2). It should be amended to include the correct citation, which should be s. DOC 310.04 (3).
- DHS 97.04 (2) (b) is obsolete and burdensome. It requires the corrections complaint examiner (“CCE”) to send a copy of his or her report on a complainant’s appeal to the DCTS administrator, but this is inconsistent with current practice, wherein the CCE only elevates specific complaints to the DCTS administrator based on professional judgement. It is burdensome because there are over 200 complaints received per year. The rule should be amended to permit—rather than require—that the CCE submit the report to the DCTS administrator.

DHS 101 – relating to Medical Assistance; introduction and definitions:

- Other Medical Assistance rules are inconsistent with 2017 Wis. Act 119, which amended s. 49.46 (2) (a) 4. and (2) (b) 6. to allow providers acting within the scope of their practice to prescribe or order covered services. A definition of “provider acting within the scope of the provider’s practice” is necessary to provide meaning to the term as used in the Department’s Medical Assistance rules.

DHS 103 – relating to Medical Assistance; eligibility:

- DHS 103.06 (4) (b) 1. contains a statement about aid to families with dependent children (“AFDC”) policy concerning assets which has been obsolete since 2008. This subdivision should be repealed. Section DHS 103.06 (4) (b) 2. should be condensed into the introductory clause, which should be amended and renumbered s. DHS 103.06 (4) (b).
- DHS 103.06 (7) (a) 4. contains a statement about AFDC policy concerning assets which has been obsolete since 2008. This subdivision should be repealed.
- DHS 103.063 refers to divestment policies prior to August 9, 1989 which have been obsolete for over 20 years. This section should be repealed.
- DHS 103.065 was rendered obsolete by amendments to s. 49.453, Stats., in 2007, and this section should be repealed.

DHS 104 – relating to Medical Assistance; recipient rights and duties:

- DHS 104.01 (12) (a) 1. is inconsistent with MA policy, and a new subdivision paragraph needs to be created to clarify that only home and community-based waiver recipients who pay monthly cost shares are exempt from co-payments for services.

DHS 105 – relating to Medical Assistance; provider certification:

- DHS 105.05 (2) conflicts with 2021 Wis. Act 23, which amended statute to allow physician assistants to bill for services. This subdivision should be amended to reflect updates in statute and the new Physician Assistant Affiliated Credentialing Board in ch. PA of the Wisconsin Administrative Code.
- DHS 105.16 is inconsistent with 2021 Wis. Act 248, which changed statute to include services outside the home. This section should be amended to remove the requirement that home health agency services must be provided in the home.
- DHS 105.22 (3) conflicts with s. 455.04 (2) because it does not include interim psychologists as billing providers. This subdivision should be amended to include interim psychologists as billing providers.

DHS 107 – relating to Medical Assistance; covered services:

- Numerous provisions throughout ch. DHS 107 restrict prescribing authority for certain services to physicians, and these provisions are inconsistent with 2017 Wis. Act 119, which amended s. 49.46 (2) (a) 4. and (2) (b) 6. to allow providers acting within the scope of their practice to prescribe or order covered services. These provisions should be amended accordingly
- DHS 107.11 (1) (c) and (6) (a) are inconsistent with other rules. Clearinghouse Rule CR 23-046 amended parts of DHS 107.11 to align with changes to 42 CFR 440 via final rule CMS02348-F, 81 Fed. Reg. 5530, that prohibited requiring an individual to be “homebound” in order to receive home health services, and also clarified that home health services cannot otherwise be restricted to services furnished in the home itself. Section DHS 107.11 (1) (c) requires that a home health visit occur “in the recipient’s place of residence,” and s. DHS 107.11 (6) (a) requires that “part-time, intermittent care” occur in a recipient’s home. Both provisions are inconsistent with other rules and federal regulations, and should be amended.
- DHS 107.13 (4) (a) is conflicts with Wisconsin Statue. The rule contains a requirement that mental health day treatment services be “prescribed by physician,” but s. 49.45 (30f), Stats., as amended by 2009 Wis. Act 28 s. 1305r, which states that the Department may not require that a physician or orhter health care provider first prescribe psychotherapy services.
- DHS 107.16 conflicts with 2015 Wis. Act 375. Section 462.04, Stats., was amended by Act 375 to permit physical therapists to order x-rays when requirements listed in ss. 448.50 (4) (b) and 448.56 (7) are satisfied. Section DHS 107.16 does not, however, include ordering x-rays as a covered evaluation. Section DHS 107.16 should be amended for consistency with Act 375, and to avoid a conflict with the proposed edits to s. DHS 107.25 based on 2017 Wis. Act 119 (regarding providers acting within the scope of their practice).
- DHS 107.24 (1) (b) 1. contains an outdated reference to “a physician assistant licensed under subch. II of ch. 448, Stats.” Chapter 448 was amended, and physician assistant licensure is now addressed in

subch. IX of ch. 448. This reference should be removed from subd. 2, and a new subdivision should be created to refer to physician assistants licensed under ch. IX of ch. 448, Stats.

DHS 109 – relating to senior care:

- DHS 109.31 (1) contains several outdated statutory citations, and it is inconsistent with recent enactments, such as 2021 Wis. Acts 23 and 98. This subsection should be updated accordingly.

DHS 118 – relating to trauma care:

- DHS 118 Appendix A contains training references that do not align with the American College of Surgeons (“ACS”) standards. *See* s. 256.25 (2), Stats. (stating that rules developed in DHS 118 shall “be based on standards developed by the American College of Surgeons”). Criteria 6. (c), 7. (e), 8. (i), and 9. (i) should be updated for consistency with ACS standards.
- DHS 118 Appendix A 2. (m), 7. (j), and 11. (z) contain duplicative standards regarding advanced trauma life support (“ATLS”) training for trauma care facilities. These duplicative standards can be burdensome for providers and should be condensed into a single training requirement under 7. (j).
- DHS 118 Appendix A 10. (b) (18) includes a requirement that a trauma care facility that stabilizes pediatric trauma care patients in an emergency department must have “Laryngeal mask airway: sizes 1.5, 2, 2.5, and 3.” This terminology is incorrect, as a laryngeal mask airway is a specific type of supraglottic airway, and this provision should be amended to refer to the umbrella term of supraglottic airway.
- DHS 118 Appendix A 11. (xm) provides a standard under which trauma care facilities must have “fresh frozen plasma available within 15 minutes.” This standard conflicts with the industry standard thaw times—which are closer to 20 minutes—and is burdensome for trauma care facilities. This standard should be updated to reflect traditional thaw times.

DHS 124 – relating to hospitals:

- DHS 124.06 is obsolete as the requirements are now contained in 42 CFR 485.614. This section should be amended to remove patient rights for critical access hospitals.

DHS 127 – relating to rural medical centers:

- DHS 127.02 (3) cites to s. 183.0202(5), Stats. Chapter 183 of the statutes was repealed and recreated by 2021 Wis. Act 258. This subsection should be amended for consistency with the updated ch. 183, Stats.

DHS 129 – relating to certification of programs for training and testing nurse aides, medication aides, and feeding assistants:

- DHS 129.03 (30) (a) 2. cites to DHS 129.03 (31), which no longer exists. This subdivision should be updated to remove the outdated citation.
- DHS 129.03 (30m) cites to DHS 146.40 (3) or (3g), neither of which exists. It appears this is a typo, and the citation should be updated to “s. 146.40 (3) or (3g), Stats.”
- DHS 129.04 (3) and 129.08 (4) contain nurse aide training program requirements that conflict with amendments made by Public Law 105-15, Section 1819 (f) (2) and Section 1919 (f) (2) of the Social Security Act, and 42 U.S.C. 1395i3 (f) (2) and 42 U.S.C. 1396r (f) (2). These subsections should be amended for consistency with federal law.

DHS 133 – relating to home health agencies:

- DHS 133.02 (9m) needs to be amended because it cites to Wis. Stat. § 448.01(6), which was repealed.
- DHS 133.05 and 133.07 (1) need to be amended for consistency with federal regulations regarding evaluations of programs.

DHS 134 – relating to facilities serving people with development disabilities:

- DHS 134.83 (7) (b) and 134.83 (8) (b) need to be amended because they include a reference to the department of industry, labor, and human relations. These paragraphs should be updated to the department of workforce development.

DHS 163 – relating to certification for the identification, removal, and reduction of lead-based paint hazards:

- DHS 163.10 (8) (c) 5. cites to DHS 163.10(8)(b)4., which was repealed by CR 19-110. This subdivision and its accompanying note should be repealed.
- DHS 163.12 (3) (a) 1. e. cites to DHS 163.12 (2) (d) 2., which was repealed by CR 19-110. This subdivision paragraph should be amended to remove the outdated reference.

DHS 252 – relating to electronic benefit transfer:

- There are numerous references throughout ch. DHS 252 that use the outdated term “food stamps,” which has been replaced the SNAP benefit in laws and regulations and "FoodShare" in Wisconsin. These outdated provisions should be amended.
- There are numerous citations to the code of federal regulations that no longer exist. These citations should be amended with contemporary citations, or removed entirely.

DHS 254 – relating to IM worker training:

- DHS 254.04 (1) (d) 2. refers to a “recipient,” which is outdated Medicaid contract language that has been replaced with “member. This subdivision should be updated accordingly.
- DHS 254.07 (1) includes a requirement that annual reports of IM worker training be submitted by February 1. This is inconsistent with current Medicaid contract language and should be updated.

Summary of, and comparison with, existing or proposed federal regulations

Summary and comparison of federal regulations are provided in the plain language analysis, as applicable, for each rule chapter.

Comparison with rules in adjacent states

Illinois:

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

Iowa:

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

Michigan:

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

Minnesota:

Not applicable - the proposed rule order is based on the requirements in s. 227.29, Stats.

Summary of factual data and analytical methodologies

The Department relied upon requirements under s. 227.29, Stats., and information provided to the Department by the Legislative Reference Bureau.

Analysis and supporting documents used to determine effect on small business

The proposed rules are not anticipated to have an impact on small businesses.

Effect on small business

The proposed rules are not anticipated to have an impact on small businesses.

Agency contact persons

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Statement on quality of agency data

The information used by the Department to prepare the proposed rules complies with s. 227.14 (2m), Stats.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the Department's website, at <https://www.dhs.wisconsin.gov/rules/active-rulemaking-projects.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION @@. DHS 10.32 (1) (b) 2. and 10.36 are @ @ @ to read:

DHS 10.32 (1) (b) 2. An applicant who, on the date that the family care benefit first became available in the county, was receiving services in a long-term care facility funded under any of the programs specified under s. DHS 10.33 (3) (c) administered by that county.

DHS 10.36 (1) (c) The person meets the criteria under s. DHS 10.33 (3).

SECTION 1. DHS 34.02 (14) and 34.03 (2) (b) 2. are amended to read:

DHS 34.02 (14) "Mental disorder" means a condition listed in the Diagnostic and Statistical Manual of Mental Disorders ~~(4th edition)~~, 5th edition, text revision, published by the American Psychiatric Association, or in the International Classification of Diseases, 9th edition, Clinical Modification, ICD-9-CM, Chapter 5, "Mental Disorders," published by the U.S. department of health and human services.

DHS 34.03 (2) (b) 2. Review the results of any grievances filed against the program pursuant to s. DHS 94.27 94.28 during the preceding period of certification.

SECTION 2. DHS 34.21 (3) (b) 18. is amended to read:

DHS 34.21 (3) (b) 18. Mental health technicians, peer specialists, parent peer specialists, and recovery coaches shall be paraprofessionals who are employed on the basis of personal aptitude and life experience which demonstrates their ability to provide effective emergency mental health services.

SECTION 3. DHS 35.03 (1m) and (Note) are amended to read:

DHS 35.03 (1m) "Approved placement criteria" means ~~a placement instrument that is used to develop a placement recommendation for an appropriate level of care for a consumer who has a substance use disorder such as the Wisconsin Uniform Placement Criteria (WI-UPC); criteria in the American Society of Addiction Medicine (ASAM); Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions (4th ed., October 5, 2023) or other similar placement instrument criteria that is approved by the department to develop a placement recommendation for an appropriate level of care for a consumer who has a substance use disorder.~~

Note: ~~A copy of the publications, *Wisconsin Uniform Placement Criteria and Patient Placement Criteria for the Treatment of Substance-Related Disorders*, the ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions (published October 24, 2013), published by the American Society of Addiction Medicine, may be obtained by writing the Bureau of Mental Health and Substance Abuse Services, 1 W. Wilson Street, Room 437, PO Box 7851, Madison, Wisconsin 53707-7851 is on file in the department's division of care and treatment services and the legislative reference bureau. Send inquiries about the ASAM placement criteria to American Society of Addiction Medicine, 4601 N. Park Ave., Suite 101 Upper Arcade, Chevy Chase, MD 20815, or check, and may be obtained from ASAM's at 11400 Rockville Pike, Suite 200, Rockville, MD 20852, or internet site at <https://www.asam.org/asam-criteria/text>.~~

SECTION 4. DHS 35.03 (5) (a) is amended to read:

DHS 35.03 (5) (a) The supervised practice of psychotherapy as described under ch. MPSW 4, 12, or 16, or Psy 2, as applicable. ~~For a recognized psychotherapy practitioner, "clinical supervision" means the supervised practice of psychotherapy by a licensed treatment professional of at least one hour per week.~~

SECTION 5. DHS 36.03 (8) is amended to read:

DHS 36.03 (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~~ DSM.

SECTION 6. DHS 36.03 (10g) is created to read:

DHS 36.03 (10g) "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th edition, text revision, published by the American Psychiatric Association.

SECTION 7. DHS 36.03 (15) is amended to read:

DHS 36.03 (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)~~ DSM, excluding the categories of dementia, substance-related disorders, and developmental disability as defined in 42 CFR 435.1009.

SECTION 8. DHS 36.03 (15) (Note) is repealed.

SECTION 9. DHS 36.03 (30) and (31) are amended to read:

DHS 36.03 (30) "Substance abuse use professional" means a person who meets the requirements of s. ~~DHS 75.02 (84)~~ definition of a "substance abuse counselor" under s. DHS 75.03 (85), 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~~.

SECTION 10. DHS 36.10 (2) (g) 7. is repealed and recreated to read:

DHS 36.10 (2) (g) 7. Nurse practitioners or clinical specialists shall have a current license as a registered nurse under ch. 441, Stats., a master's degree from an accredited graduate school of nursing, and be board certified by an applicable national nurse certifying body.

SECTION 11. DHS 36.10 (2) (g) 8. a. is amended to read:

DHS 36.10 (2) (g) 8. a. Advanced practice nurse prescribers certified under ch. N 8 shall be adult psychiatric and mental health nurse practitioners or clinical specialists, family psychiatric and mental health nurse practitioners or clinical specialists in adult psychiatric and mental health nursing who are board certified by the American Nurses Credentialing Center; who hold a current license as a registered nurse under ch. 441, Stats.; have completed 1500 hours of supervised clinical experience in a mental health environment; have completed 650 hours of supervised prescribing experience with clients with mental illness and the ability to apply relevant theoretical principles of advance psychiatric or mental health nursing practice; and, hold a master's degree in mental health nursing from a an accredited graduate school of nursing from an approved college or university, and are board certified by an applicable national nurse certifying body.

SECTION 12. DHS 36.10 (2) (g) 9. is amended to read:

DHS 36.10 (2) (g) 9. Certified social workers, certified advance practice social workers ~~and, certified independent social workers, licensed professional counselors in-training, and licensed marriage and family therapists in-training~~ shall meet the qualifications established in ch. 457, Stats., and related administrative rules, and have received certification by the examining board of social workers, marriage and family therapists and professional counselors.

SECTION 13. DHS 36.10 (2) (g) 20. is repealed and recreated to read:

DHS 36.10 **(2) (g) 20.** A certified peer specialist or a certified parent peer specialist shall be an individual with lived experience with mental health issues, substance use issues, or both, and currently certified by the department through successful completion of the state-approved peer specialist training and certification exam. The peer specialist must complete all continuing education requirements and act within their scope of practice.

SECTION 14. DHS 36.14 (intro.) and (3) (b) (Note) are amended to read:

DHS 36.14 **Criteria for determining the need for psychosocial rehabilitation services.** Psychosocial rehabilitation services shall be available to individuals who are determined to require more than outpatient counseling but less than the services provided by a community support program under s. 51.421, Stats., and ch. DHS 63, as a result indicated by the results of a department-approved functional screen, which must be administered initially and annually, and meet all of the following criteria:

DHS 36.14 **(3) (b) Note:** A written request for a review of the determination of need for psychosocial rehabilitation services should be addressed to the Bureau of ~~Mental Health and Substance Abuse Services~~ Prevention, Treatment and Recovery, 1 W. Wilson Street, Room 433, PO Box 7851, Madison, WI 53707-7851.

SECTION 15. DHS 36.16 (3) (b) is amended to read:

DHS 36.16 **(3) (b)** Be updated as new information becomes available, or at least every 6 months.

SECTION 16. DHS 36.17 (5) (am) 3. is repealed and recreated to read:

DHS 36.17 **(5) (am) 3.** Information on how the consumer who is involuntarily discharged from the CCS program can submit to the department a written request for a review of the discharge.

SECTION 17. DHS 36.18 (3) (f) 7m. is amended to read:

DHS 36.18 **(3) (f) 7m.** Medications may be administered only by a physician, nurse, a practitioner, a person who has completed training in a drug administration course ~~approved by the department,~~ or by the consumer.

SECTION 18. DHS 36.19 (1) (c) is repealed.

SECTION 19. DHS 40.03 (38) is amended to read:

DHS 40.03 **(38)** "Physician assistant" has the meaning given in s. ~~448.01 (6)~~ 448.971 (2), Stats.

SECTION 20. DHS 60.01 (10) (a) is renumbered DHS 60.01 (10) (am).

SECTION 21. DHS 60.01 (1) (a) is created to read:

DHS 60.01 **(10) (a)** Individuals are required to obey all posted signs on institution grounds.

SECTION 22. DHS 61.021 (5) (intro.) and (b) are consolidated, renumbered DHS 61.021 (5), and amended to read:

DHS 61.021 (5) "Inpatient" means a medically oriented residential service which provides continuous medical services on a 24 hour basis to enable an individual with problems related to mental illness, alcohol and other drug abuse to function without 24 hour medical support services. ~~(b) Inpatient treatment of individuals under 18 years of age shall be provided in specialized inpatient programs which comply with standards specified in s. DHS 61.79.~~

SECTION 23. DHS 61.021 (5) (a) is repealed.

SECTION 24. DHS 61.11 is amended to read:

DHS 61.11 **Client rights.** The client rights mandated by s. 51.61, Stats. and s. DHS 94 shall apply.

SECTION 25. DHS 61.12 is amended to read:

DHS 61.12 **Grievance procedure.** The grievance procedure mandated under s. 51.61 (5), Stats. and DHS 94 shall apply.

SECTION 26. DHS 62.03 (1), (12) (a), (17), (21), (22), and (24) are amended to read:

DHS 62.03 (1) "Alternative education" means ~~the~~ a course of traffic safety instruction ~~provided under s. DHS 75.16 (5)~~ that is designed to meet the goals of a group dynamic traffic safety program or a multiple offender traffic safety program for clients that cannot be accommodated by a group dynamic traffic safety program or a multiple offender traffic program.

DHS 62.03 (12) (a) An approved public treatment facility or an approved private treatment facility certified by the department under ch. DHS 75 to provide substance ~~abuse~~ use services or a comparable agency lawfully established for that purpose in another state.

DHS 62.03 (17) "Intoxicated driver assessment facility" or "assessment facility" means an approved private treatment facility or an approved public treatment facility that is certified under s. ~~DHS 75.13 as an outpatient treatment service or s. DHS 75.16 as an intervention service~~ DHS 75.15 as an intervention service or an intoxicated driver service and designated under s. DHS 62.04 (1) by a board to conduct intoxicated driver assessments.

DHS 62.03 (21) "Substance" means ~~alcohol~~, a psychoactive agent, or chemical, including nicotine, that principally affects the central nervous system and alters mood or behavior.

DHS 62.03 (22) "Substance use" or "Substance abuse" means use of ~~alcohol or other drugs individually or in combination~~ any mood-altering substance in a manner that interferes with, or poses a risk of interfering with, an individual's educational, vocational, health, behavioral, financial, legal, or social functioning.

DHS 62.03 (24) "Treatment" means the planned provision of services under ~~ss. DHS 75.05 to 75.15~~ 75.49 to 75.60 that are ~~sensitive and responsive to a client's age, disability, if any, gender and culture that are conducted under clinical supervision~~ a patient's individuals needs to assist the ~~client~~ patient through the process of recovery.

SECTION 27. DHS 62.05 (2) (a) 1. a. and b. are amended to read:

DHS 62.05 **(2) (a) 1. a.** A substance abuse counselor as defined under s. DHS ~~75.02 (84) (a)~~ 75.03 (85).
b. A clinical supervisor as defined under s. DHS ~~75.02 (11)~~ 75.03 (19).

SECTION 28. DHS 62.06 (1), (2), and (4) are amended to read:

DHS 62.06 **(1)** A driver safety plan provider who provides treatment to a client under ss. DHS ~~75.05 to 75.15~~ 75.49 to 75.60 shall comply with the applicable provisions of ch. DHS 75.

(2) A driver safety plan provider who provides services to a client under ss. DHS ~~75.05 to 75.15~~ 75.49 to 75.60 and this chapter shall include the intoxicated driver assessment findings and driver safety plan recommendations in their assessment and treatment planning.

DHS 62.06 **(4)** Providers of alternative education shall operate in accordance with applicable provisions of this chapter and applicable provisions of s. DHS ~~75.13 or 75.16~~ 75.15.

SECTION 29. DHS 62.07 (1) (h), (5) (a) 1. c., 2. c., and (b) 1. to 3. are amended to read:

DHS 62.07 **(1) (h)** A driver safety plan recommending treatment under sub. (5) (b) to (d) shall recommend the least restrictive treatment. The screening procedures under s. DHS ~~75.03 (10)~~ 75.24 (1) may be used to develop the driver safety plan recommendation if the finding is one of the findings in sub. (4) (b) 2. to 5.

DHS 62.07 **(5) (a) 1. c.** Alternative education. Alternative education driver safety plan recommendations shall have the prior approval of the local traffic safety school coordinator and the designated coordinator in the client's county of residence. If alternative education is approved for a client who does not have a language barrier, literacy barrier, developmental disability, mental illness, or cognitive deficit, the alternative education program shall be comparable to the appropriate group dynamic traffic safety program or multiple offender traffic safety program as it pertains to purpose, content, instructor qualifications, and hours as prescribed under s. DHS ~~75.16 (5)~~ 75.15 (9). If the traffic safety school coordinator and the designated coordinator disagree regarding a referral to alternative education, the designated coordinator shall make a written request to the department for mediation.

DHS 62.07 **(5) (a) 2. c.** Alternative education. Driver safety plans recommending alternative education shall be approved by the local traffic safety school coordinator and the designated coordinator in the client's county of residence. If alternative education is approved for a client who does not have a language barrier, literacy barrier, developmental disability, mental illness, or cognitive deficit, the alternative education program shall be comparable to the appropriate group dynamic traffic safety program or multiple offender traffic safety program as it pertains to purpose, content, instructor qualifications, and hours as prescribed under s. DHS ~~75.16 (5)~~ 75.15 (9). If the traffic safety school coordinator and the designated coordinator disagree regarding a referral to alternative education, the designated coordinator shall make a written request to the department for mediation.

DHS 62.07 **(5) (b) 1.** 'Finding of irresponsible use-borderline.' If the assessment finding for a client is irresponsible use-borderline of alcohol, a controlled substance, controlled substance analog, or other drug, the driver safety plan may recommend short-term outpatient substance abuse treatment under s. DHS ~~75.13~~ 75.49 or 75.50.

2. 'Finding of suspected dependency.' If the assessment finding for a client is suspected alcohol, controlled substance, controlled substance analog, or other drug dependency, the driver safety plan shall recommend substance abuse treatment, including an evaluation of the appropriateness of medication-assisted treatment, that does not include residential or inpatient services under s. ~~DHS-75.10, 75.11 75.53, 75.54, or 75.14 75.55.~~

3. Finding of dependency.' If the assessment finding for a client is alcohol, controlled substance, controlled substance analog, or other drug dependency, the driver safety plan shall recommend substance abuse treatment, including an evaluation of the appropriateness of medication-assisted treatment, under ss. ~~DHS-75.10 to 75.15 75.49 to 75.60. If residential or inpatient services are recommended, the residential or inpatient services may not exceed 30 days.~~

SECTION 30. DHS 62.07 (5) (d) 1. is repealed.

SECTION 31. DHS 62.07 (5) (d) 2. is amended to read:

DHS 62.07 **(5) (d) 2.** Case management as described under s. ~~DHS-75.16 (6) 75.03 (11)~~ if a treatment service is also recommended.

SECTION 32. DHS 62.07 (5) (d) 3. is repealed.

SECTION 33. DHS 62.07 (6) (c) 2. (intro.) and a. are amended to read:

DHS 62.07 **(6) (c) 2.** If the driver safety plan provider provides a treatment service under ss. ~~DHS-75.10 to 75.15 75.49 to 75.60,~~ the plan provider shall be notified of all of the following:

a. That the client is to be evaluated so that the client's treatment plan may be individualized as directed by s. 51.45 (9) (d), Stats., and s. ~~DHS-75.03 (13) 75.23 (13).~~

SECTION 34. DHS 63.06 (2) (c) and (4) (a) 9. are amended to read:

DHS 63.06 **(2) (c)** A clinical coordinator who shall have overall responsibility for and provide direct supervision of the CSP's client treatment services and supervision of CSP clinical staff. The clinical coordinator shall be a psychiatrist ~~or psychologist or have a master's degree in social work, clinical psychology or psychiatric mental health nursing or have met equivalent requirements~~ a licensed mental health professional authorized to practice psychology, marriage and family therapy, professional counseling, or clinical social work, pursuant to ch. 455 or 457, Stats. The coordinator shall have either 3,000 hours of supervised clinical experience in a practice where the majority of clients are adults with chronic mental illness or 1,500 hours of supervised clinical experience in a CSP.

DHS 63.06 **(4) (a) 9.** A mental health technician, peer support specialist, or recovery coach shall be a paraprofessional who is employed on the basis of personal aptitude. A mental health technician, peer support specialist, or recovery coach shall have a suitable period of orientation and in-service training and shall work under the supervision of a clinical coordinator under sub. (2) (c).

SECTION 35. DHS 75.03 (33) is amended to read:

DHS 75.03 **(33)** “DSM” means the Diagnostic and Statistical Manual of Mental Disorders, ~~Fifth Edition~~ 5th edition, text revision, published by the American Psychiatric Association.

SECTION 36. DHS 75.07 (2) (e) is amended to read:

DHS 75.07 **(2) (e)** The transferor shall notify a ~~clients~~ client or client's legal representative no less than 7 days in advance of the transfer of ownership.

SECTION 37. DHS 75.14 (4) (a) 3. b. and (b) are amended to read:

DHS 75.14 **(4) (a) 3. b.** That no person will be denied service or discriminated against on the basis of sex, race, color, creed, sexual orientation, disability, or age, in accordance with 45 CFR part 92 and Title VI of the Civil Rights Act of 1964, as amended, 42 USC. 2000d, Title ~~XI~~ IX of the Education Amendments of 1972, 20 USC 1681-1686 and s. 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, and the Americans with Disabilities Act of 1990, as amended, 42 USC 12101-12213.

DHS 75.14 **(4) (b)** *Caregiver background check.* At the time of hire, employment, or contract, and every 4 years after, the service shall conduct and document a caregiver background check following the procedures in s. 50.065, Stats., and ch. DHS 12. A service shall not employ or contract with a person who has been convicted of a crime or offense, or has a governmental finding of misconduct, found in s. 50.065, Stats., and ch. DHS 12, ~~Appendix A~~, unless the person has been approved under the department's rehabilitation process as defined in ch. DHS 12.

SECTION 38. DHS 75.14 (6) (a) and (b) (intro.) are consolidated, renumbered DHS 75.14 (6) (a) (intro.) and amended to read:

DHS 75.14 **(6) (a)** ~~*General Strategies employed by the prevention service.*~~ A prevention service shall utilize at least one of the following recognized best practices for evidence-based substance use prevention. ~~(b) *Strategies employed by the prevention service.*~~

SECTION 39. DHS 75.14 (6) (b) 1. to 7. are renumbered DHS 75.14 (6) (a) 1. to 7.

SECTION 40. DHS 75.15 (5) (b) is amended to read:

DHS 75.15 **(5) (b)** *Caregiver background check.* At the time of hire, employment, or contract, and every 4 years after, the service shall conduct and document a caregiver background check following the procedures in s. 50.065, Stats., and ch. DHS 12. A service shall not employ or contract the service if the person has been convicted of the crimes or offenses, or has a governmental finding of misconduct, found in s. 50.065, Stats., and ch. DHS 12, ~~Appendix A~~, unless the person has been approved under the department's rehabilitation process, as defined in ch. DHS 12.

SECTION 41. DHS 75.24 (11) (d) 6. (intro.) is amended to read:

DHS 75.24 **(11) (d) 6.** The clinical assessment shall include any collateral information gathered during the clinical assessment. Collateral information may include one ~~of~~ or more of the following:

SECTION 42. DHS 75.48 (2) (table) row (j) is amended to read:

(j) Additional assessment requirements	<p>1. For patients continuously enrolled in services, an assessment update shall be completed not less than every six months.</p> <p>2. The service shall have a written and documented procedure for reviewing assessments and level of care placement during clinical consultation or clinical supervision that occurs within 7 days of the assessment</p>	A physician, physician assistant, registered nurse, or clinical supervisor shall review and co- sign the assessment and level of care placement within 7 days of the assessment.	A prescriber shall review and co-sign the assessment and level of care placement within 2 working days following the assessment.	The clinical assessment and level of care placement shall be reviewed at the next clinical consultation staffing following the assessment
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SECTION 43. DHS 75.60 (6) (b) is amended to read:

DHS 75.60 **(6) (b) Caregiver background check.** At the time of hire, employment, or contract, and every 4 years after, the service shall conduct and document a caregiver background check following the procedures in s. 50.065, Stats., and ch. DHS 12. A service shall not employ or contract with a person who has been convicted of a crime or offense, or has a governmental finding of misconduct, found in s. 50.065, Stats., and ch. DHS 12, ~~Appendix A,~~ unless the person has been approved under the department's rehabilitation process as defined in ch. DHS 12.

SECTION 44. DHS 90.11 (6) (a) 7. is amended to read:

DHS 90.11 **(6) (a) 7.** Pediatricians and other physicians shall be licensed under ch. 448, Stats., and physician assistants shall be ~~certified~~ licensed under ~~s. 448.05 (5) subch. IX of ch. 448, Stats.;~~

SECTION 45. DHS 92.01 (1) is amended to read:

DHS 92.01 **(1) SCOPE.** This chapter applies to all records of persons who are receiving treatment or who at any time received treatment for mental illness, developmental disabilities, ~~alcohol abuse or drug abuse~~ substance use or substance use disorder from the department, a board established under s. 46.23, 51.42 or 51.437, Stats., or treatment facilities and persons providing services under contract with the department, a

board or a treatment facility whether the services are provided through a board or not. Private practitioners practicing individually who are not providing services to boards are not deemed to be treatment facilities and their records are not governed by this chapter.

SECTION 46. DHS 92.02 (7), (13), (15) and (16) are amended to read:

DHS 92.02 (7) "Patient" means any individual who is receiving or who at any time has received services for mental illness, developmental disabilities, ~~alcoholism or drug dependence~~ substance use or substance use disorder from the department, a board, a treatment facility, or from persons providing services under contract to the department, a board or a treatment facility.

DHS 92.02 (13) "Treatment" has the meaning designated in s. 51.01 (17), Stats., namely, those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of ~~a mentally ill, alcoholic, drug dependent or developmentally disabled person~~ individuals with mental illness, substance use disorder, or a developmental disability.

DHS 92.02 (15) - "Treatment facility" has the meaning designated in s. 51.01 (19), Stats., namely, any publicly or privately operated facility or unit of a facility providing treatment of ~~alcoholic, drug dependent, mentally ill or developmentally disabled persons~~ with mental illness, substance use, or developmental disability, including but not limited to inpatient and outpatient treatment programs and rehabilitation programs.

DHS 92.02 (16) "Treatment records" has the meaning designated in s. 51.30 (1) (b), Stats., namely, all records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, ~~alcoholism, or drug dependence~~ substance use or substance use disorder which are maintained by the department, by boards and their staffs, and by treatment facilities. "Treatment records" include written, computer, electronic and microform records, but do not include notes or records maintained for personal use by an individual providing treatment services for the department, a board, or a treatment facility if the notes or records are not available to others.

SECTION 47. DHS 92.03 (1) (g) is amended to read:

DHS 92.03 (1) (g) Whenever requirements of federal law regarding ~~alcoholism and drug dependence~~ substance use or substance use disorder services in 42 CFR Part 2 require restrictions on the disclosure of treatment records greater than the restrictions required by this section, the federal requirements shall be observed.

SECTION @@. DHS 92.04 (2) (e) (Note) is repealed.

SECTION 48. DHS 92.04 (11) (b) and (d), and (15) (b) 1. are amended to read:

DHS 92.04 (11) (b) A patient's attorney or guardian ad litem, or both, shall have access to ~~alcohol and drug abuse~~ substance use or substance use disorder patient treatment records only as authorized under 42 CFR 2.15 and 2.35.

DHS 92.04 **(11) (d)** Counsel for the interests of the public may have access to ~~alcohol or drug abuse~~ substance use or substance use disorder treatment records only with informed consent of the patient or as authorized under 42 CFR 2.61 to 2.67.

DHS 92.04 **(15) (b) 1.** A court order authorizing access to ~~alcoholism or drug dependence~~ substance use or substance use disorder treatment records shall comply with the requirements of 42 CFR 2.61 to 2.67.

SECTION 49. DHS 92.05 (1) (c) is amended to read:

DHS 92.05 **(1) (c)** Each patient, patient's guardian and parent of a minor patient shall be informed of all rights of access upon admission or as soon as clinically feasible, as required under s. 51.61 (1) (a), Stats., and upon discharge as required under s. 51.30 (4) (d) 4., Stats. If a minor is receiving ~~alcohol or other drug abuse~~ substance use or substance use disorder treatment services, the parents shall be informed that they have a right of access to the treatment records only with the minor's consent or in accordance with 42 CFR 2.15.

SECTION 50. DHS 92.06 (2) and (Note) are amended to read:

DHS 92.06 **(2)** Information may be released from the ~~alcohol or drug abuse~~ substance use or substance use disorder treatment records of a minor only with the consent of both the minor and the minor's parent, guardian or person in the place of a parent, except that outpatient or detoxification services information, with the qualifications about these services indicated in s. 51.47 (2), Stats., shall be disclosed only with the consent of the minor provided that the minor is 12 years of age or older.

Note: Section 42 CFR 2.14 (b) provides that when a minor under state law can obtain treatment for ~~alcohol abuse or drug abuse~~ substance use or substance use disorder without the parent or guardian's approval, as under s. 51.47, Stats., only the minor's consent is required for disclosure of information from records of that treatment.

SECTION 51. DHS 92.07 (Note) is amended to read:

DHS 92.07 **Note:** Federal regulations regarding ~~alcohol and drug dependence~~ substance use or substance use disorder treatment records do not recognize the statutory exceptions to the physician and psychologist privilege in s. 905.04, Stats., or the attorney privilege in s. 905.03, Stats., but require either informed consent or a court order under 42 CFR 2.61 to 2.67 for disclosure of confidential information.

SECTION 52. DHS 94.01 (1) and (2) (a) are amended to read:

DHS 94.01 **(1) AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of s. 51.61 (5) (b) and (9), Stats., to implement s. 51.61, Stats., concerning the rights of patients receiving treatment for mental illness, a developmental disability, ~~alcohol abuse or dependency or other drug abuse or dependency~~ substance use or substance use disorder.

DHS 94.01 **(2) (a)** Except as provided in par. (b), this chapter applies to the department, to county departments established under s. 46.23, 51.42 or 51.437, Stats., and to all treatment facilities and other service providers, whether or not under contract to a county department, including the state-operated

mental health institutes and centers for the developmentally disabled, habilitation or rehabilitation programs, programs certified under ch. DHS 61 and facilities licensed under ch. DHS 124 which also provide treatment for ~~alcoholic, drug dependent, mentally ill or developmentally disabled persons with~~ substance use disorders, mental illnesses, or developmental disabilities. This chapter also applies to correctional institutions in which inmates receive treatment for mental disorders, but only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. This chapter does not apply to a hospital emergency room.

SECTION 53. DHS 94.02 (24) and (45) are amended to read:

DHS 94.02 (24) "Inpatient treatment facility" has the meaning prescribed for "inpatient facility" in s. 51.01 (10), Stats., and includes the mental health institutes as defined in s. 51.01 (12), Stats., ~~the Milwaukee county mental health center~~ a facility established under s. 51.08, Stats., and county hospitals established under s. 51.09, Stats.

DHS 94.02 (45) "Treatment facility" means any publicly or privately operated facility, unit in a facility or agency providing treatment, habilitation or rehabilitation for ~~alcoholic, drug dependent, mentally ill or developmentally disabled persons~~ with substance use disorders, mental illnesses, or developmental disabilities, including an inpatient treatment facility, a residential treatment facility or an outpatient treatment facility

SECTION 54. DHS 94.03 (1) (intro.) is amended to read:

DHS 94.03 (1) Any informed consent document required under this chapter shall declare that the patient or the person acting on the patient's behalf has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning the proposed treatment or services made necessary by and directly related to the person's mental illness, developmental disability, ~~alcoholism or drug dependency~~ or substance use disorder, including:

SECTION 55. DHS 94.04 (5) (Note) is amended to read:

DHS 94.04 (5) **Note:** A simplified version of patient rights in poster form is available from the Division of ~~Mental Health and Substance Abuse~~ Care and Treatment Services, P.O. Box 7851, Madison, WI 53707 or at www.dhs.wisconsin.gov/clientrights.

SECTION 56. DHS 94.05 (4) (b) (Note) is amended to read:

DHS 94.05 (4) (b) **Note:** Copies of the rights-denial form may be requested from the Department's website at www.dhs.wisconsin.gov/clientrights or by writing to the Division of ~~Mental Health and Substance Abuse~~ Care and Treatment Services, P.O. Box 7851, Madison, WI 53707-7851.

SECTION 57. DHS 94.40 (1) is amended to read:

DHS 94.40 (1) GRIEVANCE RESOLUTION SYSTEM REQUIRED. All programs providing services or residential care to persons who need the services or residential care because of mental illness, a developmental disability, ~~alcoholism or drug dependency~~, as those terms are defined in s. [51.01](#), Stats. or

substance use disorder, shall have a grievance resolution system which complies with the requirements of this subchapter.

SECTION 58. DHS 94.42 (5) (a) is amended to read:

DHS 94.42 **(5) (a)** Copies of the decision by the county director shall be given personally or sent ~~by first class mail~~ to the program manager, the client, the grievant if other than the client, the client rights specialist, the parent or guardian of the client, if that person's consent is required for treatment, all staff who received a copy of the program manager's decision, and the office of the department designated under sub. (1) (b) 2.

SECTION 59. DHS 94.43 (1) (b) is amended to read:

DHS 94.43 **(1) (b)** If a grievant wishes to seek a state review of the county director's decision, he or she shall make the request to the office or unit designated under s. DHS 94.42 (1) (b) 2., or directly to the program manager. The program manager shall forward the request and supporting materials to the office or unit designated under s. DHS 94.42 (1) (b) 2. in the same manner as provided in s. DHS 94.42 (2) (c), with a copy sent ~~by first class mail~~ to the county director. All other parties shall make their request to the office or unit designated under s. DHS 94.42 (1) (b) 2., with copies of the request given personally or sent ~~by first class mail~~ to the other parties.

SECTION 60. DHS 94.44 (6) (b) 1. a. and b. are amended to read:

DHS 94.44 **(6) (b) 1. a.** The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit ~~by first class mail~~ the materials identified in sub. (2) (a) to the administrator designated under sub. (1) within 7 days of receiving the request; and
b. Other parties shall transmit ~~by first class mail~~ their request for review along with all of the materials directly to the department administrator within 14 days of receiving the decision of the state grievance examiner; and.

SECTION 61. DHS 96 is repealed.

SECTION 62. DHS 97.01 is amended to read:

DHS 97.01 **Authority and applicability.** Pursuant to authority under ss. 46.056-~~(4)~~ and 227.11 (2), Stats., the department adopts this chapter as the procedures governing complaints by inmates pertaining to the Wisconsin Resource Center.

SECTION 64. DHS 97.04 (2) (a) and (b) are amended to read:

DHS 97.04 **(2) (a)** Notwithstanding s. DOC 310.04-~~(2)~~ (3), the director shall appoint an institution complaint examiner.

(b) The CCE ~~shall~~ may send a copy of his or her recommendation under s. DOC 310.12 to the DCTS administrator, and the DCTS administrator or designee may make a recommendation to the secretary of corrections

SECTION 65. DHS 101.03 (137m) is created to read:

DHS 101.03 **(137m)** “Provider acting within the scope of the provider’s practice” means a provider who is authorized to prescribe or order, within their scope of practice under statutes, rules, or regulations that govern the provider’s practice, for either of the following:

- (a) Medical services under s. 49.46 (2) (a) 4., Stats.
- (b) Services under s. 49.46 (2) (b) 6., Stats.

SECTION 66. DHS 103.06 (4) (b) (intro.) and 2. are consolidated, renumbered DHS 103.06 (4) (b). and amended to read:

DHS 103.06 **(4) (b)** Net proceeds from the sale of homestead property shall be treated as assets ~~as follows:~~ 2. For SSI-related MA the proceeds are disregarded if they are placed in an escrow account and used to purchase another home within 3 months. After 3 months the proceeds are considered available.

SECTION 67. DHS 103.06 (4) (b) 1. is repealed.

SECTION 68. DHS 103.06 (7) (title) and (a) (intro.) are consolidated, renumbered DHS 103.06 (7) (intro.) and amended to read:

DHS 103.06 **(7) TRUSTS.** ~~(a)~~ Trust funds shall be considered available assets, ~~except that~~ unless any of the following apply:

SECTION 69. DHS 103.06 (7) (a) 1. to 3. are renumbered DHS 103.06 (7) (a) to (c) and amended to read:

- (a)** Trust funds payable to a beneficiary only upon order of a court shall not be considered available assets if the trustee or other person interested in the trust first applied to the court for an order allowing use of part or all of the trust fund to meet the needs of the beneficiary and the court denied such application;
- (b)** Trust funds held in a trust which meets the requirements of ss. 701.0501 and 701.0502, Stats., shall not be considered available assets unless the settlor is legally obligated to support the beneficiary;
- (c)** For SSI-related MA applicants and recipients, the pertinent SSI standards on the treatment of trusts as resources shall apply; ~~and.~~

SECTION 70. DHS 103.06 (7) (a) 4. is repealed.

SECTION 71. DHS 103.063 is repealed.

SECTION 72. DHS 103.065 is repealed.

SECTION 73. DHS 104.01 (12) (a) 1. dm. is created to read:

DHS 104.01 **(12) (a) 1. dm.** An individual in a home and community-based setting whose medical assistance is reduced by amounts reflecting available income other than required for personal needs.

SECTION 74. DHS 105.05 (2) is amended to read:

DHS 105.05 (2) PHYSICIAN ASSISTANTS. For MA certification, physician assistants shall be certified and registered pursuant to ss. ~~448.05 and 448.07~~ ch. 448, subch. IX, Stats., and chs. Med 8 and 14.

SECTION 75. DHS 105.16 (1) is amended to read:

DHS 105.16 (1) HOME HEALTH AGENCY SERVICES. For MA certification, a home health agency shall provide part-time, intermittent skilled nursing services performed by a registered nurse or licensed practical nurse and home health aide services and may provide physical therapy, occupational therapy, speech and language pathology services and medical supplies and equipment. ~~Services may be provided only on visits to a recipient's home and that home may not be provided in a hospital or nursing home.~~ Home health services shall be provided in accordance with a written plan of care, which the physician shall review at least every 62 days or when the recipient's medical condition changes, whichever occurs first.

SECTION 76. DHS 105.22 (3) is amended to read:

DHS 105.22 (3) REIMBURSEMENT FOR OUTPATIENT PSYCHOTHERAPY SERVICES. Reimbursement shall be made to any certified psychotherapy provider whose practice, as described by individual licensure or clinic certification regulations, allows for the delivery of psychotherapy without clinical supervision, or to an interim psychologist in accordance with s. 455.04 (2), Stats. For outpatient psychotherapy services delivered by certified providers who are required, under individual licensure or clinic certification regulations, to practice under a clinical supervisor, reimbursement shall be made to the supervising provider. The supervising provider must be MA certified.

SECTION 77. DHS 107.02 (2m) (tile) and (a) (intro.) is amended to read:

DHS 107.02 (2m) SERVICES REQUIRING ~~A PHYSICIAN'S AN~~ ORDER OR PRESCRIPTION. (a) The following services require ~~a physician's~~ an order or prescription by a provider acting within the scope of the provider's practice, to be covered under MA:

SECTION 78. DHS 107.08 (4) (a) 6. is amended to read:

DHS 107.08 (4) (a) 6. Hospital laboratory, diagnostic, radiology and imaging tests not ordered by a ~~physician~~ provider acting within the scope of the provider's practice, except in emergencies;

SECTION 79. DHS 107.09 (2) (intro.) and (4) (a) 1. a. to c. and 2. a. to e. are amended to read:

DHS 107.09 (2) COVERED SERVICES. Covered nursing home services are medically necessary services provided by a certified nursing home to an inpatient and prescribed by a ~~physician~~ provider acting within the scope of the provider's practice in a written plan of care. The costs of all routine, day-to-day health care services and materials provided to recipients by a nursing home shall be reimbursed within the daily rate determined for MA in accordance with s. 49.45 (6m), Stats. These services are the following:

DHS 107.09 (4) (a) 1. a. Oxygen in liters, tanks, or hours, including tank rentals and monthly rental fees for concentrators;

- b.** Tracheostomy and ventilatory supplies and related equipment, subject to guidelines and limitations published by the department in the provider handbook;
- c.** Transportation of a recipient to obtain health treatment or care if the treatment or care is prescribed by a ~~physician~~ provider acting within the scope of the provider's practice as medically necessary and is performed at a physician's office, clinic, or other recognized medical treatment center, if the transportation service is provided by the nursing home, in its controlled equipment and by its staff, or by common carrier such as bus or taxi, and if the transportation service was provided prior to July 1, 1986. Transportation shall not be reimbursed as an ancillary service on or after July 1, 1986; ~~and.~~

DHS 107.09 (4) (a) **2. a.** Claims shall be submitted under the nursing home's provider number, and shall appear on the same claim form used for claiming reimbursement at the daily nursing home rate;

- b.** The items identified in subd. 1. shall have been prescribed in writing by the attending ~~physician~~ provider acting within the scope of the provider's practice, or ~~the physician's that provider's~~ entry in the medical records or nursing charts shall make the need for the items obvious;
- c.** The amounts billed shall reflect the fact that the nursing home has taken advantage of the benefits associated with quantity purchasing and other outside funding sources;
- d.** Reimbursement for questionable materials and services shall be decided by the department;
- e.** Claims for transportation shall show the name and address of any treatment center to which the patient recipient was transported, and the total number of miles to and from the treatment center; ~~and.~~

SECTION 80. DHS 107.09 (4) (e) 1. to 3. are amended to read:

- DHS 107.09 (4) (e) **1.** Where the inherent complexity of a service prescribed for a patient is such that it can be safely and effectively performed only by or under the direct supervision of technical or professional personnel, the service shall constitute a skilled service;
- 2.** The restoration potential of a patient shall not be the deciding factor in determining whether a service is to be considered skilled or nonskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities. For example, even though no potential for rehabilitation exists, a terminal cancer patient may require skilled services as defined in this paragraph and par. (f); ~~and.~~
- 3.** A service that is ordinarily nonskilled shall be considered a skilled service where, because of medical complications, its performance or supervision or the observation of the patient necessitates the use of skilled nursing or skilled rehabilitation personnel. For example, the existence of a plaster cast on an extremity generally does not indicate a need for skilled care, but a patient with a preexisting acute skin problem or with a need for special traction of the injured extremity might need to have technical or professional personnel properly adjust traction or observe the patient for complications. In these cases, the complications and special services involved shall be documented by ~~physician's~~ the provider's orders and nursing or therapy notes.

SECTION 81. DHS 107.09 (4) (f) 2. a. and b. are amended to read:

DHS 107.09 (4) (f) 2. a. Overall management and evaluation of the care plan. The development, management and evaluation of a patient care plan based on the ~~physician's~~ provider's orders constitute skilled services when, in terms of the patient's physical or mental condition, the development, management and evaluation necessitate the involvement of technical or professional personnel to meet needs, promote recovery and actuate medical safety. This includes the management of a plan involving only a variety of personal care services where in light of the patient's condition the aggregate of the services necessitates the involvement of technical or professional personnel. Skilled planning and management activities are not always specifically identified in the patient's clinical record. In light of this, where the patient's overall condition supports a finding that recovery or safety can be assured only if the total care required is planned, managed, and evaluated by technical or professional personnel, it is appropriate to infer that skilled services are being provided;.

b. Observation and assessment of the patient's changing condition. When the patient's condition is such that the skills of a nurse or other technical or professional person are required to identify and evaluate the patient's need for possible modification of treatment and the initiation of additional medical procedures until the patient's condition is stabilized, the services constitute skilled nursing or rehabilitation services. Patients who in addition to their physical problems exhibit acute psychological symptoms such as depression, anxiety or agitation may also require skilled observation and assessment by technical or professional personnel for their safety and the safety of others. In these cases, the special services required shall be documented by a ~~physician's~~ provider's orders or nursing or therapy notes; ~~and~~.

SECTION 82. DHS 107.09 (4) (g) 1. a., 2. (intro.) and a. and b., 3. (intro.) and a. to e., and 4. are amended to read:

DHS 107.09 (4) (g) 1. a. Considered appropriate by the department and provided by a Christian Science sanatorium either operated by or listed and certified by the First Church of Christ Scientist, Boston, Mass.; ~~or~~.

DHS 107.09 (4) (g) 2. Intermediate care services may include services provided in an institution for developmentally disabled persons if all of the following criteria are satisfied:

a. The primary purpose of the institution is to provide health or rehabilitation services for developmentally disabled persons;.

b. The institution meets the standards in s. DHS 105.12; ~~and~~.

DHS 107.09 (4) (g) 3. Intermediate care services may include services provided in a distinct part of a facility other than an intermediate care facility if the distinct part meets all of the following criteria:

a. Meets all requirements for an intermediate care facility;.

b. Is an identifiable unit, such as an entire ward or contiguous ward, a wing, a floor, or a building;.

c. Consists of all beds and related facilities in the unit;.

d. Houses all recipients for whom payment is being made for intermediate care facility services, except as provided in subd. 4;.

e. Is clearly identified; ~~and~~.

DHS 107.09 (4) (g) 4. If the department includes as intermediate care facility services those services provided by a distinct part of a facility other than an intermediate care facility, it may not require transfer of a recipient within or between facilities if, in the opinion of the attending ~~physician~~ provider acting within the scope of the provider's practice, transfer might be harmful to the physical or mental health of the recipient.

SECTION 83. DHS 107.09 (4) (j) 1. a. to f. are amended to read:

DHS 107.09 (4) (j) 1. a. The facility's occupancy level meets the requirements for bedhold reimbursement under the nursing home reimbursement formula. The facility shall maintain adequate records regarding occupancy and provide these records to the department upon request;.

b. For bedholds resulting from hospitalization of a recipient, reimbursement shall be available for a period not to exceed 15 days for each hospital stay. There is no limit on the number of stays per year. No recipient may be administratively discharged from the nursing home unless the recipient remains in the hospital longer than 15 days;.

c. The first day that a recipient is considered absent from the home shall be the day the recipient leaves the home, regardless of the time of day. The day of return to the home does not count as a bedhold day, regardless of the time of day;.

d. A staff member designated by the nursing home administrator, such as the director of nursing service or social service director, shall document the recipient's absence in the recipient's chart and shall approve in writing each leave;.

e. Claims for bedhold days may not be submitted when it is known in advance that a recipient will not return to the facility following the leave. In the case where the recipient dies while hospitalized, or where the facility is notified that the recipient is terminally ill, or that due to changes in the recipient's condition the recipient will not be returning to the facility, payment may be claimed only for those days prior to the recipient's death or prior to the notification of the recipient's terminal condition or need for discharge to another facility;.

f. For bedhold days for therapeutic visits or for participation in therapeutic/rehabilitative programs, the recipient's ~~physician~~ provider acting within the scope of the provider's practice shall record approval of the leave in ~~the physician's~~ that provider's plan of care. This statement shall include the rationale for and anticipated goals of the leave as well as any limitations regarding the frequency or duration of the leave; ~~and~~.

SECTION 84. DHS 107.09 (4) (m) (title), 1., 2. (intro). and a. and b. are amended to read:

DHS 107.09 (4) (m) ~~Physician certification~~ Certification of need for SNF or ICF inpatient care.

1. A ~~physician~~ provider acting within the scope of the provider's practice shall certify at the time that an applicant or recipient is admitted to a nursing home or, for an individual who applies for MA while in a nursing home before the MA agency authorizes payment, that SNF or ICF nursing home services are or were needed.
2. Recertification shall be performed by a ~~physician, a physician's assistant, or a nurse practitioner under the supervision of a physician~~ provider acting within the scope of the provider's practice as follows:
 - a. Recertification of need for inpatient care in an SNF shall take place 30, 60 and 90 days after the date of initial certification and every 60 days after that;.

b. Recertification of need for inpatient care in an ICF shall take place no earlier than 60 days and 180 days after initial certification, at 12, 18 and 24 months after initial certification, and every 12 months after that; ~~and.~~

SECTION 85. DHS 107.09 (4) (n) 1. (intro.), a., and 3. are amended to read:

DHS 107.09 (4) (n) **1.** Before a recipient is admitted to an SNF or before payment is authorized for a resident who applies for MA, the attending ~~physician~~ provider acting within the scope of the provider's practice shall do all of the following:

a. Undertake a medical evaluation of each applicant's or recipient's need for care in the SNF; ~~and.~~

DHS 107.09 (4) (n) **3.** Each medical evaluation shall include: diagnosis, summary of present medical findings, medical history, documentation of mental and physical status and functional capacity, prognosis, and a recommendation by the ~~physician~~ provider acting within the scope of the provider's practice concerning admission to the SNF or continued care in the SNF.

SECTION 86. DHS 107.09 (4) (q) (title) and 1. to 4. are amended to read:

DHS 107.09 (4) (q) ~~Physician's plan~~ Plan of care for SNF or ICF resident.

1. The level of care and services to be received by a recipient from the SNF or ICF shall be documented in the physician's plan of care by the attending physician and approved by the department. The ~~physician's~~ plan of care shall be submitted to the department whenever the recipient's condition changes.

2. A physician's plan of care shall be required at the time of application by a nursing home resident for MA benefits. If a physician's plan of care is not submitted to the department by the nursing home at the time that a resident applies for MA benefits, the department shall not certify the level of care of the recipient until the ~~physician's~~ plan of care has been received. Authorization shall be covered only for the period of 2 weeks prior to the date of submission of the physician's plan of care.

3. The physician's plan of care shall include diagnosis, symptoms, complaints and complications indicating the need for admission; a description of the functional level of the individual; objectives; any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services or diet, or special procedures recommended for the health and safety of the patient; plans for continuing care, including review and modification to the plan of care; and plans for discharge.

4. The attending or staff physician and a physician assistant and other personnel involved in the recipient's care shall review the physician's plan of care at least every 60 days for SNF recipients and at least every 90 days for ICF recipients.

SECTION 87. DHS 107.09 (4) (r) (intro.) and 1. are amended to read:

DHS 107.09 (4) (r) *Reports of evaluations and plans of care - ICF and SNF.* A written report of each evaluation and the ~~physician's~~ plan of care shall be made part of the applicant's or recipient's record at one of the following:

1. ~~At the~~ The time of admission; ~~or.~~

SECTION 88. DHS 107.10 (1) (Note 2) is repealed.

SECTION 89. DHS 107.10 (3) (e) is amended to read:

DHS 107.10 **(3) (e)** The following drugs may be dispensed in amounts up to but not to exceed a 100-day supply, as prescribed by a physician-provider listed in sub. (1):

SECTION 90. DHS 107.11 (2m) (b) and (d), and (4) (e) are amended to read:

DHS 107.11 **(2m) (b)** Based on the assessment by the recipient's physician-referring provider acting within the scope of the provider's practice of the recipient's rehabilitation potential, services provided under sub. (2) are expected to materially improve the recipient's condition within a reasonable, predictable time period, or are necessary to establish a safe and effective maintenance program for the recipient.

DHS 107.11 **(2m) (d)** The therapist or speech pathologist shall provide a summary of activities, including goals and outcomes, to the referring physician-provider acting within the scope of the provider's practice at least every 62 days, and upon conclusion of therapy services

DHS 107.11 **(4) (e)** An intake evaluation is a covered home health skilled nursing service only if, during the course of the initial visit to the recipient, the recipient is admitted into the agency's care and covered skilled nursing services are performed according to the written physician's orders of the referring provider acting within the scope of the provider practice's during the visit.

SECTION 91. DHS 107.11 (6) (a) and (b) 1, 2., 3. (intro.) and a. to d., 4., and 5. a. are amended to read:

DHS 107.11 **(6) (a) Definition.** In this subsection, "part-time, intermittent care" means skilled nursing services provided in a recipient's home outside of a hospital or nursing home under a plan of care which requires less than 8 hours of skilled care in a calendar day.

DHS 107.11 **(6) (b) 1.** Part-time, intermittent nursing care may be provided by an independent nurse certified under s. DHS 105.19 when an existing home health agency cannot provide the services as appropriately documented by the nurse, and the physician's provider's acting within the scope of the provider's practice's prescription specifies that the recipient requires less than 8 hours of skilled nursing care per calendar day and calls for a level of care which the nurse is licensed to provide as documented to the department.

2. Services provided by an MA-certified registered nurse are those services prescribed by a physician provider acting within the scope of the provider's practice which comprise the practice of professional nursing as described under s. 441.001 (4), Stats., and s. N 6.03. Services provided by an MA-certified licensed practical nurse are those services which comprise the practice of practical nursing under s. 441.001 (3), Stats., and s. N 6.04. An LPN may provide nursing services delegated by an RN as delegated nursing acts under the requirements of ss. N 6.03 and 6.04 and guidelines established by the state board of nursing.

3. A written plan of care shall be established for every recipient admitted for care and shall be signed by the physician-referring provider acting within the scope of the provider's practice and incorporated into the recipient's medical record. A written plan of care shall be developed by the registered nurse or therapist within 72 hours after acceptance. The written plan of care shall be

developed by the registered nurse or therapist in consultation with the recipient and the recipient's ~~physician-referring provider acting within the scope of the provider's practice~~ and shall be signed by the ~~physician-referring provider acting within the scope of the provider's practice~~ within 20 working days following the recipient's admission for care. The written plan of care shall include, in addition to the medication and treatment orders, all of the following information:

- a. Measurable time-specific goals;
 - b. Methods for delivering needed care, and an indication of which, if any, professional disciplines are responsible for delivering the care;
 - c. Provision for care coordination by an RN when more than one nurse is necessary to staff the recipient's case;
 - d. Identification of all other parties providing care to the recipient and the responsibilities of each party for that care; ~~and.~~
4. The written plan of care shall be reviewed, signed and dated by the recipient's ~~physician~~ referring provider acting within the scope of the provider's practice as often as required by the recipient's condition but at least every 62 days. The RN shall promptly notify the physician of any change in the recipient's condition that suggests a need to modify the plan of care.
- 5.
- a. Except as provided in subd. 5. b., drugs and treatment shall be administered by the RN or LPN only as ordered by the recipient's ~~physician or his or her designee-referring medical provider~~. The nurse shall immediately record and sign oral orders and shall obtain the physician's countersignature within 10 working days.

SECTION 92. DHS 107.112 (1) (a) is amended to read:

DHS 107.112 (1) (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a ~~physician by a~~ provider acting within the scope of the provider's practice, and provided by a personal care provider certified under s. DHS 105.17 ~~and by or~~ a personal care worker employed by the personal care provider or under contract ~~to~~ with the personal care provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

SECTION 93. DHS 107.112 (3) (b) (intro.) and 1. to 3. are amended to read:

DHS 107.112 (3) (b) Services shall be performed according to a written plan of care for the recipient developed by a registered nurse for purposes of providing necessary and appropriate services, allowing appropriate assignment of a personal care worker and setting standards for personal care activities, giving full consideration to the recipient's preferences for service arrangements and choice of personal care workers. The plan shall be based on the registered nurse's visit to the recipient's home and shall include all of the following:

1. Review and interpretation of the ~~physician's~~ referring provider acting within the scope of the provider's practice;

2. Frequency and anticipated duration of service;
3. Evaluation of the recipient's needs and preferences; ~~and~~.

SECTION 94. DHS 107.112 (3) (c) is amended to read:

DHS 107.112 **(3) (c)** Review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker shall be made by a registered nurse at least every 60 days. The review shall include a visit to the recipient's home, review of the personal care worker's daily written record and discussion with the ~~physician~~ referring provider acting within the scope of the provider's practice of any necessary changes in the plan of care.

SECTION 95. DHS 107.113 (1) (a) is amended to read:

DHS 107.113 **(1) (a)** Services, medical supplies and equipment necessary to provide life support for a recipient who has been hospitalized for at least 30 consecutive days for his or her respiratory condition and who is dependent on a ventilator for at least 6 hours per day shall be covered services when these services are provided to the recipient ~~in the recipient's home~~ outside of a hospital or nursing home.

SECTION 96. DHS 107.113 (5) (e) is repealed.

SECTION 97. DHS 107.122 (1) (intro.) is amended to read:

DHS 107.122 **(1)** COVERED SERVICES. Services provided by a nurse practitioner, including a clinical nurse specialist, which are covered by the MA program are those medical services delegated by a ~~licensed physician~~ provider acting within in the scope of the provider's practice by a written protocol developed with the nurse practitioner pursuant to the requirements set forth in s. N 6.03 (2) and guidelines set forth by the medical examining board and the board of nursing. General nursing procedures are covered services when performed by a certified nurse practitioner or clinical nurse specialist in accordance with the requirements of s. N 6.03 (1). These services may include those medically necessary diagnostic, preventive, therapeutic, rehabilitative or palliative services provided in a medical setting, the recipient's home or elsewhere. Specific reimbursable delegated medical acts and nursing services are the following:

SECTION 98. DHS 107.13 (1) (a), (b) 1. and 2. (intro.) and a., 3. a. and b., 5. d., 6. a., 7. (title) and a. are amended to read:

DHS 107.13 **(1) (a)** *Covered services.* Inpatient hospital mental health and AODA care shall be covered when prescribed by a ~~physician~~ provider acting within the scope of the provider's practice and when provided within a hospital institution for mental disease (IMD) which is certified under ss. DHS 105.07 and 105.21, except as provided in par. (b).

DHS 107.13 **(1) (b) 1.** 'Definition.' In this paragraph, "individual plan of care" or "plan of care" means a written plan developed for each recipient under 21 years of age who receives inpatient hospital mental health or AODA care in a hospital IMD for the purpose of improving the recipient's condition to the extent that inpatient care is no longer necessary.

2. 'General conditions.' Inpatient hospital mental health and AODA care provided in a hospital IMD for recipients under age 21 shall be provided under the direction of a ~~physician~~ provider

acting within the scope of the provider's practice and, if the recipient was receiving the services immediately before reaching age 21, coverage shall extend to the earlier of the following:

- a. The date the recipient no longer requires the services;~~or,~~

DHS 107.13 **(1) (b) 3. a.** For recipients under age 21 receiving services in a hospital IMD, a team specified in subd. 3. b. shall certify that ambulatory care resources do not meet the treatment needs of the recipient, proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a ~~physician~~ provider acting within the scope of the provider's practice and the services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will be needed in reduced amount or intensity or no longer be needed. The certification specified in this subdivision satisfies the requirement for physician certification in subd. 7. In this subparagraph, "ambulatory care resources" means any covered service except hospital inpatient care or care of a resident in a nursing home.

b. Certification under subd. 3. a. shall be made for a recipient when the person is admitted to a facility or program by an independent team that includes a ~~physician~~ provider acting within the scope of the provider's practice. The team shall have competence in diagnosis and treatment of mental illness, preferably in child psychology, and have knowledge of the recipient's situation.

DHS 107.13 **(1) (b) 5. d.** The development and review of the plan of care under this subdivision shall satisfy the utilization control requirements for ~~physician~~ certification by a provider acting within the scope of the provider's practice and establishment and periodic review of the plan of care.

DHS 107.13 **(1) (b) 6. a.** Before a recipient is admitted to a psychiatric hospital or before payment is authorized for a patient who applies for MA, the attending ~~physician~~ or staff ~~physician~~ provider acting within the scope of the provider's practice shall make a medical evaluation of each applicant's or recipient's need for care in the hospital, and appropriate professional personnel shall make a psychiatric and social evaluation of the applicant's or recipient's need for care.

DHS 107.13 **(1) (b) 7.** ~~'Physician-Medical provider certification.'~~

a. A ~~physician~~ provider acting within the scope of the provider's practice shall certify and recertify for each applicant or recipient that inpatient services in a psychiatric hospital are or were needed.

SECTION 99. DHS 107.13 (1) (b) 8. (title) and (a) are consolidated, renumbered DHS 107.13 (1) (b) 8. (intro.) and amended to read:

DHS 107.13 **(1) (b) 8.** ~~'Physician's plan~~ Plan of care. Before a recipient is admitted to a psychiatric hospital or before payment is authorized, the attending ~~physician~~ or staff ~~physician~~ provider acting within the scope of the provider's practice shall document and sign a written plan of care for the recipient or applicant. The ~~physician's~~ plan of care shall include ~~diagnosis, symptoms, complaints and complications indicating the need for admission; a description of the functional level of the individual; objectives; any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet or special procedures~~

~~recommended for the health and safety of the patient; plans for continuing care, including review and modification to the plan of care; and plans for discharge.~~ all of the following:

SECTION 100. DHS 107.13 (1) (b) 8. a. to f. are created to read:

DHS 107.13 **(1) (b) 8. a.** Diagnosis, symptoms, complaints and complications indicating the need for admission.

b. A description of the functional level of the individual.

c. Objectives of the plan of care.

d. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet or special procedures recommended for the health and safety of the patient.

e. Plans for continuing care, including review and modification to the plan of care.

f. Plans for discharge.

SECTION 101. DHS 107.13 (1) (b) 8. b. is renumbered DHS 107.13 (1) (b) 8m. and amended to read:

DHS 107.13 **(1) (b) 8m.** 'Plan of care review.' The attending or staff ~~physician~~ provider acting within the scope of the provider's practice and other personnel involved in the recipient's care shall review each plan of care at least every 30 days.

SECTION 102. DHS 107.13 (1) (f) 5. is amended to read:

DHS 107.13 **(1) (f) 5.** Psychotherapy or ~~AODA-SUD~~ treatment services when separately billed and performed by masters level therapists or ~~AODA-substance use~~ counsellors certified under s. DHS 105.22 or 105.23;

SECTION 103. DHS 107.13 (3) (title), (a) 1. to 6., and (c) 1. and 3. are amended to read:

DHS 107.13 **(3) (a) 1.**;

2. Before being enrolled in an alcohol or drug abuse treatment program, the recipient receives a complete medical evaluation, including diagnosis, summary of present medical findings, medical history and explicit recommendations by the ~~physician~~ provider acting within the scope of the provider's practice for participation in the alcohol or other drug abuse treatment program. A medical evaluation performed for this purpose within 60 days prior to enrollment shall be valid for reenrollment;

3. The supervising ~~physician~~ provider acting within the provider's scope of practice or psychologist develops a treatment plan which relates to behavior and personality changes being sought and to the expected outcome of treatment;

SECTION 104. DHS 107.13 (4) (a) (intro.), (b) 1. a. to d., and (d) 1. to 7. Are amended to read:

DHS 107.13 **(4) (a) Covered services.** Day treatment or day hospital services are covered services when ~~prescribed by a physician~~ provided by a provider acting within the scope of the provider's practice, when provided by a provider who meets the requirements of s. DHS 105.24, and when the following conditions are met:

SECTION 105. DHS 107.13 (6) (a) (intro.) is amended to read:

DHS 107.13 **(6) (a) Covered services.** Community support program ~~(CSP)~~ services shall be covered services when prescribed by a ~~physician~~ medical provider acting within the scope of the provider's practice and provided by a provider certified under s. DHS 105.255 for recipients who can benefit from the services. These non-institutional services make medical treatment and related care and rehabilitative services available to enable a recipient to better manage the symptoms of his or her illness, to increase the likelihood of the recipient's independent, effective functioning in the community and to reduce the incidence and duration of institutional treatment otherwise brought about by mental illness. Services covered are as follows:

SECTION 106. DHS 107.16 (1) (a) is amended to read:

DHS 107.16 **(1) (a) General.** Covered physical therapy services are those medically necessary modalities, procedures and evaluations enumerated in pars. (b) to (d), when prescribed by a ~~physician~~ provider acting within the scope of the provider's practice and performed by a qualified physical therapist (PT) or a certified physical therapy assistant under the supervision of a physical therapist pursuant to s. PT 5.01. Specific services performed by a physical therapy aide under par. (e) are covered when provided in accordance with supervision requirements under par. (e) 3.

SECTION 107. DHS 107.16 (1) (b) 40. is created to read:

DHS 107.16 **(1) (b) 40.** Diagnostic imaging as described in ss. 49.46 (2) (a) 4. e. and 448.56 (7), Stats.

SECTION 108. DHS 107.16 (3) (a) (intro.) and 1. and 2. are amended to read:

DHS 107.16 **(3) (a) Plan of care for therapy services.** ~~Services shall be furnished to a recipient under a plan~~ A plan of care for therapy service shall be established and periodically reviewed by a ~~physician~~ provider acting within the scope of the provider's practice. The plan shall be reduced to writing before treatment is begun, either by the physician who makes the plan available to the provider or by the provider of therapy when the provider makes a written record of the physician's oral orders begins. When the ordering provider is not the rendering provider, the plan shall be promptly signed by the ordering ~~physician~~ provider and incorporated into the rendering provider's permanent record for the recipient. The plan shall:

1. State the type, amount, frequency and duration of the therapy services that are to be furnished the recipient and shall indicate the diagnosis and anticipated goals. Any changes shall be made in writing and signed by ~~the physician, the provider of therapy services or the physician on the staff of the provider pursuant to the attending physician's oral orders; and~~ acting within the scope of the provider's practice.
2. Be reviewed by ~~the attending physician in consultation with the therapist providing services, a~~ provider acting within the scope of the provider's practice at whatever intervals the severity of the recipient's condition requires, but at least every 90 days. Each review of the plan shall be indicated on the plan by the initials of the ~~physician and the date performed~~ provider acting within the scope of the provider's practice. The plan for the recipient shall be retained in the rendering provider's file.

SECTION 109. DHS 107.17 (1) (intro.) is amended to read:

DHS 107.17 (1) COVERED SERVICES. Covered occupational therapy services are the following medically necessary services when prescribed by a physician provider acting within the scope of the provider's practice, in accordance with s. 49.46 (2) (a) 4. or (2) (b) 6., Stats., and performed by a certified occupational therapist (OT) or by a certified occupational therapist assistant (~~COTA~~) under the direct, immediate, on-premises supervision of a certified occupational therapist or, for services under par. (d), by a certified occupational therapist assistant under the general supervision of a certified occupational therapist pursuant to the requirements of s. DHS 105.28 (2):

SECTION 110. DHS 107.17 (3) (a) (intro.) and 1. and 2. are amended to read:

DHS 107.17 (3) (a) *Plan of care for therapy services.* ~~Services shall be furnished to a recipient under a plan~~ A plan of care for therapy service shall be established and periodically reviewed by a physician provider acting within the scope of the provider's practice. The plan shall be reduced to writing before treatment is begun, ~~either by the physician who makes the plan available to the provider or by the provider of therapy when the provider makes a written record of the physician's oral orders begins.~~ When the ordering provider is not the rendering provider, the plan shall be promptly signed by the ordering physician-provider and incorporated into the rendering provider's permanent record for the recipient. The plan shall:

1. State the type, amount, frequency, and duration of the therapy services that are to be furnished the recipient and shall indicate the diagnosis and anticipated goals. Any changes shall be made in writing and signed by the physician, the a provider of therapy services or the physician on the staff of the provider pursuant to the attending physician's oral orders; and acting within the scope of the provider's practice.
2. Be reviewed by the attending physician in consultation with the therapist providing services, a provider acting within the scope of the provider's practice at whatever intervals the severity of the recipient's condition requires, but at least every 90 days. Each review of the plan shall be indicated on the plan by the initials of the physician and the date performed provider acting within the scope of the provider's practice. The plan for the recipient shall be retained in the rendering provider's file.

SECTION 111. DHS 107.18 (1) (a) is amended to read:

DHS 107.18 (1) (a) *General.* Covered speech and language pathology services are those medically necessary diagnostic, screening, preventive or corrective speech and language pathology services prescribed by a physician provider acting within the scope of the provider's practice and provided by a certified speech and language pathologist or under the direct, immediate on-premises supervision of a certified speech and language pathologist.

SECTION 112. DHS 107.18 (3) (a) (intro.), 1. and 2. are amended to read:

DHS 107.18 (3) (a) *Plan of care for therapy services.* ~~Services~~ A plan of care for therapy services shall be furnished to a recipient under a plan of care established and periodically reviewed by a physician provider acting within the scope of the provider's practice. The plan shall be reduced to writing before treatment is begun, ~~either by the physician who makes the plan available to the provider or by the provider of therapy when the provider makes a written record of the physician's oral orders begins.~~ The When the ordering provider is not the rendering provider, the plan shall be promptly signed

reviewed and approved by the ordering-physician-provider and incorporated into the rendering provider's permanent record for the recipient. The plan shall:

1. State the type, amount, frequency, and duration of the therapy services that are to be furnished the recipient and shall indicate the diagnosis and anticipated goals. Any changes shall be made in writing and signed by the physician or by the provider of therapy services or physician on the staff of the provider pursuant to the attending physician's oral orders; and a provider acting within the scope of the provider's practice.
2. Be reviewed by the attending-physician a provider acting within the scope of the provider's practice, in consultation with the therapist providing services, at whatever intervals the severity of the recipient's condition requires but at least every 90 days. Each review of the plan shall contain the initials of the physician provider acting within the scope of the provider's practice and the date performed. The plan for the recipient shall be retained in the rendering provider's file.

SECTION 113. DHS 107.19 (1) (intro.), (3) (a) (intro.), 1. and 2. are amended to read:

DHS 107.19 **(1) COVERED SERVICES.** Covered audiology services are those medically necessary diagnostic, screening, preventive or corrective audiology services prescribed by a physician provider acting within the scope of the provider's practice and provided by an audiologist certified pursuant to s. DHS 105.31. These services include:

DHS 107.19 **(3) (a) *Plan of care for therapy services.*** ~~Services~~ A plan of care for therapy services shall be furnished to a recipient under a plan of care established and periodically reviewed by a physician provider acting within the scope of the provider's practice. The plan shall be reduced to writing before treatment is begun, either by the physician who makes the plan available to the provider or by the provider of therapy when the provider makes a written record of the physician's oral orders begins. ~~The~~ When the ordering provider is not the rendering provider, the plan shall be promptly signed reviewed and approved by the ordering-physician-provider and incorporated into the rendering provider's permanent record for the recipient. The plan shall:

1. State the type, amount, frequency, and duration of the therapy services that are to be furnished the recipient and shall indicate the diagnosis and anticipated goals. Any changes shall be made in writing and signed by the physician or by the provider of therapy services or physician on the staff of the provider pursuant to the attending physician's oral orders; and a provider acting within the scope of the provider's practice.
2. Be reviewed by the attending-physician a provider acting within the scope of the provider's practice, in consultation with the therapist providing services, at whatever intervals the severity of the recipient's condition requires but at least every 90 days. Each review of the plan shall contain the initials of the physician provider acting within the scope of the provider's practice and the date performed. The plan for the recipient shall be retained in the rendering provider's file.

SECTION 114. DHS 107.21 (1) (a) is amended to read:

DHS 107.21 **(1) (a) *General.*** Covered family planning services are the services included in this subsection when prescribed by a physician provider acting within the scope of the provider's practice and provided to a recipient, including initial physical exam and health history, annual office visits and follow-up office visits, laboratory services, prescribing and supplying contraceptive supplies and devices, counseling services and prescribing medication for specific treatments. All family planning services performed in family planning clinics shall be prescribed and rendered by a physician

provider acting within the scope of the provider's practice, and ~~furnished~~, directed or supervised by a physician, registered nurse, nurse practitioner, licensed practical nurse or nurse midwife under s. 441.15 (1) and (2) (b), Stats.

SECTION 115. DHS 107.24 (1) is repealed and recreated to read:

DHS 107.24 (1) DEFINITION. In this section:

- (a) "DME" means durable medical equipment.
- (b) "Medical supplies" means disposable, consumable, expendable or nondurable medically necessary supplies which have a very limited life expectancy. Examples are plastic bed pans, catheters, electric pads, hypodermic needles, syringes, continence pads and oxygen administration circuits.
- (c) "Qualified health care professional" means any of the following:
 - 1. A physician licensed under subch. II of ch. 448, Stats.
 - 2. A physician assistant licensed under subch. IX of ch. 448, Stats.
 - 3. A physical therapist licensed under subch. [III of ch. 448](#), Stats.
 - 4. An occupational therapist licensed under subch. [VII of ch. 448](#), Stats.
 - 5. A chiropractor licensed under ch. [446](#), Stats.
 - 6. A nurse midwife licensed under s. 441.15, Stats., and acting within the scope of their practice
 - 7. An advanced practice nurse prescriber certified under s. 441.16, Stats.
 - 8. A pharmacist licensed under s. 450.03, Stats., acting in accordance with ch. 450.033, Stats., and ch. Phar 7.

SECTION 116. DHS 107.24 (2) (a) 1. and 2., (b), (3) (h) 1. (intro.), and (4) (c) 2. (intro.) are amended to read:

- DHS 107.24 (2) (a) 1. Durable medical equipment (~~DME~~) and medical supplies, excluding complex rehabilitation technology identified in subd. 2., are covered services only when prescribed by a ~~physician~~ provider acting within the scope of the provider's practice and when provided by a qualified provider acting within the scope of the provider's practice, clinic, hospital outpatient department, nursing home, pharmacy, home health agency, therapist, orthotist, prosthetist, hearing instrument specialist or medical equipment vendor.
2. Complex rehabilitation manual wheelchairs, power wheelchairs, and other seating components identified in the Wisconsin DME and medical supplies indices are covered services only when prescribed by a ~~physician~~ provider acting within the scope of the provider's practice and when provided by a qualified complex rehabilitation technology supplier.
- (b) *Items covered.* Covered services are limited to items contained in the Wisconsin ~~durable medical equipment (DME)~~ DME and medical supplies indices. Items prescribed by a ~~physician~~ provider acting within the scope of the provider's practice which are not contained in one of these indices or in the listing of non-covered services in sub. (5) require submittal of a DME additional request. Should the item be deemed covered, a prior authorization request may be required.

- DHS 107.24 (3) (h) 1. A request for prior authorization of a hearing aid or other ALD shall be reviewed only if the request consists of an otological report from the ~~recipient's physician~~ a provider acting within the scope of the provider's practice and an audiological report from an audiologist or hearing instrument specialist, is on forms designated by the department and contains all information requested by the department. A hearing instrument specialist may perform an

audiological evaluation and a hearing aid evaluation to be included in the audiological report if these evaluations are prescribed by a physician provider acting within the scope of the provider's practice who determines all of the following:

DHS 107.24 **(4) (c) 2.** Durable medical equipment which is personalized in nature or custom-made for a recipient and is to be used by the recipient on an individual basis for hygienic or other reasons. These items are orthoses, prostheses including hearing aids or other assistive listening devices, orthopedic or corrective shoes, and complex rehabilitation technology. For coverage and reimbursement complex rehabilitation technology shall be prescribed by a physician provider acting within the scope of the provider's practice require prior authorization to establish medically necessity, and meet all complex rehabilitation standards under sub. (3) (i). In order to be covered for a recipient who is a nursing home resident, the complex rehabilitation technology shall do at least one of the following:

SECTION 117. DHS 107.25 (1) and (2) (a) are amended to read:

DHS 107.25 **(1)** COVERED SERVICES. Professional and technical diagnostic services covered by MA are laboratory services provided by a certified physician or under the physician's supervision, or prescribed by a physician provider acting within the scope of the provider's practice and provided by an independent certified laboratory, and x-ray services prescribed by a physician provider acting within the scope of the provider's practice and provided by or under the general supervision of a certified physician.

DHS 107.25 **(2) (a)** All diagnostic services shall be prescribed or ordered by a physician or dentist provider acting within the scope of the provider's practice.

SECTION 118. DHS 109.31 (1) is renumbered DHS 109.31 (1) (intro.) and amended to read:

DHS 109.31 **(1)** COVERED SERVICES. Drugs and drug products covered under this chapter include prescription drugs and insulin listed in the Wisconsin medical assistance drug index that are prescribed by ~~a physician licensed under s. 448.04, Stats., by a dentist licensed under s. 447.04, Stats., by a podiatrist licensed under s. 448.04, Stats., by an optometrist licensed under ch. 449, Stats., or by a nurse prescriber under ch. N 8, or when a physician delegates prescription of drugs to a nurse practitioner or to a physician's assistant certified under s. 448.04, Stats., and the requirements under s. N 6.03 for nurse practitioners and under s. Med 8.07 for physician assistants are met. The limitations on coverage and services in this section apply to co-pay, spend down and deductible.~~ any of the following:

SECTION 119. DHS 109.31 (1) (a) to (g) are created to read:

DHS 109.31 **(1) (a)** A physician licensed under s. 448.04, Stats.

(b) A dentist licensed under s. 447.04, Stats.

(c) A podiatrist licensed under s. 448.61, Stats.

(d) An optometrist licensed under s. 449.02, Stats.

(e) An advanced practice nurse prescriber certified under s. 441.16, Stats.

(f) A physician assistant licensed under s. 448.972, Stats.

(g) A pharmacist licensed under s. 450.03, Stats., acting in accordance with ch. 450.033, Stats.

SECTION 120. DHS 109.31 (1m) is created to read:

DHS 109.31 **(1m)** LIMITATIONS. The limitations on coverage and services in this section apply to co-pay, spend-down and deductible.

SECTION 121. DHS 118 Appendix A row 2. (m) is repealed.

SECTION 122. DHS 118 Appendix A, row 6. (c) (1) is amended to read:

6.	Clinical Functions: General Surgery		
... (c)	III required, IV if the TCF provides general surgical services for trauma patients	... (1) Completion of a residency training program in general surgery , with the time period consistent with years of training in the United States. The completion of a residency training program must be evidenced by a certified letter from the program director.	2

SECTION 123. DHS 118 Appendix A, row 7. (e) (1) is amended to read:

7.	Clinical Functions: Emergency Medicine		
... (e)	III, IV	... (1) Completion of a residency training program in emergency medicine , with the time period consistent with years of training in the United States. The completion of a residency training program must be evidenced by a certified letter from the program director	2

SECTION 124. DHS 118 Appendix A, row 8. (i) (1) is amended to read:

8.	Clinical Functions: Neurosurgery		
... (i)	III if the TCF provides neurosurgery for trauma patients, IV if the TCF provides neurosurgery for trauma patients	... (1) Completion of a residency training program in neurosurgery , with the time period consistent with years of training in the United States. The completion of a residency training program must be evidenced by a certified letter from the program director	2

SECTION 125. DHS 118 Appendix A, row 9. (i) (1) is amended to read:

9.	Clinical Functions: Orthopedic Surgery		
... (i)	III required, IV if the TCF provides orthopedic surgery for trauma patients	... (1) Completion of a residency training program in orthopedic surgery , with the time period consistent with years of training in the United States. The completion of a residency training program must be evidenced by a certified letter from the program director.	2

SECTION 126. DHS 118 Appendix A, row 10. (b) (18) is amended to read:

10.	Description of Trauma Care Facilities and Their Roles in a Trauma Care System		
... (b)	III, IV	... (18) Laryngeal mask airway: <u>Supraglottic airway</u> sizes 1.5, 2, 2.5, and 3.	2

SECTION 127. DHS 118 Appendix A, row 11. (xm) is amended to read:

11.	Collaborative Clinical Services		
... (xm)	III	The TCF's blood bank must have an adequate supply of packed red blood cells and fresh frozen plasma available within 15-20 minutes.	1

SECTION 128. DHS 118 Appendix A, row 11. (z) is repealed.

SECTION 129. DHS 124.06 is repealed

SECTION 130. DHS 127.02 (3) is amended to read:

DHS 127.02 (3) "Applicant" means a person or persons who apply for a license to operate a rural medical center, who ultimately will be responsible for the operation of the rural medical center and legally responsible for decisions and liabilities related to the rural medical center. If a corporation, "applicant" means each person serving as director as indicated under ss. 180.0202 (2) (a) and 181.0202 (2) (a), Stats. If a partnership, "applicant" means persons identified in s. 178.0102 (11), Stats. If a limited partnership, "applicant" means persons identified in ch. 179, Stats. If a limited liability company, "applicant" means each person organizing the company as identified under s. ~~183.0202 (5)~~ 183.0201 (2) (e), Stats.

SECTION 131. DHS 129.03 (30) (a) 2. And (30m) are amended to read:

DHS 129.03 (3) (a) 2. Any person providing nursing or nursing-related services to clients, regardless of the title under which the person is employed, ~~except individuals in sub. (31).~~

DHS 129.03 (30m) "Nurse aide training program" means an instructional program for a nurse aide that is approved by the department as mandated by s. ~~DHS-146.40 (3) or (3g)~~, Stats.

SECTION 132. DHS 129.04 (3) (intro.) is amended to read:

DHS 129.04 (3) NURSE AIDE TRAINING OR COMPETENCY EVALUATION PROGRAM WAIVER OF PROHIBITION. Pursuant to amendments made to Public Law 105-15, Section 1819 (f) (2) and Section 1919 (f) (2) of the Social Security Act, and 42 U.S.C. ~~1395i-3~~ 1395i-3 (f) (2) and 42 U.S.C. 1396r (f) (2), the department may authorize a waiver of the 2-year prohibition for approval of training programs or the competency evaluation program offered in but not by a facility under the following circumstances:

SECTION 133. DHS 129.04 (3) (a) (intro.) is renumbered DHS 129.04 (3) and amended to read:

DHS 129.04 (3) (a) No other department-approved program is offered within a reasonable distance of the facility. ~~A reasonable distance means any of the following:~~

SECTION 134. DHS 129.04 (3) (a) 1. to 3. are repealed.

SECTION 135. DHS 129.08 (4) is amended to read:

DHS 129.08 (4) EXAMINATIONS. To be included on the registry under s. DHS 129.09, a student shall successfully pass a Wisconsin-approved nurse aide competency evaluation examination ~~within one year of completing an approved nurse aide training program~~. If a person fails to pass any component of the competency evaluation examination, the individual need only retake the failed component. The person may retake the component failed as many times as needed ~~within the one year time period~~. The competency evaluation program shall ensure that each repeat examination shall differ in content from any examination previously taken by the individual.

SECTION 136. DHS 133.02 (9m) is amended to read:

DHS 133.02 (9m) “Physician assistant” has the meaning given in s. 448.01 ~~(6)~~ 448.971 (2), Stats.

SECTION 137. DHS 133.05 (2) is repealed.

SECTION 138. DHS 133.07 (1) is amended to read:

DHS 133.07 (1) REQUIREMENT. An evaluation of the home health agency's total program shall be conducted at least once a year by the ~~advisory group required by s. DHS 133.05 (2)~~, home health agency staff and consumers.

SECTION 139. DHS 134.83 (7) (b) (intro.) is amended to read:

DHS 134.83 (7) (b) No facility may install a smoke detection system that fails to receive the approval of the department or of the department of ~~industry, labor and human relations~~ safety and professional services. At least one smoke detector shall be located at each of the following locations:

SECTION 140. DHS 134.83 (8) (b) is amended to read:

DHS 134.83 (8) (b) *Sewage disposal*. All sewage shall be discharged into a municipal sewage system, if one is available. Otherwise the sewage shall be collected, treated and disposed of by means of an independent sewage system approved by the department of ~~industry, labor and human relations~~ safety and professional services under applicable state law and by the local authority.

SECTION 141. DHS 163.10 (8) (c) 5. and (Note) are repealed.

SECTION 142. DHS 163.12 (3) (a) 1. e. is amended to read:

DHS 163.12 **(3) (a) 1. e.** The name of ~~an the individual who meets one of the certification requirements~~ authorized representative who signs an affirmation under sub. (2) (d) ~~or the completed regulatory worksheet under sub. (2) (d) 2.~~

SECTION 143. DHS 252.01 is amended to read:

DHS 252.01 **Authority and purpose.** This chapter is promulgated under the authority of s. 49.797 (7), Stats., for the purpose of administering an electronic benefit transfer (~~EBT~~) system for delivery of ~~food stamp~~ FoodShare benefits, ~~as an alternative to issuing food stamp coupons.~~

SECTION 144. DHS 252.02 (1), (3), (5), (6), (8), and (9) are amended to read:

DHS 252.02 **(1)** “Authorized buyer” means an individual designated by a ~~food stamp~~ FoodShare group to have access to the ~~food stamp~~ FoodShare account as a secondary cardholder on behalf of the group.

DHS 252.02 **(3)** “Coupon” means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the ~~food stamp act, as amended,~~ FoodShare program for the purchase of eligible food.

DHS 252.02 **(5)** “EBT” or “electronic benefit transfer” means an electronic system that allows a recipient on-line access to their ~~food stamp~~ FoodShare benefits through the use of a POS device at an FNS-authorized retailer, thereby authorizing the electronic payment of federal funds to the retailer to settle the approved purchase of eligible food items.

(6) “EBT account” means an account established by the department or its EBT vendor on behalf of the ~~food stamp~~ FoodShare group

DHS 252.02 **(8)** “Economic support ~~(ES)~~ agency” or “ES agency” means a county department of social services or human services, a W-2 agency or a tribal agency which administers economic support programs, including ~~food stamps~~ FoodShare.

(9) “FNS” means the food and nutrition service, a subdivision of the United States department of agriculture that has administrative responsibility for the ~~food stamp~~ FoodShare program.

SECTION 145. DHS 252.02 (10) is repealed and recreated to read:

DHS 252.02 (10) “FoodShare” means Wisconsin’s SNAP benefits program, established under s. 49.797, Stats.

SECTION 146. DHS 252.02 (11) and (12) are amended to read:

DHS 252.02 **(11)** “~~Food stamp~~ FoodShare group” means those persons whose financial eligibility for food ~~stamps~~ share is determined together.

(12) “~~Food stamp~~ FoodShare payee” means an individual designated by a responsible member of the food stamp group to receive an EBT card and have access to the food stamp account on behalf of the food stamp group.

SECTION 147. DHS 252.02 (13) is repealed.

SECTION 148. DHS 252.02 (15) is renumbered DHS 252.02 (15) (intro.) and amended to read:

DHS 252.02 (15) "IPV" or "intentional program violation" ~~has the meaning given in 7 CFR 273.16(e), and shall consist of having~~ means when an individual intentionally does either of the following with respect to an application for, or receipt of, FoodShare benefits: ~~a) made a false or misleading statement, or misrepresented, concealed or withheld facts, or b) committed any act that constitutes a violation of the food stamp act, the food stamp share program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, possession or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).~~

SECTION 149. DHS 252.02 (15) (a) and (b) are created to read:

DHS 252.02 (15) (a) makes a false or misleading statement, or misrepresents, conceals, or withholds facts.

(b) commits any act that constitutes a violation of SNAP laws and regulations or any state statute relating to the use, presentation, transfer, acquisition, receipt, possession or trafficking of FoodShare benefits or EBT cards.

SECTION 150. DHS 252.02 (17), (18), and (20) are amended to read:

DHS 252.02 (17) "On-line" means immediate access, via the EBT card, to benefit information stored in a central computer database for the purpose of authorizing ~~electronic food stamp~~ FoodShare transactions at the point of sale.

(18) "PAN" or "primary account number" is the number on the EBT card that is linked to the ~~food stamp~~ share account established on behalf of the ~~food stamp~~ FoodShare group.

DHS 252.02 (20) "Primary person" means the person whose name is listed first on the application form as the person applying for ~~food stamps share~~ share for his or her household.

SECTION 151. DHS 252.02 (24m) is created to read:

252.02 (24m) "SNAP" means the supplemental nutrition and assistance program established under 7 USC 2011 to 2036d and governed by the United States department of agriculture under 7 CFR 271 to 292.

SECTION 152. DHS 252.02 (25) (Note) is repealed.

SECTION 153. DHS 252.03 is amended to read:

DHS 252.03 **Mandatory participation.** All ~~food food stamp~~ FoodShare households in Wisconsin shall participate in the EBT system. The department shall ensure access to the EBT system for special needs groups such as the elderly and disabled.

SECTION 154. DHS 252.04 (1) is amended to read:

DHS 252.04 (1) When a ~~food stamp~~ FoodShare group has been determined eligible for ~~food stamps share~~ share at the economic support agency, the department shall provide an EBT card which allows the ~~food stamp~~

FoodShare group to access ~~food stamp~~ FoodShare benefits in its EBT account. The department shall authorize the card issuer to issue the EBT cards. The card issuer shall mail the card to the ~~food stamp~~ share group. The department shall also require economic support agencies to maintain temporary card issuance capability for emergency issuances. A statement of nondiscrimination shall be included in the mailer that is sent with the card. The department may require a special activation procedure for cards to assure that the rightful ~~food stamp~~ FoodShare group receives the card.

SECTION 155. DHS 252.04 (1) (Note) is repealed.

SECTION 156. DHS 252.06 is amended to read:

DHS 252.06 **Primary cardholder.** The department shall provide one designated EBT card and PIN to the primary person or a designated payee to access the ~~food stamp~~ FoodShare account. The primary person's or designated payee's name and signature shall be on the permanent EBT card. For residents of drug and alcohol treatment centers and group living arrangements, the department may issue the card to a person employed by the facility who is designated as the ~~food stamp~~ FoodShare payee.

SECTION 157. DHS 252.07 is amended to read:

DHS 252.07 **Secondary cardholder.** The department shall provide a card and PIN to an individual designated by the ~~food stamp~~ FoodShare group as an authorized buyer. The authorized buyer's name and signature shall be on the permanent EBT card. The PAN shall be different from that of the primary cardholder but shall be linked to the same ~~food stamp~~ FoodShare account. There shall be a limit of one secondary cardholder per ~~food stamp~~ FoodShare group.

SECTION 158. DHS 252.08 (1) is amended to read:

DHS 152.08 **(1) RECIPIENT RESPONSIBILITY.** The recipient is responsible for protecting the security of his or her EBT card and PIN. Benefits will not be replaced if they are lost or stolen after the recipient gives the card and PIN to another person. The recipient shall report a lost or stolen card or compromised PIN to recipient customer service. When the recipient reports one of these events, the EBT vendor shall immediately disable card access to the ~~food stamp~~ FoodShare account. The department may require that the recipient sign a card and PIN security responsibility statement prior to issuance of benefits via EBT.

SECTION 159. DHS 252.09 (2) (d) (Note) is repealed.

SECTION 160. DHS 252.10 (1) is repealed.

SECTION 161. DHS 252.11 (intro.), (1) (a) and (b) are amended to read:

DHS 252.11 **Vendor deployment of EBT-only POS equipment.** The department will afford all authorized retailers, including non-traditional retailers, the opportunity to participate in the EBT system. By federal regulation, the department may not require authorized retailers to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the EBT vendor or its agent and are utilized solely for ~~food stamp~~ FoodShare benefit issuance. If the vendor or agent must provide equipment to a retailer to afford the opportunity to participate in the EBT system, the following criteria shall apply:

DHS 252.11 (1) (a) The retailer must have \$100 or more per month in ~~food stamp~~ FoodShare redemption activity and have the capability to support operation of the terminal.

SECTION 162. DHS 252.11 (1) (a) (Note) is repealed.

SECTION 163. DHS 252.11 (1) (b) is renumbered DHS 252.11 (1) (b) (intro.) and amended to read:

DHS 252.11 (1) (b) ~~The following POS terminal deployment formula, as specified in 7 CFR 274.12(h)(4)(ii), will be followed: 1) When food stamp redemption activity is 15% or more of total food sales, the retailer shall have POS terminals for all checkout lanes. 2) When food stamp redemption activity is less than 15% of total food sales, designated supermarkets shall have one POS terminal for every \$11,000 in monthly redemption activity up to the number of lanes per store. All other retailers shall have one POS terminal for every \$8,000 in monthly redemption activity. A retailer whose redemption activity qualifies for 3 or more EBT only POS terminals may request an additional POS terminal for use by clients to check their food stamp balance if the terminal is located in a designated area of the store and is available for self-service use by clients. will be as follows:~~

SECTION 164. DHS 252.11 (1) (b) 1., to 3. are created to read:

DHS 252.11 (1) (b) 1. When food share redemption activity is 15% or more of total food sales, the retailer shall have POS terminals for all checkout lanes.

2. When food share redemption activity is less than 15% of total food sales, designated supermarkets shall have one POS terminal for every \$11,000 in monthly redemption activity up to the number of lanes per store.

3. All other retailers shall have one POS terminal for every \$8,000 in monthly redemption activity.

SECTION 165. DHS 252.11 (1) (c) is created to read:

DHS 252.11 (1) (c) A retailer whose redemption activity qualifies for 3 or more EBT-only POS terminals may request an additional POS terminal for use by clients to check their food stamp balance if the terminal is located in a designated area of the store and is available for self-service use by clients.

SECTION 166. DHS 252.11 (3) is amended to read:

DHS 252.11 (3) TELEPHONE LINES. A retailer with average ~~food stamp~~ FoodShare redemptions of at least \$5000 per month may request a dedicated telephone line for exclusive EBT use and the EBT vendor shall install such a line. In providing retailers access to the vendor's system, the EBT vendor shall comply with the regulations in 7 CFR 274.12, ~~as amended and clarified by FNS.~~

SECTION 167. DHS 252.12 (1) and (2) (a) are amended to read:

DHS 252.12 (1) ACCESS BY RECIPIENT. The department shall provide the capability for the cardholder to access the appropriate ~~food stamp~~ FoodShare account in retail food stores authorized by FNS within the Wisconsin EBT project area.

DHS 252.12 **(2) (a)** When paying for eligible food items in a store equipped with a POS terminal, the ~~food stamp~~ FoodShare recipient's card is swiped through the terminal and the recipient enters the PIN to access the ~~food stamp~~ FoodShare account. The system electronically verifies the PIN and the account balance, and sends an authorization or denial back to the retailer. If authorized, the recipient's account is debited for the amount of the purchase. If the total cost of the food items exceeds the balance in the account, the transaction will be denied. The account balance will be provided on the denial receipt. The recipient may then effect a second purchase transaction utilizing the account balance for selected eligible food items.

SECTION 168. DHS 252.13 (1) and (2) and amended to read:

DHS 252.13 **(1) DAILY BENEFITS.** The department shall make daily (initial and supplemental) ~~food stamp~~ FoodShare benefits available to recipients via their EBT account by a specified day and time.

(2) MONTHLY BENEFITS. The department shall make monthly ~~food stamp~~ FoodShare benefits available to recipients via their EBT accounts on a staggered cycle over the first 15 days of the month. The department shall make the daily and monthly schedule available to recipients during EBT implementation and at the time of ~~food stamp~~ FoodShare application.

SECTION 169. DHS 252.15 (2) (d) is amended to read:

DHS 252.15 **(2) (d)** information in obtaining monthly reimbursement of POS supplies (i.e., printer ribbon, tape) used for the processing of ~~food stamp~~ FoodShare transactions. Reimbursement shall be an ACH deposit paid monthly to the retailers for the amount of supplies used. Supply reimbursement shall be calculated based upon the number of EBT transactions performed by the retailer in the previous month.

SECTION 170. DHS 252.16 (1) (Note) and (2) are amended to read:

DHS 252.16 **(1) Note:** This provision varies from federal ~~food stamp~~ SNAP regulations in 7 CFR 274.12 (g)(5)(ii) as allowed by a waiver approved by the U.S. department of agriculture.

(2) The department shall require ES agencies to maintain card issuance capability for emergency card replacement. The department may institute a card replacement fee not to exceed the actual cost to replace the card if the card loss rate is excessive. The fee may be subtracted from the current ~~food stamp~~ FoodShare allotment.

SECTION 171. DHS 252.19 (1) (a) and (b), and (2) are amended to read:

DHS 252.19 **(1) (a)** An individual may be disqualified from the ~~food stamp~~ FoodShare program for an IPV related to fraudulent EBT transactions. IPV is determined by an administrative disqualification hearing, court hearing, or disqualification agreement or waiver as provided in 7 CFR 273.16. An individual found guilty of an IPV is ineligible for one year for the first violation, 2 years for the second violation, and permanently for the third violation or for any violation involving the use of \$500 or more worth of food ~~stamps share benefits~~ for purposes other than which they are intended.

(b) Individuals may be fined, imprisoned or both for ~~food stamp~~ FoodShare offenses as specified in s. 946.92, Stats., depending on the value of the food coupons and whether it is the first, second or subsequent offense.

DHS 252.19 **(2) RETAILER.** ~~A-In accordance with 7 CFR 278.6, a retail food store or authorized wholesale food concern may be disqualified from the food stamp FoodShare program or subjected to a monetary penalty by FNS if the firm fails to handle EBT transactions in compliance for failing to comply with federal food stamp SNAP regulations. FNS may, in lieu of a disqualification, subject the firm to a civil money penalty. Refer to 7 CFR 278.6 for disqualification criteria and procedures.~~

SECTION 172. DHS 252.20 is amended to read:

DHS 252.20 **Confidentiality.** The department shall take all reasonable steps to ensure that information regarding ~~food stamp~~ FoodShare recipients will be kept confidential by the EBT vendor and the card issuer. The department shall oversee the EBT vendor's and card issuer's performance in this area.

SECTION 173. DHS 252.23 is amended to read:

DHS 252.23 **Conversion to coupons.** ~~food stamp~~ FoodShare groups moving out of Wisconsin may not have their electronic ~~food stamp~~ FoodShare benefits converted to paper coupons.

SECTION 174. DHS 252.25 (intro.) and (1) are amended to read:

DHS 252.25 **Expungement.** All ~~food stamp~~ FoodShare benefits shall be expunged from the EBT account at the direction of the department if any of the following occur:

(1) Benefits have not been accessed by the household for a period of ~~one year, or~~ 274 days.

SECTION 175. DHS 252.25 (2) is repealed.

SECTION 176. DHS 252.25 (3) and (4) are amended to read:

DHS 252.25 **(3)** A one-person ~~food stamp~~ FoodShare group is denied due to death of the recipient.

(4) The ~~food stamp~~ FoodShare group loses its rights to the expunged benefits as stated in 7 CFR 274.12(g)(7) 274.2 (i).

SECTION 177. DHS 254.04 (1) (d) 2. is amended to read:

DHS 254.04 **(1) (d) 2.** Special needs of the IM ~~recipient member~~ or a family member, including substance abuse, domestic abuse, and physical or mental disabilities.

SECTION 178. DHS 254.07 (1) is amended to read:

DHS 254.07 **(1) ANNUAL REPORT OF ALL IM WORKER TRAINING.** Each county or tribal agency shall submit an annual report to the department ~~by February 1 of each calendar year a report~~ that documents training completed by all new and experienced IM workers during the previous calendar year. The due date for the report shall be specified in the contract between the department and the county or tribal agency.

SECTION 179. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.