



State of Wisconsin
2025 - 2026 LEGISLATURE

LRB-0613/1
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2025 SENATE BILL 106

March 7, 2025 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Mental Health, Substance Abuse Prevention, Children and Families.

AN ACT *to create* 20.435 (5) (bt), 49.46 (2) (b) 14c., 49.46 (2) (bv) and 51.044 of the statutes; **relating to:** psychiatric residential treatment facilities, providing an exemption from emergency rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on Emergency Detention and Civil Commitment of Minors.

The bill specifies that the Department of Health Services (DHS) may establish a certification process for and certify psychiatric residential treatment facilities (PRTFs) to provide inpatient psychiatric services for individuals under age 21, under the direction of a physician, with services provided by a facility that meets PRTF standards under federal regulations. The bill also specifies that PRTF services are a reimbursable Medical Assistance (MA) benefit, subject to any necessary federal approval.

SENATE BILL 106*Certification*

The bill specifies certain aspects of PRTF certification. In particular, DHS may make announced and unannounced inspections and complaint investigations of PRTFs as it deems necessary. DHS may limit the number of certifications it grants to operate PRTFs. DHS must, using the DHS's division of the state into regions by county, include statewide geographic consideration in its evaluation of applications for certification to ensure geographic diversity among the regions in the location of PRTFs.

The bill also grants rule-making authority to DHS to promulgate administrative rules, including emergency rules, to implement the bill. Specifically, DHS may promulgate rules to establish any of the following: (1) minimum security requirements for PRTFs; (2) a target range for the number of beds in a PRTF; (3) policies for coordination between PRTFs and certain other facilities; (4) appropriate staffing level requirements, including policies to ensure the availability of adequate in-person and on-site care; (5) requirements to define the population to be served at a given PRTF, including establishment of any minimum age requirements; and (6) rules and standards for PRTF operations as the department determines are necessary to provide safe and adequate care and treatment of patients and to protect the health and safety of patients and employees of a PRTF.

Federal Regulations

The bill applies the federal regulatory framework for PRTFs to the state's regulation of PRTFs, including standards for admission and other conditions for MA participation.

The bill defines a PRTF with the meaning given in the federal regulations. Under those regulations, a PRTF means a facility other than a hospital, that provides psychiatric services to individuals under age 21, in an inpatient setting. The "psychiatric services" are described in federal MA requirements and limits that are applicable to inpatient psychiatric services for individuals under age 21. The bill incorporates those requirements and limits, including requirements to provide active treatment and individual plans of care.

As provided under the federal regulations, the bill specifies that in order to admit an individual for services, a treatment team must certify all of the following: (1) ambulatory care resources available in the community do not meet the treatment needs of the individual; (2) proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and (3) the services can reasonably be expected to improve the individual's condition or prevent further regression, so that the services will no longer be needed. Under the federal regulations incorporated in the bill, if an individual is an MA participant when admitted to a PRTF, the treatment team must include a physician who has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, and who has knowledge of the individual's situation.

The bill specifies that a PRTF must comply with all federal conditions of participation, including provisions for the protection of residents, orders for the use of restraint or seclusion, and all other federal conditions of participation that apply to a PRTF.

Additional State Regulations

The bill addresses three aspects of PRTF operation that are not addressed in the federal regulations.

First, the bill specifies that a PRTF may use video surveillance and recordings in common areas, entrances, and exits, without a patient's consent, but must inform the patient and the patient's parent, guardian, legal custodian, or Indian custodian of the surveillance and recording. The bill specifies that video surveillance and recording may not be used as a substitute for one-on-one monitoring of a patient who is at high risk for self-harm. It also specifies that any video recording is confidential, except as provided by the department by rule. The department may review any recording made by a PRTF.

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The bill specifies that DHS may promulgate rules requiring a PRTF to adopt a policy for monitoring safety, which may include the use of video surveillance and recording in common areas, entrances, and exits.

Second, the bill specifies that a PRTF may implement the use of locked units for safety, and specifies that DHS may promulgate rules requiring a PRTF to adopt a policy for the use of locked units for safety.

Third, the bill clarifies that admission to a PRTF is subject to the requirements of Chapter 51, Stats.

Administration

Lastly, the bill addresses certain state administrative and operational aspects. This includes: (1) allowing DHS to provide grants to entities to establish a PRTF, with preference toward having at least one PRTF in the northern or north-central region of the state and at least one in the southern region of the state; (2) specifying that a PRTF may seek reimbursement for its services from a private health benefit plan or a self-insured governmental health plan; and (3) providing DHS with position authority for four full-time equivalent positions for the purpose of implementing the certification process and requirements for PRTFs. The bill includes a placeholder to add funding for PRTFs in DHS's schedule under the biennial state budget.

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

2025-26 2026-27

20.435 Health services, department of**(5) CARE AND TREATMENT SERVICES****(bt) Psychiatric residential treatment**

facilities

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SECTION 2. 20.435 (5) (bt) of the statutes is created to read:

20.435 **(5)** (bt) *Psychiatric residential treatment facilities.* Biennially, the amounts in the schedule for the administration and funding of psychiatric residential treatment facilities under s. 51.044.

SECTION 3. 49.46 (2) (b) 14c. of the statutes is created to read:

49.46 **(2)** (b) 14c. Subject to par. (bv), services by a psychiatric residential treatment facility.

SECTION 4. 49.46 (2) (bv) of the statutes is created to read:

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49.46 (2) (bv) The department shall submit to the federal department of health and human services any request for a state plan amendment, waiver, or other federal approval necessary to provide reimbursement for services by a psychiatric residential treatment facility. If the federal department of health and human services approves the request or if no federal approval is necessary, the department shall provide reimbursement under par. (b) 14c. If the federal department of health and human services disapproves the request, the department may not provide reimbursement for services under par. (b) 14c.

SECTION 5. 51.044 of the statutes is created to read:

51.044 Psychiatric residential treatment facilities. (1) DEFINITION. In this section, “psychiatric residential treatment facility” has the meaning given in 42 CFR 483.352.

(2) CERTIFICATION AND REQUIREMENTS. (a) The department may establish a certification process for and certify psychiatric residential treatment facilities to provide inpatient psychiatric services for individuals under the age of 21, under the direction of a physician, with services provided by a psychiatric facility that meets the requirements of 42 CFR 441.151 (a) (2) (ii). No person may operate a psychiatric residential treatment facility without a certification from the department. The department may make announced and unannounced inspections and complaint investigations of psychiatric residential treatment facilities as it deems necessary, at reasonable times and in a reasonable manner. The department may limit the number of certifications it grants to operate psychiatric residential treatment facilities. The department shall, using the department’s division of the state into

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regions by county, include statewide geographic consideration in its evaluation of applications for certification under this section to ensure geographic diversity among the regions in the location of psychiatric residential treatment facilities certified under this section.

(b) A psychiatric residential treatment facility that has a certification from the department under this section is not subject to facility regulation under ch. 48.

(c) In order to admit an individual for services at a psychiatric residential treatment facility, a treatment team shall, as required under 42 CFR 441.152, certify that all of the following are true:

1. Ambulatory care resources available in the community do not meet the treatment needs of the individual. For purposes of this subdivision, “ambulatory care resources” means any service except hospital inpatient care or inpatient care in an institution for mental diseases, as defined in s. 49.43 (6m).

2. Proper treatment of the individual’s psychiatric condition requires services on an inpatient basis under the direction of a physician.

3. The services at a psychiatric residential treatment facility can reasonably be expected to improve the individual’s condition or prevent further regression so that the services will no longer be needed.

(d) The treatment team certifying the need for services under par. (c) shall meet the requirements of 42 CFR 441.153.

(e) A psychiatric residential treatment facility shall comply with all federal requirements for active treatment and individual plans of care under 42 CFR 441.154 to 441.156, as well as emergency preparedness requirements under 42 CFR 441.184.

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(f) A psychiatric residential treatment facility shall comply with all of the following federal conditions of participation:

1. Protection of residents as set forth under 42 CFR 483.356.
2. Orders for the use of restraint or seclusion as set forth under 42 CFR 483.358.
3. All other requirements set forth under 42 CFR 483.350 to 483.376.

(g) Admission to a psychiatric residential treatment facility is subject to the procedures of this chapter.

(3) VIDEO MONITORING. (a) Notwithstanding s. 51.61 (1) (o), a psychiatric residential treatment facility may use video surveillance and recordings in common areas, entrances, and exits without the consent of the patient being surveilled or recorded. The psychiatric residential treatment facility shall inform the patient and the patient's parent, guardian, legal custodian, or Indian custodian about the video surveillance and recording.

(b) Any video recording made under this subsection is confidential and not open to public inspection, except as provided by the department by rule. The department may review any recording made under this subsection.

(c) Video surveillance and recording may not be used as a substitute for one-on-one monitoring of a patient who is at high risk for self-harm.

(d) The department shall promulgate rules requiring that all psychiatric residential treatment facilities adopt a policy for monitoring safety, which may include the use of video surveillance and recording in common areas, entrances, and exits.

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(4) LOCKED UNITS FOR SAFETY. (a) A psychiatric residential treatment facility may implement the use of locked units for safety.

(b) The department may promulgate rules requiring that all psychiatric residential treatment facilities adopt a policy for the use of locked units for safety.

(5) GRANTS. The department may distribute grants to entities to establish a psychiatric residential treatment facility. In distributing grants under this subsection, the department shall give preference toward having at least one psychiatric residential treatment facility in the northern or north-central region of the state and at least one in the southern region of the state.

(6) INSURANCE. This section may not be construed to limit a psychiatric residential treatment facility from seeking reimbursement for its services from a health benefit plan, as defined in s. 632.745 (11), or self-insured health plan, as defined s. in s. 632.85 (1) (c).

(7) RULES. The department may promulgate rules to implement this section, including any of the following:

(a) Minimum security requirements for psychiatric residential treatment facilities certified under this section.

(b) Establishment of a target range for the number of beds in a psychiatric residential treatment facility certified under this section.

(c) Establishment of policies for coordination between psychiatric residential treatment facilities certified under this section and any facility established or operated with funding received under s. 165.12 from settlement proceeds from the opiate litigation, as defined in s. 165.12 (1), as well as policies to encourage

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awareness of and communication and coordination with other facilities that provide services similar to those provided by psychiatric residential treatment facilities.

(d) Establishment of appropriate staffing level requirements, including policies to ensure the availability of adequate in-person and on-site care.

(e) Establishment of requirements to define the population to be served at a given psychiatric residential treatment facility, including establishment of any minimum age requirements.

(f) Rules and standards for psychiatric residential treatment facility operations as the department determines are necessary to provide safe and adequate care and treatment of patients and to protect the health and safety of patients and employees of a psychiatric residential treatment facility.

SECTION 6. Nonstatutory provisions.**(1) EMERGENCY RULES ON PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES.**

The department of health services may promulgate emergency rules under s. 227.24 implementing certification of psychiatric residential treatment facilities under s. 51.044, including development of a new provider type and a reimbursement model for psychiatric residential treatment facilities under the Medical Assistance program under subch. IV of ch. 49. Notwithstanding s. 227.24 (1) (a) and (3), the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this

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subsection remain in effect until July 1, 2027, or the date on which permanent rules take effect, whichever is sooner.

(2) POSITION AUTHORIZATIONS FOR THE DEPARTMENT OF HEALTH SERVICES. The authorized FTE positions for the department of health services are increased by 4.0 GPR positions, to be funded from the appropriation under s. 20.435 (5) (bt), for the purpose of implementing the certification process and requirements for psychiatric residential treatment facilities under s. 51.044.

SECTION 7. Effective date.

(1) This act takes effect on the day after publication, or on the 2nd day after publication of the 2025 biennial budget act, whichever is later.

(END)