

The Governor approved this Statement of Scope on August 17, 2015.

STATEMENT OF SCOPE
DEPARTMENT OF HEALTH SERVICES

Rule No.: DHS 40

Relating to: Mental health day treatment for children

Rule Type: Permanent

Type of Statement of Scope: Original

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable.

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

The objective of the rulemaking is to update ch. DHS 40 to the current practices and requirements for mental health day treatment for children.

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

Mental health day treatment services for children are community mental health services provided by programs certified by the department for clinically supervised, non-residential care to children with mental illness, behavioral problems, or severe emotional disturbance.

Chapter DHS 40 includes provisions on program certification and operational requirements for admission, assessment, treatment planning, treatment, and discharge planning. Chapter DHS 40 was last revised in 1996 and is out-of-date in terms of diagnostics, treatment, and treatment planning. The current rule specifies standards for three diagnostic levels of treatment, but those levels have become blurred and less useful for effective treatment planning.

The department proposes to revise program certification requirements relating to clinical supervision; service level designation, components and required personnel and services; admission policies and criteria; client assessment; use of seclusion and restraints; and use of medications, and other related changes to update the rule in consultation with stakeholders of the mental health community.

The department also proposes to incorporate updated standards by reference to the Diagnostic and Statistical Manual of Medical Disorders (DSM).

Chapter DHS 40 and the proposed changes are not intended to regulate other forms of day services for children such as those operated by alcohol and other drug abuse treatment programs under Chapter DHS 75.

There are no reasonable alternatives. Mental health day treatment services have changed significantly since the rule was created in 1996. Children do not fit neatly into diagnostic boxes, and often have other related mental health issues that need to be considered and addressed. Children should be admitted to types of services that are most appropriate for them and be provided the services that they need.

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

Section 51.42 (7) (b), Stats., reads: DUTIES OF THE DEPARTMENT OF HEALTH SERVICES.

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

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

Section 227.11 (2) (a), Stats., reads: Rule-making authority is expressly conferred on an agency as follows:

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

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

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

An estimated total of 400 hours of staff time may be needed to update ch. DHS 40. This includes the writing and review of the various rulemaking documents, working with an advisory committee, and conducting listening sessions with stakeholders.

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

The existing 33 certified day treatment programs, including school-based and community-based programs; children with mental illness and their families; Disability Rights Wisconsin; Wisconsin Family Ties; and the Wisconsin Association of Family & Children's Agencies.

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

There appears to be no existing or proposed federal regulation that addresses the activities to be regulated by the proposed rule.

8. Anticipated economic impact of implementing the rule:

The proposed rule is anticipated to have a moderate economic impact if promulgated.

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