ORDER OF
DEPARTMENT OF HEALTH SERVICES
TO ADOPT RULES

The Wisconsin Department of Health Services proposes **to repeal** HFS 61.91, 61.92, 61.93, 61.94, 61.97 and 61.98, and 105.22 (1) (d); **to amend** HFS 105.22 (1) (c), 105.22 (2) (title), (a) and (b), and (3), 107.13 (2) (a) (intro.) and 1. (intro.), 107.13 (2) (a) 3. a. and b., 4. a. to f., 6., 7. , (b) 1., 4. a. to d., (c) 4. and 6., and (d) 2.; **to repeal and recreate** HFS 61.95 and 61.96; and **to create** ch. HFS 35, 105.22 (1) (bm), 107.13 (2) (a) 1. a. to g. and (2m), relating to outpatient mental health clinics, and affecting small businesses.

SUMMARY OF PROPOSED RULE

Statute interpreted: Sections 49.45 (10), 51.04, 51.03 (4) (f), (g) and (h) and (5), 51.42 (7) (a) and (b), 51.30, 51.61, and 632.89, (2) Stats.

Statutory authority: Sections 49.45 (10), 51.03 (4) (f), (g), and (h) and (5), 51.04, 51.42 (7) (a) and (b), and 227.11 (2) (a), Stats.

Explanation of agency authority:

- Section 49.45 (10), Stats., requires the Department to promulgate rules that are consistent with its duties in administering medical assistance.

- Section 51.03 (4) (f), (g) and (h) and (5), Stats., authorizes the Department to promote access to appropriate mental health and alcohol and other drug abuse services; consumer decision making to enable persons with mental illness and substance use disorders to be more self sufficient; and use of individualized treatment plans, developed with consumers and families of consumers who are children, and advocates chosen by consumers, that promote treatment and recovery, establish meaningful and measurable goals for the consumer, are based on assessment of the consumer's strength and abilities, needs and preferences, and are modified as necessary.

- Section 51.04, Stats., authorizes the Department to certify treatment facilities for the receipt of funds for services provided as a benefit to a medical assistance recipient under s. 49.46 (2) (b) 6. f., Stats., a community aids funding recipient under s. 51.423 (2), Stats., or as mandated coverage under s. 632.89 (2), Stats.

- Section 51.42 (7) (a), Stats., requires the Department to review and certify county departments of community programs and community mental health programs to assure that the county department and programs are in compliance with the purpose and intent of s. 51.42 Stats., to enable and encourage counties to develop a comprehensive range of services offering continuity of care; to utilize and expand existing governmental, voluntary, and private community resources for provision of services to prevent or ameliorate mental disabilities, including mental illness, developmental disabilities, and alcoholism and drug abuse; to provide for the integration of administration of those services and facilities organized under s. 51.42, Stats., through a county department of community programs; and to authorize state consultative services, review and establishment of standards, and grants-in aids for such program of services and facilities.

- Section 51.42 (7) (b), Stats., requires the Department to promulgate rules which govern the administrative structure deemed necessary to administer community mental health services; prescribe standards for qualifications of personnel; prescribe standards for quality of professional services; 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; to establish medication procedures to be used in the delivery of mental health services; establish criteria for the level of scrutiny of evaluation of community mental health programs, and prescribe requirements for certification of community mental health programs.

Related statute or rule: Sections HFS 105.22 and 107.13 and ss. 51.04 and 51.42 (7) (a) and (b), and 632.89 (2), Stats.

Plain language analysis:

The current rules for outpatient mental health clinics are under ss. HFS 61.91 to 61.98. These regulations address procedures for certification; required personnel; service requirements; and denial, involuntary termination or suspension of certification for outpatient mental health clinics; clinical supervision and clinical collaboration; written authorization of psychotherapy by a physician; initial assessments of clients and development of treatment plans; progress notes; discharge summaries; and record keeping. In addition to these requirements, the rules require clinics to ensure continuity of care for persons with mental disorders or alcohol and drug abuse problems by rendering or arranging for the provision of specified services, including, but not limited to, residential facility placement; aftercare for continuing treatment in the community to help the patient maintain and improve adjustment following a period of treatment in a facility; and emergency care. Sections HFS 61.91 to 61.98 have not been comprehensively reviewed and rewritten since May 1981.

Section HFS 105.22 provides the requirements for medical assistance certification of psychotherapy providers, staffing of outpatient facilities, and medical assistance reimbursement for outpatient psychotherapy services. Section HFS 107.13 (2) details the medical assistance requirements for covered services for outpatient psychotherapy services, prior authorization and other limits and procedures, and non-covered services under the medical assistance program. Section HFS 105.22, was last revised in 1991 and s. HFS 107.13 (2) has not been comprehensively reviewed and rewritten since March 1986.

The Department proposes to do all the following:

- Eliminate burdensome provisions that do not help to lead to the desired outcomes for persons who receive outpatient mental health services treatment.

- Codify, in rule, the statewide variances that have been issued by the Department to outpatient mental health providers.

- Increase flexibility for clinic operations including allowing certified clinics to alternatively meet the standards of one of several national accrediting bodies when applying for renewal certification; permitting clinics to provide either clinical supervision or clinical collaboration as part of the clinic's quality improvement process; allowing mental health professionals to provide the recommendation for psychotherapy for consumers who are not medical assistance recipients; allow persons other than a physician or psychiatrist to

provide mental health services; and allow clinics to provide psychotherapy services in the clinic, a branch office, or alternate location.

- Establish certification and enforcement processes that are similar in both organization and content to the certification and enforcement processes set out in rules for other certified community mental health programs.

- Clarify the minimum staff requirements for a clinic; and the role of professional staff members of a clinic, including for persons who prescribe medication within a clinic.

- Clarify record keeping requirements for psychotherapy notes.

- Establish training requirements for clinic staff members.

- Add or expand language on admission, assessment, consent for treatment, treatment planning and medication administration; standards for electronic records; and consumer rights.

- Incorporate the provisions under s. 50.065, Stats., and chs. HFS 12 and 13, that require caregiver background checks on clinic staff members and reporting of clinic staff misconduct.

- Increase consumers' participation in treatment planning resulting in treatment that is recovery-based and consumer-directed.

The Department proposes to revise ss. HFS 105.22 and 107.13 (2), to ensure that the language in these rules are consistent with the language in the proposed ch. HFS 35 and that these rules incorporate current practices and needs, such as, indexing the number of visits and dollar amounts before a prior authorization is required. Covered services are not proposed to change.

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

42 CFR 440.130 permits use of Medicaid funds to provide diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level. There are no other known proposed or existing federal regulations pertinent to outpatient mental health clinics.

Comparison with rules in adjacent states:

Illinois

Sources:

1. Mental Health Program Book, Division of Mental Health Services, Department of Human Services: Chapter 200: Mental Health Treatment Program
2. 59 Illinois Administrative Code, Part 132 - Medicaid Community Mental Health Services Program
3. A conversation with Dennis Smith, Public Service Administrator, Division of Mental Health Services, Department of Human Services

The administrative code for outpatient mental health services for the State of Illinois is not comparable to Wisconsin's because the code only applies to Community Mental Health Centers (CMHCs), comparable to our county 51.42 Boards, and are written generally to address mental health issues of clients. Medicaid payments for mental health services are only permissible through the CMHCs under a grant contract. Illinois has no separate regulations at this time for a provider type of outpatient mental health clinics.

Iowa

Sources:

1. Iowa Administrative Code – Chapter 24: Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities
2. A conversation with James Overland, Chief of the Bureau of Community Services, Division of Behavioral, Developmental and Protective Services, Department of Human Services

The State of Iowa has a managed care system that addresses mental health, as well as physical health, needs. As a result, the administrative code addressing mental health issues is extremely brief. Their rules consist of performance benchmarks (e.g., individualized and appropriate intervention services and treatments are provided in ways that support the needs, desires, and goals identified in the service plan, and that respect the rights and choices of the individual using the service) and performance indicators (e.g., staff document in the narrative the individual's participation in the treatment program).

These performance benchmarks and indicators are globally stated and are meant to evaluate a managed care delivery system. Funding may be withheld for failure to meet the performance benchmarks or indicators. In a fee-for-service system, such as Wisconsin's, the administrative code must indicate failure to meet the requirements based on the scope and severity of deficiencies noted by a licensor, which then results in the possibility of termination or non-renewal of the provider's license. Therefore, a comparison between Iowa and Wisconsin's psychosocial rehabilitation services has marginal utility.

Michigan

Source:

1. State of Michigan Administrative Code, R 330.2005 – 330.2814, which address community mental health programs of emergency intervention services, prevention services, outpatient services, aftercare services, day program and activity services, public information services, inpatient services, and community/caregiver services.

The State of Michigan has a managed care system that addresses mental health, as well as physical health, needs. As a result, the administrative code addressing mental health issues is extremely brief. For example, the requirements for day program and activity services is only five lines long and states that these services shall include providing habilitative and rehabilitative treatment and training activity. The administrative code does not reference recovery, involvement of consumers on a governing/advisory board, etc.

Minnesota

Sources:

1. Minnesota Statutes, s. 256B.0623, Covered service: adult rehabilitative mental health services.

2. A conversation with Richard Seurer, Planning Analyst in the Mental Health Division, Department of Human Services

Similarities between Minnesota's and Wisconsin's requirements:

1. Wisconsin provided a statewide variance to the supervision requirements in HFS 61.97 that is comparable to Minnesota's requirement for clinical consultation and case review.
2. Both states require a provider to facilitate appropriate referrals if the necessary treatment or the treatment desired by the client is not available and to ensure continuity of care.
3. Both states require the provision of emergency therapy, when necessary.
4. Both states have similar confidentiality and record storage requirements.

Differences between Minnesota's and Wisconsin's requirements:

1. Minnesota's regulations are written primarily for Community Mental Health Centers (CMHCs), comparable to our county 51.42 Boards, but also apply to private mental health clinics. There are significantly fewer private mental health clinics in Minnesota compared to Wisconsin (approximately 100 to 700).
2. Minnesota's regulations clearly state the relationship between a main office and satellite offices.
3. Minnesota requires a multidisciplinary approach, which requires that staff members interact in providing clinical services, that the services provided to a client involve all needed disciplines represented on the center staff, and that staff members participate in case review and clinical consultation procedures.
4. Minnesota is more explicit regarding assessment and diagnostic processes (i.e., "The assessment of each client shall include clinical consideration of the client's general physical, medical, developmental, family, social, psychiatric, and psychological history and current condition," and, "The diagnosis shall be by or under the supervision of and signed by a psychiatrist or licensed psychologist.").
5. Minnesota is more explicit regarding treatment planning (i.e., "…the client has been informed in the following areas: assessment of the client condition; treatment alternatives; possible outcomes and side effects of treatment; treatment recommendations; approximate length, cost, and hoped-for outcome of treatment; the client's rights and responsibilities in implementation of the individual treatment plan…," and "Clinical services shall be appropriate to the condition, age, sex, socioeconomic, and ethnic background of the client, and provided in the least restrictive manner.").
6. Minnesota has specific requirements for quality assurance, including peer review, internal utilization review, staff supervision, and continuing education.
7. Minnesota has more stringent requirements regarding staffing:
    a. The multidisciplinary staff of a center shall consist of at least four mental health professionals. At least two of the mental health professionals shall each be employed or under contract for a minimum of 35 hours a week by the center. Those two mental health professionals shall be of different disciplines.
    b. The mental health professional staff shall include a psychiatrist and a licensed psychologist.
    c. The mental health professional employed or under contract to the center shall be at the main office of the center and providing clinical services in the treatment of mental illness at least eight hours every two weeks.
    d. Additional mental health professional staff members may be employed by or under contract to the center provided that no single mental health discipline or combination of allied fields shall comprise more than 60 percent of the full-time equivalent mental health professional staff members. This provision does not apply to a center with fewer than six full-time equivalent mental health professional staff members.

8. Minnesota has a definition for "mental health practitioner", persons who are not licensed or certified with individual provider status, and provisions for these persons to work for a mental health provider. There are limitations on the percentage of total staff members that can be a mental health practitioner.
9. Wisconsin's regulations include a section addressing the special needs of children and adolescents.

Summary of factual data and analytical methodologies:

The Department referred to all of the following to draft the proposed rules and the small business fiscal impact analysis:

- In 2000, the Department worked with representatives from outpatient mental health clinics, professional organizations, and mental health advocates to develop proposed rules (ch. HFS 35) which proceeded to public hearing, but were not submitted to the legislature. During the ensuing years, the Department worked with these stakeholders to provide several statewide variances to the current rules in order to increase clinics' flexibility in complying with the rules. In 2005, the Department prepared an updated draft of the previously proposed ch. HFS 35 and incorporated the concepts from the statewide variances, changes in applicable statutes and regulations, and concepts, such as recovery-based, consumer-directed treatment from the ch. HFS 36, Comprehensive Community Services regulations, which were promulgated in 2004, and from statutory and regulatory language from other states. The Department held a public listening session in Wausau, Madison and Milwaukee to obtain reactions to the updated draft from stakeholders. In response to comments received at these listening sessions, the Department revised the draft and held another round of public listening sessions in Wausau, Madison and Waukesha to present the refined draft to stakeholders and obtain further comments. The listening sessions were announced through mail and the Wisconsin Administrative Rules Website, where the iterative drafts were also posted. The Department also accepted comments via the Website, mail or phone from October 6, 2005 through June 1, 2006. In addition, Department staff members met, upon request, with various stakeholders including the Wisconsin Nurses Association; Wisconsin Association of Marriage and Family Therapists; Clinical Social Work Federation – Wisconsin; National Association of Social Workers – Wisconsin Chapter; Wisconsin Association of Behavioral Health Services; Wisconsin Coalition of Marriage and Family Therapists, Professional Counselors, and Social Workers, Inc.; Wisconsin Counseling Association; Wisconsin Mental Health Counseling Association; Wisconsin Association of Family and Children's Agencies; and the combined Marriage and Family Therapist, Professional Counselor and Social Worker Boards of the Department of Regulation and Licensing to discuss the intent of the rule and to clarify draft proposed rule language.

- The Department, in January 2006, solicited data with the help of the Coalition of Marriage and Family Therapists, Professional Counselors, and Social Workers, Inc., and the Wisconsin Association of Behavioral Health Services (WABHS), from 831 certified outpatient mental health clinics (WABHS survey). The WABHS survey data solicited related to the number of staff members and the hours worked by staff members; number of psychotherapy hours provided to consumers; the ownership status; branch offices; type of consumers served; the professional supervision model used, including the hours of supervision provided and the cost of providing supervision; and the length of time staff members take to prepare for bi-annual certification. As reported by the WABHS survey, the total number of clinics that responded to the survey was 205 (for a 24.8% response

rate). The Department interpreted the WABHS survey results from non-profit and for-profit clinics as representative of an "average" clinic.

- The Department used its criteria that are approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index (CPI) or revenues are reduced by more than the prior year's CPI. For the purposes of this rulemaking, we used 2005 as the index year; the 2005 CPI is 3.4%. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and measures, among other things, the rate of inflation.

- Section 227.114 (1) (a), Stats., which defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than $5,000,000.

Analysis and supporting documents used to determine effect on small business:

The Department is required under s. 51.42 (7) (b), Stats., to promulgate rules which govern the administrative structure deemed necessary to administer community mental health services; prescribe standards for qualifications of personnel; prescribe standards for quality of professional services; 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; and to establish medication procedures to be used in the delivery of mental health services. Section 51.04, Stats., allows treatment facilities to apply to the Department for certification of the facility for the receipt of funds for services provided as a benefit to medical assistance recipients under s. 49.46 (2) (b) 6. f., Stats., or to a community aids funding recipient under s. 51.423 (2), Stats., or provided as mandated private insurance coverage under s. 632.89 (2), Stats. Section 51.42 (7) (a), Stats., requires the Department to review and certify county departments of community programs and community mental health programs to assure that the county department and programs are in compliance with the purpose and intent of s. 51.42 Stats., to enable and encourage counties to develop a comprehensive range of services offering continuity of care; to utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including mental illness, developmental disabilities, and alcoholism and drug abuse; to provide for the integration of administration of those services and facilities organized under s. 51.42, Stats., through a county department of community programs; and to authorize state consultative services, review and establishment of standards and grants-in aids for such program of services and facilities.

The rules promulgated under s. 51.42 (7) (b), Stats., are currently codified under ss. HFS 61.91 through 61.98. These rules first became effective on January 1, 1980. The most recent revisions became effective on May 1, 1981. The rules were written primarily for public mental health clinics, which were assumed to have access to an interdisciplinary team (e.g., psychiatrist, nurse, psychotherapists, etc.). During the past 25 years, many private providers have sought to become certified outpatient mental health clinics in order to bill insurance companies for services provided under s. 632.89 (2), Stats.

Under the current regulations, a certified clinic must include a psychiatrist or a licensed psychologist, as well as a master's level social worker or a registered nurse with a master's degree with a psychiatric specialty. Other mental health professionals with training and experience in mental health may be employed as necessary, including persons with master's degrees and course work in clinical psychology, psychology, school psychology, counseling and guidance, or counseling psychology. The clinic is required to ensure continuity of care for persons with mental disorders or alcohol and drug abuse problems by rendering or arranging for the provision of and documentation of services such as evaluation to determine the extent to which the patient's problem interferes with normal functioning; residential facility placement for patients in need of a supervised living environment; partial hospitalization to provide a therapeutic milieu or other care for non–residential patients for only part of a 24–hour day; pre–care prior to hospitalization to prepare the patient for admission; aftercare for continuing treatment in the community to help the patient maintain and improve adjustment following a period of treatment in a facility; emergency care for assisting patients believed to be in danger of injuring themselves or others; rehabilitation services to achieve maximal functioning, optimal adjustment, and prevention of the patient's condition from relapsing; habilitation services to achieve adjustment and functioning of a patient in spite of continuing existence of problems; supportive transitional services to provide a residential treatment milieu for adjustment to community living; and professional consultation to render written advice and services to a program or another professional on request. The current rule also requires the clinic to provide a minimum of 2 hours each of clinical treatment by a psychiatrist or psychologist and a social worker for each 40 hours of psychotherapy provided by the clinic. Specified personnel employed by a clinic are required to be under the supervision of a physician or licensed psychologist who meets the requirements of s. HFS 61.96 (1) (a) for a specified time relating to the number of hours of psychotherapy provided and frequency of a consumer's treatment sessions. The current rule further requires that each consumer receive an initial assessment and have a treatment record that contains a treatment plan, progress notes and discharge summary.

Through this order, the Department proposes to create ch. HFS 35. Private and public clinics have reported difficulty in meeting the requirement of having a psychiatrist or psychologist to work in the clinic or to accept referrals from the clinic. To address these issues, the Department is adding two options for staffing that do not require a psychiatrist or psychologist to be a staff member of the clinic. The proposed rule responds to the issue of clinical supervision by a psychiatrist or psychologist. Many clinics report that this oversight model is costly, and that the process does not yield meaningful feedback to staff members. As an alternative, the proposed rules permit clinical collaboration in which staff members review the treatment effectiveness and together identify possible changes in treatment approaches, staff training, policy changes, etc.

The private sector outpatient mental health clinics that will be affected by the proposed rules are those that contract with county departments under s. 46.23, s. 51.42 or 51.437, Stats., to implement its community mental health services programs or to receive reimbursement for outpatient mental health services from the Wisconsin medical assistance program or private insurance under s. 632.89, (2) Stats. As of June 2006, there are 837 certified outpatient mental clinics located throughout Wisconsin with the largest concentrations in the metropolitan areas of the central and southeastern parts of the state. The majority, 92 percent (772 clinics), are privately owned non-profit or for-profit entities. The remaining 8 percent are government owned. The privately owned clinics (as represented in the WABHS survey and assumed by the Department to be representative of the "average" clinic) are staffed primarily by licensed clinical social workers, licensed marriage and family therapists, or licensed professional counselors and support staff members who provide approximately 788 hours of mental health services (and 237 hours of psychotherapy services) per clinic, per week to children, adolescent, adults, and senior

adults with various degrees of mental health issues and diagnoses, such as disorders relating to legal and illicit drug use; eating and sleeping disorders; depressive, bipolar, and anxiety disorders; and personality disorders. Staff members of these clinics also may include medical doctors, psychiatrists, psychologists, advanced practice nurse prescribers, persons with a master's in social work, persons with a master's of science, and substance abuse counselors.

More than 10% of the certified outpatient clinics that will be affected by the proposed rules may be small businesses as defined under s. 227.11 (2) (a), Stats., as the average private clinic may be independently owned and operated and employs less than 25 employees or has gross annual revenues under $5,000,000. As discussed below, the Department believes that the proposed rules will decrease costs to the average outpatient mental health clinic. The cost elements discussed in this analysis are staffing; documentation and reporting; recordkeeping; and the certification process. Any costs other than those specified in this analysis appear to be negligible and are inherent in the conduct of clinic business or are the result of required compliance with ch. 51, Stats, as a mental health provider.

The requirements in the proposed rule relating to reporting, record keeping, and the certification process and the associated costs are unchanged compared to the current rule, except that under the renewal certification process clinics that are accredited by nationally recognized bodies may request a waiver of part of the bi-annual process. A grant of a waiver of certification requirements may reduce a clinic's costs, as the clinic may not need to prepare for two certification surveys. Although the rules require additional specificity in regard to documentation in the content of assessment and treatment plan records, the costs of documentation are not expected to increase. There is no data or basis that indicates that the time involved completing the documentation of the assessment and treatment plan will increase. There are no capital costs imposed by the proposed rules.

The proposed rules are minimum requirements that give maximum flexibility under regulations that are required by statute and the intent and purpose of s. 51.42, Stats. The Department believes that the benefits of the proposed rules will outweigh any costs that they may impose because the proposed rules will benefit both consumers and clinics by improving access, protection, and quality of care and quality of life to consumers receiving or seeking mental health services and will reduce costs and the burden of regulation on outpatient mental health clinics that choose to be certified. For example, under the existing rule, services must be provided at the clinic office or a branch office identified in the certificate issued by the Department unless it is demonstrated to the Department that there are specific barriers to care if services are not delivered outside the clinic. In addition, there currently are limitations in the use of a branch office, such as branch offices must be located within 40 miles of the main office and all treatment records must be stored in the main office. In the proposed rule, service delivery will be more flexible as clinics will be allowed to offer services where needed without having to seek additional certification and other limitations on the use of branch offices are also removed. This should increase the profitability of the clinic or reduce the costs of clinics by increasing the numbers of consumers that may be served and increasing cost efficiencies in operating a main clinic with one or more branch offices. The existing rules were written for comprehensive, publicly operated clinics. The proposed rules have eliminated the requirements that clinics provide, or provide access to, residential facilities, partial hospitalization, pre-care for hospitalization, rehabilitation services, habilitation services, and supportive transitional services. The services under the proposed rule allow for services to be provided, contracted or provided by agreement. It is assumed that the therapist would expedite services as required for individual clients. The time and cost of procuring these services or agreements has been eliminated. The existing rule requires that every consumer have a referral from a physician for psychotherapy services. The proposed rule allows a licensed therapist to make the

recommendation for therapy if the consumer is a non-Medicaid recipient, which reduces cost to the consumer and increases accessibility to services. This would be an estimated cost savings to the consumers (who are not Medicaid recipients) of $100. Recommendations for psychotherapy for Medicaid recipients must be by a physician as required under s. 49.46 (2) (b) 6. f., Stats.

Personnel requirements have been changed to allow alternatives to the existing rule and to recognize and reduce a clinic's staffing costs and the difficulty clinics reportedly have in obtaining staff. Existing rules require a minimum of two hours of clinical treatment by a psychiatrist or psychologist for each 40 hours of psychotherapy provided in a clinic. The proposed rule eliminates this requirement with an estimated minimum savings of $19,000 per year for the small clinic. Larger clinics likely will save proportionally increased amounts. As reported in the WABHS survey, the average clinic already meets the minimum staffing requirements under the proposed rules. These clinics have sufficient numbers of staff members working sufficient number of hours to meet the current and proposed minimum staff requirements. Although the Department estimates that approximately 150 currently certified clinics may not currently meet the minimum staff requirements or the proposed regulations, the Department believes that these and all other clinics will be able meet one of the options for minimum staffing without difficulty and without increased costs. The proposed rules provide two options for minimum staffing that do not require a psychiatrist or psychologist to be a staff member of the clinic, which acknowledges the shortage of psychiatrists and psychologists. A third option for minimum staffing is similar to the current regulations, but is more stringent in that it requires staff members to be available to provide outpatient mental health services at least 37.5 hours per week combined. This option, however, is less stringent than the existing requirement in that it requires only four hours per month of direct services from a psychiatrist, or advanced practice nurse prescriber as opposed to a minimum of two hours of clinical treatment by a psychiatrist or psychologist for each 40 hours of psychotherapy provided. The proposed rule allows existing clinics two years to comply with the proposed minimum staffing requirements. If a clinic submits data regarding its reasonable, bona fide efforts to comply with the minimum staffing requirements, then the Department may grant a waiver request regarding the minimum staffing requirements for the clinic. The proposed staffing requirements may be met either through contract or employment. In addition, under the existing rule clinics are required to provide supervision by a psychiatrist or psychologist at the rate of 30 minutes for every 40 hours of therapy provided. As reported in the WABHS survey the oversight model type most used by clinics is supervision from a psychiatrist or psychologist, which costs the average clinic approximately $701 per month and $593 per month, respectively. The proposed rules allow clinical collaboration, which is a process by which staff members review the effectiveness of treatment and together identify possible changes in treatment approaches, staff training, policy changes, etc. Clinics that already use clinical collaboration (which is currently allowed under a statewide waiver) have an average reported cost of $551 per month. Based on the average costs for supervision versus clinical collaboration, the cost-savings for using clinical collaboration is estimated to be approximately $500 to $1800 per year. The average clinic has annual gross revenues of $593,000 per year (based on the revenue information reported in the WABHS survey). For the average clinic, the estimated cost savings of $19,000 plus $1,800 per year represent a 3.5 percent potential decrease in costs for a clinic if the clinic chooses clinical collaboration as an oversight model.

The proposed rules include waiver and variance provisions to allow clinics to use alternatives to rules. A waiver or variance may be granted if there are alternative means to meet the intent of a requirement. In addition, "deemed status" which would eliminate duplicate costs to the agency for staff time to prepare for survey by both the national accrediting organization and Department, may be granted if the clinic has accreditation from a recognized national

accrediting organization. A waiver or variance would not be allowed if quality of care is adversely affected.

Effect on small business:

Pursuant to the foregoing analysis, the proposed rules may decrease costs to the small businesses affected by the proposed rules. The proposed rules will affect a substantial number of small businesses, but will not have a significant economic impact on those businesses. Further, any increase in operating costs or decreases in revenues that may be caused by the proposed rules are expected to be less than the 2005 Consumer Price Index of 3.4%.

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Place where comments are to be submitted and deadline for submission:
Comments may be made via the Wisconsin Administrative Rules Website at http://adminrules.wisconsin.gov or to Dan Zimmerman at the address, telephone number or email address listed above until August 10, 2006.

TEXT OF PROPOSED RULE

SECTION 1. HFS 61.91 to 61.94 are repealed.

SECTION 1g. HFS 61.95 is repealed and recreated to read:

HFS 61.95 Outpatient psychotherapy clinics are certified by the department under the standards set forth in ch. HFS 35.

SECTION 1m. HFS 61.96 is repealed and recreated to read:

HFS 61.96 Qualifications for a mental health professional in an outpatient psychotherapy clinic are set forth in ch. HFS 35.

SECTION 1r. HFS 61.97 to HFS 61.98 are repealed.

SECTION 2. Chapter HFS 35 is created to read:

CHAPTER HFS 35
OUTPATIENT MENTAL HEALTH CLINICS

SUBCHAPTER I General Provisions

SUBCHAPTER II Certification

SUBCHAPTER III Personnel

SUBCHAPTER IV Outpatient mental health services

SUBCHAPTER I GENERAL PROVISIONS

HFS 35.01 Authority and purpose. This chapter is promulgated under the authority of ss. 49.45 (2) (a) 11, 51.04, 51.42 (7) (b) 11, and 227.11 (2) (a), Stats., 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 under 42 USC § 300x, et.seq., or receive state community aids funds under s. 51.423 (2), Stats.

HFS 35.02 Applicability. (1) This chapter applies to public and private outpatient mental health clinics that request reimbursement for services from the Wisconsin medical assistance and BadgerCare Plus programs and from private insurance required under s. 632.89 (2), Stats., or who utilize federal community mental health services block grant funds under 42 USC § 300x, et.seq., or receive state community aids funds under s. 51.423 (2).

(2) This chapter does not apply to outpatient programs governed under ch. HFS 75 that provide services to persons who have alcohol or other drug abuse related treatment needs but do not provide mental health services.

HFS 35.03 Definitions. (1) "Advanced practice nurse" has the meaning given in s. N 8.02 (1).

(1g) "Advanced practice nurse prescriber" means an advanced practice nurse certified to issue prescription orders under s. 441.16 (2), Stats.

(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); the American Society of Addiction Medicine (ASAM); or similar placement instrument that is approved by the department.

Note: A copy of the publications, *Wisconsin Uniform Placement Criteria and Patient Placement Criteria for the Treatment of Substance- Related Disorders*, published by the American Society of Addiction Medicine (ASAM), 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. Send inquires 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 ASAM's internet site at www.asam.org.

(2) "Available to provide outpatient mental health services" means physical presence at any of the clinic's offices.

(4) "Clinical collaboration" means mental health professionals working together in a joint intellectual and clinical approach for the therapeutic benefit and favorable outcome of consumers.

(5) "Clinical supervision" means any of the following:

(a) The supervised practice of psychotherapy as described under chs. 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.

(b) For any staff member, including a substance abuse counselor, who provides services to consumers who have a primary diagnosis of substance abuse, "clinical supervision" has the meaning given under s. RL 160.02 (6) by a clinical supervisor as defined under ch. RL 160.02 (7).

Note: Any staff member, including a substance abuse counselor-in training, substance abuse counselor, or clinical substance abuse counselor, providing services to consumers who have a primary diagnosis of substance abuse is required under s. HFS 35.14 (4) (b) to receive clinical supervision from a clinical supervisor as defined under ch. RL 160.02 (7).

(6) "Consumer" means an individual who receives or requests outpatient mental health services from a clinic.

(6m) "Deficiency" means a failure to meet a requirement of this chapter.

(7) "Department" means the Wisconsin department of health services.

(8) “Discharge” has the meaning given in s. 51.01 (7), Stats.

Note: Section 51.01 (7) Stats., defines “discharge” for a patient who is under involuntary commitment orders as meaning termination of custody and treatment obligations of the patient to the authority to which the patient was committed by court action. For voluntary admissions to a treatment program or facility, s. 51.01 (7), Stats., defines “discharge” as meaning termination of treatment obligations between the patient and the treatment program or facility.

(9) “Legal representative” means any of the following:

(a) A guardian of the person as defined under s. 54.01 (12), Stats.

(b) A health care agent as defined in s. 155.01 (4), Stats, if the principal has a finding of incapacity pursuant to s. 155.05 (2), Stats., and if the power to make decisions regarding outpatient mental health services is included in the scope of the agency.

(c) A parent of a minor as defined in s. 48.02 (13), Stats., a guardian of a minor as defined in s. 48.02 (8), Stats., or a legal custodian of a minor as defined in s. 48.02 (11), Stats.

(9g) “Licensed treatment professional” means an individual licensed as a physician under s. 448.03, Stats., who has completed a residency in psychiatry; a psychologist or a private practice school psychologist licensed under ch. 455, Stats., a marriage and family therapist licensed under s. 457.10 or 457.11, Stats., a professional counselor licensed under s. 457.12 or 457.13, Stats., an advanced practice social worker granted a certificate under s. 457.08 (2), Stats., an independent social worker licensed under s. 457.08 (3), Stats., or a clinical social worker licensed under s. 457.08 (4), Stats.; and includes any of these individuals practicing under a currently valid training or temporary license or certificate granted under applicable provisions of ch. 457, Stats. “Licensed treatment professional” does not include an individual whose license or certificate is suspended, revoked, or voluntarily surrendered, or whose license or certificate is limited or restricted, when practicing in areas prohibited by the limitation or restriction.

(9m) "Major deficiency" means the clinic has repeatedly or substantially failed to meet one or more requirements of this chapter or the department determines that an action, condition, policy or practice of the clinic or the conduct of its staff does any of the following:

(a) Creates a risk of harm to a consumer or violates a consumer right created by this chapter or other state or federal statutes or rules, including any of the following:

1. A staff member has had sexual contact or intercourse, as defined in s. 940.225 (5) (b) or (c), Stats, with a consumer.

2. A staff member has been convicted of abuse under s. 940.285, 940.29 or 940.295, Stats.

3. The health or safety of a consumer is in imminent danger because of any act or omission by the clinic or a staff member.

(b) Submits or causes to be submitted one or more statements for purposes of obtaining certification under this chapter that were false.

(c) A license, certification or required local, state or federal approval of the clinic has been revoked or suspended or has expired, including termination of a provider's Medicaid or Medicare certification for any basis under s. HFS 106.06 or federal law.

(d) Constitutes fraud or willful misrepresentation within the meaning of s. HFS 108.02(9)(d).

Note: Under s. HFS 108.02(9)(d)1, the department may withhold MA payments, in whole or in part, to a provider upon receipt of reliable evidence that the circumstances giving rise to the need for withholding of payments involve fraud or willful misrepresentation under the MA program. Reliable evidence of fraud or willful misrepresentation includes, but is not limited to, the filing of criminal charges for those activities against the provider or one of its agents or employees by a prosecuting attorney. The department may withhold payments without first notifying the provider of its intention to withhold the payments. A provider is entitled to a hearing under s. HFS 106.12.

Note: Willful misrepresentation under this paragraph does not include the signing of a claim for reimbursement by an authorized representative of a clinic who did not perform the service for which reimbursement is claimed, if the individual who performed the service was qualified to do so under this chapter and applicable professional licensure or certification law and was on the clinic's staff when the services were performed.

(e) A staff member has a substantiated finding of caregiver misconduct as identified in chs. HFS 12 and 13.

(10) "Mental health practitioner" means a person who before January 1, 2012, holds a graduate degree from an accredited college or university in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field, and either has completed the applicable supervised practice requirements under ch. MPSW 4, 12, or 16, or Psy 2 or has 3,000 hours of supervised clinical post-graduate degree experience including at least 1,000 hours of face-to-face contact with consumers, and who commences work at a clinic required to be certified under this chapter no later than January 1, 2013. "Mental health practitioner" does not include an individual whose professional license is suspended, revoked, or voluntarily surrendered, or whose professional license or certificate is limited or restricted, when practicing in areas prohibited by the limitation or restriction, irrespective of whether that individual otherwise meets the terms of this definition. Whether a person's graduate degree is in a "closely related" field will be determined by the Department on a case-by-case basis upon application by a clinic.

(11) "Mental health professional" means a licensed treatment professional, a mental health practitioner, a qualified treatment trainee, or a recognized psychotherapy practitioner.

(12) "Minor" means an individual who is 17 years old or younger.

(13) "Outpatient mental health clinic" or "clinic" means an entity that is required to be certified under this chapter to receive reimbursement for outpatient mental health services to consumers.

(14) "Outpatient mental health services" means the services offered or provided to a consumer, including intake, assessment, evaluation, diagnosis, treatment planning, psychotherapy and medication management.

(15) “Physician” means an individual licensed under ch. 448, Stats., as a physician.

(15m) “Physician assistant” means an individual licensed under ch 448, Stats., as a physician assistant.

(16) “Prescriber” means a physician, a physician assistant acting within the conditions and limitations set forth in § Med 8.08, or an advanced practice nurse prescriber acting within the conditions and limitations set forth in § N 8.06.

(17) “Psychotherapy” means any activity that falls within the definitions set forth at s. 457.01 (8m) or 455.01 (6), Stats.

(17m) “Qualified treatment trainee” means either of the following:

(a) A graduate student who is enrolled in an accredited institution in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field.

(b) A person with a graduate degree from an accredited institution and course work in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field who has not yet completed the applicable supervised practice requirements described under chs. MPSW 4, 12, or 16, or Psy 2 as applicable.

(17r) “Recognized psychotherapy practitioner” means an individual who may lawfully practice psychotherapy within the scope of a license, permit, registration or certificate granted by this state other than under ch. 455 or 457, Stats.

Note: Section 457.02 (6) (a), Stats., provides that a license or certificate under ch. 457, Stats., is not required for a person to “lawfully practice within the scope of a license, permit, registration, or certificate granted by this state or the federal government.” The Department will recognize as a “recognized psychotherapy practitioner” for purposes of this chapter any person legally recognized as permitted to provide psychotherapy within the scope of his or her professional credential issued by a state agency.

(18) “Recovery” means the process of a consumer’s growth and improvement, despite a history of a mental or substance use disorder, in attitudes, values, feelings, goals, skills and behavior measured by a decrease in dysfunctional symptoms and an increase in maintaining the person’s highest level of health, wellness, stability, self-determination and self-sufficiency.

(19) “Staff” or “staff member” means an owner of a clinic or an individual employed by or under contract with an outpatient mental health clinic.

(20) “Substance” has the meaning given under s. RL 160.02 (25).

(21) “Substance abuse counselor” has the meaning given under s. RL 160.02 (26).

(22) “Substance use disorder” has the meaning given under s. RL 160.02 (28).

(22m) “Treatment records” has the meaning given in s. 51.30 (1) (b), Stats., namely, all records created in the course of providing services to individuals for mental illness, which are maintained by the department, by boards and their staffs, and by treatment facilities. "Treatment records" 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.

(23) "Trauma" means a single experience, or an enduring or repeating event or events that results in significant distress or impairment in social, occupational, or other important areas of functioning for a person.

(24) "Variance" means an alternate requirement in place of a non-statutory requirement of this chapter by the department.

(25) "Waiver" means an exemption from a non-statutory requirement of this chapter by the department.

SUBCHAPTER II CERTIFICATION

HFS 35.06 Effect of certification. (1) PUBLIC FUNDING**.** Unless certified under this chapter, an outpatient mental health clinic is not eligible to receive funding from the Wisconsin medical assistance or BadgerCare Plus programs under ss. 49.45 and 49.471, Stats., federal community mental health services block grant funds under 42 USC s. 300x, et. seq., or state community aids funds under s. 51.423 (2), Stats., in connection with the provision of outpatient mental health services.

(2) PRIVATE INSURANCE. An outpatient mental health clinic certified under this chapter is certified by the Department within the meaning of s. 632.89(1)(e)1., Stats., for purposes of the provisions of s. 632.89(2), Stats., relating to required coverage of treatment for certain conditions under certain policies issued by private insurers.

HFS 35.07 Location of service delivery. (1) A clinic may provide outpatient mental health services at one or more offices. If a clinic provides outpatient mental health services at more than one office, all of the following apply:

(a) The clinic shall designate one office as its main office.

(b) All notices under this chapter will be sent to the main office.

(c) The clinic administrator shall be primarily located at the main office.

(d) Both the clinic as a whole and the main office shall comply with the staffing requirements of s. HFS 35.123(2).

(e) The clinic shall adopt policies and procedures that are adequate to ensure that the clinic administrator is able to carry out the oversight and other responsibilities specified under ss. HFS 35.123(1), HFS 35.14(1), and HFS 35.15(1) and (2) with respect to all other offices, given the location of the clinic's offices and their distance from the main office.

(2) A clinic may provide outpatient mental health services only at its offices, except in instances where therapeutic reasons are documented in the consumer file to show that it is appropriate to use an alternative location such as a nursing home, school, medical clinic, the consumer's home, or other location appropriate to support the consumer's recovery.

HFS 35.08 Certification process. (1) APPLICATION. (a) Application to the department for initial or renewal outpatient mental health clinic certification shall be made to the department on

a form provided by the department and shall include applicable fees, proof of malpractice and liability insurance for the clinic and each staff member who provides psychotherapy or who is a prescriber, and all of the information requested in the application. Additional offices do not require separate certification, but the clinic shall identify each office location and respond to any questions regarding each office in the application for initial or renewal certification.

Note: Fees are set and periodically revised by the Department's Division of Quality Assurance. Fees may vary based on a number of factors including the number of offices at which the clinic provides services.

(b) If a clinic applying for renewal certification holds current accreditation as an outpatient mental health clinic from a national accrediting body that has developed behavioral health standards for outpatient mental health clinics, the clinic shall in addition to the materials required under par. (a), include materials prepared by the clinic for the accrediting agency's inspection, the accrediting entity's standards, all documents and data collected during the accrediting body's certification survey, and survey findings and report resulting from the accrediting body's most current inspection.

Note: Application materials may be obtained from and submitted to the Behavioral Health Certification Unit, Division of Quality Assurance, PO Box 7851, Madison, WI 53707-7851

(2) COMPLIANCE REVIEW. (a) Upon receipt of a complete initial or renewal application, department staff, except as provided in par. (d), may conduct an on-site inspection of any office identified in the clinic application and may review any of the following information to determine if the clinic is in compliance with this chapter:

1. Statements made by the applicant or a staff member.

2. Documentary evidence.

3. On-site observations by a representative of the department.

4. Reports by consumers regarding the clinic's operations.

(b) The clinic shall make available for review by the department's designated representative all documentation necessary to establish whether the applicant and each of the applicant's offices is in compliance with the standards in this chapter, including written policies and procedures of the clinic, work schedules of staff members, credentials of staff members, consumer files and treatment records, information from grievances filed concerning the clinic, records of consumers who have been discharged, and evidence of contractual staffing.

(c) The designated representative of the department shall preserve the confidentiality of all consumer information obtained during the certification process, to the extent required by ch. HFS 92 and 45 CFR Parts 160, 162 and 164 and other applicable state and federal statutes and regulations.

(d) The department shall waive an on-site inspection of a clinic applying for renewal certification that holds current accreditation as an outpatient mental health clinic from a national accrediting body that has developed standards for outpatient mental health clinics if all of the following apply:

1. The clinic has submitted a complete application and all of the materials required under sub. (1).

2. The department determines that the standards of the accrediting body are at least as stringent as the requirements under this chapter.

3. The department determines that the clinic's record of compliance with this chapter or with the standards of the accrediting body shows no indication that an on-site inspection may be necessary.

(3) ISSUANCE OF CERTIFICATION. (a) *Action on application*. 1. Within 60 days after receiving a complete application for initial or renewal certification, the department shall grant the clinic initial or renewal certification, whichever is applicable, or deny certification.

2. If the department determines that a clinic applying for initial or renewal certification has a deficiency that is not a major deficiency as defined under s. 35.03 (9m), the department may grant or deny certification to the clinic. If the department grants initial or renewal certification to a clinic with a deficiency, the department shall issue a notice of deficiency under s. 35.11 (1m) (a).

3. If the department determines that a clinic applying for initial or renewal certification has a major deficiency, the department shall issue a notice of deficiency under s. 35.11 (1m) (a) and may deny initial or renewal certification, whichever is applicable.

(b) Duration of certification. 1. The department may grant initial certification up to one year.

2. Certification may be renewed for up to 2 years, provided the clinic annually submits an application for renewal and continues to meet the requirements for certification.

3. Certification of a clinic that receives a waiver of the on-site inspection of a clinic for renewal certification under s. HFS 35.08 (2) (d) may be renewed for up to 3 years, provided the clinic annually submits an application for renewal and continues to meet the requirements for certification.

4. Initial and renewal certification is subject to denial under sub. (5) or summary suspension or termination under s. HFS 35.11 (2).

(4) EXPIRATION OF CERTIFICATION. (a) The department shall send written notice of expiration of a clinic's certification and an application for renewal of certification to the clinic at least 60 days before expiration of the clinic's certification.

(b) If the department does not receive an application for renewal of certification from the clinic before the clinic's certification expires, the clinic's certification shall expire. A clinic whose certification has expired may not bill Medicaid, or utilize federal community mental health block grant or state community aids funds for services provided after the expiration date of the clinic's certification. If a clinic's certification expires, to be certified again the clinic shall apply for certification under sub. (1).

(5) DENIAL OF CERTIFICATION. The Department may deny certification based on any major deficiency. A denial of certification shall be in writing and shall contain the reason for the denial and notice of opportunity for a hearing under s. HFS 35.11 (3).

HFS 35.09 Notification of clinic changes. The clinic shall notify the department of any changes in administration, ownership or control, office location, clinic name, or program, and any change in the clinic's policies or practices that may affect clinic compliance by no later than the effective date of the change.

HFS 35.10 Scope and transferability of certification. Certification is issued only for the offices identified in the application for initial or renewal certification and only for the individual or individuals, corporations or other legal entities named in the application for initial and renewal certification. Certification may not be transferred or assigned, including by change of ownership or control of a corporation or other legal entity named in the certification. A change in ownership or control includes a majority change in the shares of stock held or in the board of directors of a corporation certified under this chapter, or any other change that results in transfer of control or transfer of a majority share in the control of the operations of a clinic. A change in ownership requires application for new certification. Additional offices at which services are provided do not require separate certification but shall be identified in the application for initial and renewal certification.

HFS 35.11 Enforcement actions. (1) UNANNOUNCED VISITS. The department may make unannounced on-site inspections of any office of a clinic at any time to conduct complaint or death investigations involving the clinic, its staff members, or outpatient mental health services provided by the clinic, or to determine a clinic's progress toward compliance after citation of a major deficiency.

(1m) NOTICE OF DEFICIENCIES. (a) If the department determines that a clinic has a deficiency, the department shall issue a notice of deficiency to the clinic. The department may place restrictions on the activities of the clinic, or terminate or summarily suspend the clinic's certification.

(b) 1. If requested by the department, the clinic shall submit a plan of correction to the department within 30 days of the date of the notice of deficiency issued under par. (a), or other time designated by the department in the notice of deficiency. If the plan of correction submitted by the clinic is not acceptable to the department, the department may impose a plan of correction.

2. A plan of correction submitted by a clinic or imposed by the department under subd. 1. shall identify the specific steps the clinic will take to correct the deficiency; the timeline within which the corrections will be made; and the staff members who will implement the plan and monitor for future compliance.

(2) TERMINATION AND SUMMARY SUSPENSION OF CERTIFICATION. (a) The department may terminate certification at any time for any major deficiency upon written notice to the clinic. The notice shall specify the reason for the department action and the appeal information under sub. (3).

(b) 1. The department may summarily suspend a clinic's certification if the department believes immediate action is required to protect the health, safety, and welfare of consumers. Notice of summary suspension of certification may be written or verbal and shall specify the reason for the department action and the date the action becomes effective. Within 10 working days after the order is issuedhttp://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=25641808&infobase=code.nfo&jump=HFS%2057.57%281%29&softpage=Document - JUMPDEST_HFS_57.57(1), the department shall either allow continuance of the clinic's certification or proceed to terminate the clinic's certification.

2. Unless waived by the clinic, the division of hearings and appeals shall hold a hearing within 10 working days after the effective date of the order in subd. 1http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=25641808&infobase=code.nfo&jump=HFS%2057.57%281%29&softpage=Document - JUMPDEST_HFS_57.57(1). to determine if certification should remain suspended during termination proceedings. The division of hearings and appeals shall give written notice of the hearing to the clinic and the department.

(3) APPEALS. (a) If the department denies or terminates certification, the clinic may request a contested case hearing under ch. 227, Stats.

(b) A clinic's request for hearing shall be submitted in writing to the department of administration's division of hearings and appeals within 30 days after the date of the notice of the department's action. If the clinic makes a timely request for hearing on the department's decision to terminate or deny renewal certification, that action is stayed pending a decision on the appeal, unless the certification has been summarily suspended.

Note: A request for hearing may be delivered in person or mailed to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53707-7875. An appeal may be sent by fax to the Division's facsimile transmission number at (608) 264-9885.

HFS 35.12 Waivers and variances. (1) A clinic may apply to the department for a waiver or a variance at any time. Each request shall be made in writing to the department and shall include all of the following:

(a) Identification of the rule provision from which the waiver or variance is requested.

(b) The time period for which the waiver or variance is requested.

(c) If the request is for a variance, the specific alternative action that the outpatient clinic proposes.

(d) The reasons for the request.

(e) Supporting justification.

(f) Any other information requested by the department.

Note: An application for a waiver or variance should be addressed to the Behavioral Health Certification Unit, Division of Quality Assurance, P.O. Box 7851, Madison, WI 53701-7851.

(2) The department may grant a waiver or variance permitting a clinic to use new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects in the interest of better care or management, if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any consumer.

(2m) The department may grant a variance to a clinic that is unable to meet the minimum staffing requirements under s. HFS 35.123 (2). To be eligible for a variance under this subsection, the clinic shall establish that it has made and continues to make a good faith effort to recruit and retain a sufficient number of staff with the qualifications specified in s. HFS 35.123 (2). In addition to any other conditions the department may impose on a variance issued under

this paragraph, the department shall require that the clinic submit evidence on a continuous basis of the clinic's good faith efforts to recruit and retain qualified staff.

(3) The department shall provide its determination on a request for a waiver or variance to the clinic in writing. The department may impose restrictions on any waiver or variance it grants, including limiting the duration of any waiver or variance and may withdraw the waiver or variance if a clinic is not in compliance with one or more of the restrictions. The terms or restrictions of a variance may be modified upon agreement between the department and the clinic.

(4) (a) Within 60 days of the receipt of a request for waiver, the department shall grant or deny the waiver in writing. If the department denies a request for a waiver or variance, or revokes a waiver or variance, the reason for the denial or revocation shall be included in the notice.

(b) The department may revoke a waiver or variance if any of the following occurs:

1. The actions taken as a result of the waiver or variance have or will adversely affect the health, safety or welfare of a consumer.

2. The clinic has failed to comply with the variance as granted.

3. The clinic notifies the department that it wishes to relinquish the waiver or variance.

4. There is a change in applicable law.

5. For any other reason the department finds the revocation is necessary to protect the health, safety, or welfare of a consumer.

SUBCHAPTER III PERSONNEL

HFS 35.123 Staffing requirements for clinics. (1) Each clinic shall have a clinic administrator who is responsible for clinic operations, including ensuring that the clinic is in compliance with this chapter and other applicable state and federal law. A clinic administrator may be a licensed treatment professional or mental health practitioner.

(2) In addition to the clinic administrator, the clinic shall have a sufficient number of qualified staff members available to provide outpatient mental health services to consumers admitted to care. Except as provided in s. HFS 35.12 (2m), the clinic shall implement any one of the following minimum staffing combinations to provide outpatient mental health services:

(a) Two or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 60 hours per week.

(b) One or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 30 hours per week and one or more mental health practitioners or recognized psychotherapy practitioners who combined are available to provide outpatient mental health services at least 30 hours per week.

(c) One or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 37.5 hours per week, and at least one psychiatrist or

advanced practice nurse prescriber who provides outpatient mental health services to consumers of the clinic at least 4 hours per month.

(2m) If a clinic has more than one office, both the clinic as a whole and its main office shall comply with the requirements of sub. (2).

(3) If a clinic provides services to persons 13 years old or younger, the clinic shall have staff qualified by training and experience to work with children and adolescents.

(5) A clinic that is certified before the effective date of this section…. [revisor inserts date] shall meet the requirements of subs. (1) and (3) upon the effective date, but shall have until January 1, 2012 to meet the minimum staffing requirements under sub. (2).

(6) A person whose professional license is revoked, suspended, or voluntarily surrendered may not be employed or contracted with as a mental health professional, or a prescriber. A person whose professional license is limited or restricted, may not be employed or contracted with to practice in areas prohibited by the limitation or restriction.

HFS 35.127 Persons who may provide psychotherapy services through an outpatient mental health clinic. (1) Any mental health professional may provide psychotherapy to consumers through a clinic required to be certified under this chapter:

(2) A qualified treatment trainee may provide psychotherapy to consumers only under clinical supervision as defined under s. HFS 35.03 (5) (a).

(3) A clinic may choose to require clinical supervision of a mental health practitioner or recognized psychotherapy practitioner.

(4) A person who has a suspended, revoked, or voluntarily surrendered professional license may not provide psychotherapy to consumers. A person whose license or certificate is limited or restricted, may not provide psychotherapy under circumstances prohibited by the limitation or restriction.

HFS 35.13 Personnel policies. The clinic shall have and implement written personnel policies and procedures that ensure all of the following:

(1) Each staff member who provides psychotherapy or who prescribes medications is evaluated to determine if the staff member possesses current qualifications and demonstrated competence, training, experience and judgment for the privileges granted to provide psychotherapy or to prescribe medications for the clinic.

(2) Compliance with the caregiver background check and misconduct reporting requirements in s. 50.065, Stats., and ch. HFS 12, and the caregiver misconduct reporting and investigation requirements in ch. HFS 13.

Note: Forms for conducting a caregiver background check including the background information disclosure form may be obtained from the Department's website at http://dhfs.wisconsin.gov/caregiver/BkgdFormsINDEX.HTM or by writing the Department at Office of Caregiver Quality, Division of Quality Assurance, P.O. Box 2969, Madison, WI 53701-2969. Phone: (608) 266-8481, Fax: (608) 267-0352.

(3) A record is maintained for each staff member and includes all of the following:

(a) Confirmation of an applicant's current training or professional license or certification, if a training or professional license or certification is necessary for the staff member's prescribed duties or position. All limitations and restrictions on a staff member's license shall be documented by the clinic.

(b) The results of the caregiver background check including a completed background information disclosure form for every background check conducted, and the results of any subsequent investigation related to the information obtained from the background check.

(c) A vita of training, work experience and qualifications for each prescriber and each person who provides psychotherapy.

HFS 35.14 Clinical supervision and clinical collaboration. (1) (a) The clinic administrator shall have responsibility for administrative oversight of the job performance and actions of each staff member and require each staff member to adhere to all laws and regulations governing the care and treatment of consumers and the standards of practice for their individual professions.

(b) Each clinic shall implement a written policy for clinical supervision as defined under s. HFS 35.03 (5), and clinical collaboration as defined under s. HFS 35.03 (4). Each policy shall address all of the following:

1. A system to determine the status and achievement of consumer outcomes, which may include a quality improvement system or a peer review system to determine if the treatment provided is effective, and a system to identify any necessary corrective actions.

2. Identification of clinical issues, including incidents that pose a significant risk of an adverse outcome for one or more consumers of the outpatient mental health clinic that should warrant clinical collaboration, or clinical supervision that is in addition to the supervision specified under chs. MPSW 4, 12, or 16, or Psy 2, or for a recognized psychotherapy practitioner, in accordance with s. HFS 35.03 (5) (a), whichever is applicable.

(2) Except as provided under sub. (4) (b), the clinic's policy on clinical supervision shall be in accordance with chs. MPSW 4, 12, or 16, or Psy 2, or for a recognized psychotherapy practitioner, whichever is applicable. The clinic's policy on clinical collaboration shall require one or more of the following:

(a) Individual sessions, with staff case review, to assess performance and provide feedback.

(b) Individual side-by-side session while a staff member provides assessments, service planning meetings or outpatient mental health services and in which other staff member assesses, and gives advice regarding staff performance.

(c) Group meetings to review and assess quality of services and provide staff members advice or direction regarding specific situations or strategies.

(d) Any other form of professionally recognized method of clinical collaboration designed to provide sufficient guidance to assure the delivery of effective services to consumers by the staff member.

(3) Clinical supervision and clinical collaboration records shall be dated and documented with the signature of the person providing these functions in a supervision or collaboration record, or in the staff record of each staff member who attends the session or review. If clinical supervision or clinical collaboration results in a recommendation for a change to a consumer's treatment plan, the recommendation shall be documented in the consumer file.

(4) (a) A qualified treatment trainee who provides psychotherapy shall receive clinical supervision.

(b) If any staff member, including a staff member who is a substance abuse counselor-in training, substance abuse counselor, or clinical abuse counselor, provides services to consumers who have a primary diagnosis of substance abuse, the staff member shall receive clinical supervision from a clinical supervisor as defined under ch. RL 160.02 (7).

HFS 35.15 Orientation and training. (1) GENERAL REQUIREMENT. The clinic administrator shall ensure each staff member receives initial and continuing training that enables the staff member to perform staff member's duties effectively, efficiently, and competently. Documentation of training shall be made available to department staff upon request.

(2) ORIENTATION. (a) The clinic shall maintain documentation that each staff member who is a mental health professional and who is new to the clinic has completed the training requirements specified under par. (b), either as part of orientation to the clinic or as part of prior education or training. The clinic administrator shall require all other staff members to complete only the orientation training requirements specified under par. (b) that are necessary, as determined by the clinic administrator, for the staff member to successfully perform the staff member's assigned job responsibilities.

(b) The orientation training requirements under this subsection are:

1. A review of the pertinent parts of this chapter and other applicable statutes and regulations.

2. A review of the clinic's policies and procedures.

3. Cultural factors that need to be taken into consideration in providing outpatient mental health services for the clinic's consumers.

4. The signs and symptoms of substance use disorders and reactions to psychotropic drugs most relevant to the treatment of mental illness and mental disorders served by the clinic.

5. Techniques for assessing and responding to the needs of consumers who appear to have problems related to trauma; abuse of alcohol, drug abuse or addiction; and other co-occurring illnesses and disabilities.

6. How to assess a consumer to detect suicidal tendencies and to manage persons at risk of attempting suicide or causing harm to self or others.

7. Recovery concepts and principles that ensure services, and supports connection to others and to the community.

8. Any other subject that the clinic determines is necessary to enable the staff member to perform the staff member's duties effectively, efficiently, and competently.

(3) MAINTAINING ORIENTATION AND TRAINING POLICIES. A clinic shall maintain in its central administrative records the most current copy of its orientation and training policies.

CHAPTER IV OUTPATIENT MENTAL HEALTH SERVICES

HFS 35.16 Admission. (1) The clinic shall establish written selection criteria for use when screening a consumer for possible admission. The criteria may include any of the following limitations as applicable:

(a) Sources from which referrals may be accepted by the clinic.

(b) Restrictions on acceptable sources of payment for services, or the ability of a consumer or a consumer's family to pay.

(c) The age range of consumers whom the clinic will serve based on the expertise of the clinic staff members.

(d) Diagnostic or behavioral requirements that the clinic will apply in deciding whether or not to admit a consumer for treatment.

(e) Any consumer characteristics for which the clinic has been specifically designed, including the nature or severity of disorders that can be managed on an outpatient basis by the clinic, and the expected length of time that services may be necessary.

(2) A clinic shall refer any consumer not meeting the clinic's selection criteria for admission to appropriate services.

(3) If a clinic establishes priorities for consumers to be served, a waiting list for consumers to be admitted, or a waiting list for consumers who have been admitted but resources to provide services to these consumers are not yet available, the priorities or the procedures for the operation of the waiting list shall be maintained in writing and applied fairly and uniformly.

(4) (a) Only a licensed treatment professional, or a recognized psychotherapy practitioner, may diagnose a mental illness of a consumer on behalf of a clinic. The licensed treatment professional, or recognized psychotherapy practitioner shall document, in the consumer file, the recommendation for psychotherapy specifying the diagnosis; the date of the recommendation for psychotherapy; the length of time of the recommendation; the services that are expected to be needed; and the name and signature of the person issuing the recommendation for psychotherapy.

(b) In order to be reimbursed under the medical assistance program for psychotherapy services provided to a medical assistance recipient, the recommendation for psychotherapy under par. (a) shall be a physician prescription as required under s. 49.46 (2) (b) 6. f., Stats.

(5) If a clinic provides substance use services to a consumer, the clinic shall use a department approved placement criteria tool to determine if a consumer who has a co-occurring substance use disorder requires substance abuse treatment services. If the consumer is determined to need a level of substance use services that are above the level of substance use

services that can be provided by the clinic, the consumer shall be referred to an appropriate department certified provider.

HFS 35.165 Emergency services. (1) The clinic shall have and implement a written policy on how the clinic will provide or arrange for the provision of services to address a consumer's mental health emergency or crisis during hours when its offices are closed, or when staff members are not available to provide outpatient mental health services.

Note: The phrase "available to provide outpatient mental health services" is defined under s. HFS 35.03 (2).

(2) The clinic shall include, in its written policies, the procedures for identifying risk of attempted suicide or risk of harm to self or others.

HFS 35.17 Assessment. (1) (a) A mental health professional, shall complete an initial assessment of a consumer before a second meeting with a staff member. The information collected during the initial assessment shall be sufficient to identify the consumer's need for outpatient mental health services.

(b) A comprehensive assessment shall be valid, accurately reflect the consumer's current needs, strengths and functioning, be completed before beginning treatment under the treatment plan established under s. HFS 35.19 (1), and include all of the following:

1. The consumer's presenting problems.

2. A diagnosis, which shall be established from the current Diagnostic and Statistical Manual of Mental Disorders, or for children up to age 4, the current Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood.

Note: The Diagnostic and Statistical Manual of Mental Disorders is published by the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders. Washington, DC, American Psychiatric Association, 2000. The Diagnostic and Statistical Manual of Mental Disorders may be ordered through http://www.appi.org/book.cfm?id=2024 or other sources. Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood is published by the National Center for Clinical Infant Programs: Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood. Arlington, VA, National Center for Clinical Infant Programs, 1994. The Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood may be ordered through http://www.zerotothree.org/bookstore/index.cfm?pubID=2597 or other sources.

3. The recipient's symptoms which support the given diagnosis.

4. Information on the consumer's strengths, and current and past psychological, social, and physiological data; information related to school or vocational, medical, and cognitive functioning; past and present trauma; and substance abuse.

5. The consumer's unique perspective and own words about how the consumer views his or her recovery, experience, challenges, strengths, needs, recovery goals, priorities, preferences, values and lifestyle, areas of functional impairment, and family and community support.

Note: Nothing in this chapter is intended to interfere with the right of providers under s, 51.61(6), Stats., to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system.

(2) If a consumer is determined to have one or more co-occurring disorders, a licensed treatment professional, mental health practitioner, or a recognized psychotherapy practitioner, shall document the treatments and services concurrently received by the consumer through other providers; whether the clinic can serve the consumer's needs using qualified staff members or in collaboration with other providers; and any recommendations for additional services, if needed. If a clinic cannot serve a consumer's needs, independently, or in collaboration with other providers, the clinic shall refer the consumer, with the consumer's consent, to an appropriate provider.

HFS 35.18 Consent for outpatient mental health services.

(1) If a clinic determines that a consumer is appropriate for receiving outpatient mental health services through the clinic, the clinic shall inform the consumer or the consumer's legal representative of the results of the assessment. In addition, the clinic shall inform the consumer or the consumer's legal representative, orally and in writing, of all of the following:

(b) Treatment alternatives.

(c) Possible outcomes and side effects of treatment recommended in the treatment plan.

(d) Treatment recommendations and benefits of the treatment recommendations.

(e) Approximate duration and desired outcome of treatment recommended in the treatment plan.

(f) The rights of a consumer receiving outpatient mental health services, including the consumer's rights and responsibilities in the development and implementation of an individual treatment plan.

(g) The outpatient mental health services that will be offered under the treatment plan.

(h) The fees that the consumer or responsible party will be expected to pay for the proposed services.

Note: Consumers receiving Medicaid covered services may not be charged any amount in connection with services other than the applicable cost share, if any, specified by the Wisconsin Medicaid Program.

(i) How to use the clinic's grievance procedure under ch. HFS 94.

(j) The means by which a consumer may obtain emergency mental health services during periods outside the normal operating hours of the clinic.

(k) The clinic's discharge policy, including circumstances under which a patient may be involuntarily discharged for inability to pay or for behavior reasonably the result of mental health symptoms.

(2) If a consumer wishes to receive services through the clinic, the consumer or the consumer's legal representative, where the consent of the legal representative is required for treatment, shall sign a clinic form to indicate the consumer's informed consent to receive outpatient mental health services.

(3) If a consumer is prescribed medication as part of the consumer's treatment plan developed under s. HFS 35.19 (1), the clinic shall obtain a separate consent that indicates that the prescriber has explained to the consumer, or the consumer's legal representative if the legal representative's consent is required, the nature, risks and benefits of the medication and that the consumer, legal representative understands the explanation and consents to the use of the medication.

(4) The consent to outpatient mental health services shall be renewed in accordance with s. HFS 94.03 (1) (f).

Note: The consent of the patient or legal representative is not required where treatment is ordered pursuant to a court order for involuntary commitment order.

HFS 35.19 Treatment plan.

(1) DEVELOPMENT OF THE TREATMENT PLAN. (a) A licensed treatment professional, mental health practitioner, or recognized psychotherapy practitioner, shall develop an initial treatment plan upon completion of the comprehensive assessment required under s. HFS 35.17 (1) (b). The treatment plan shall be based upon the diagnosis and symptoms of the consumer and describe all of the following:

1. The consumer's strengths and how they will be used to develop the methods and expected measurable outcomes that will be accomplished.

2. The method to reduce or eliminate the symptoms causing the consumer's problems or inability to function in day to day living, and to increase the consumer's ability to function as independently as possible.

3. For a child or adolescent, a consideration of the child's or adolescent's development needs as well as the demands of the illness.

4. The schedules, frequency, and nature of services recommended to support the achievement of the consumer's recovery goals, irrespective of the availability of services and funding.

Note: Nothing in this chapter is intended to interfere with the right of providers under s, 51.61(6), Stats., to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system.

(b) The treatment plan shall reflect the current needs and goals of the consumer as indicated by progress notes and by reviewing and updating the assessment as necessary.

(2) APPROVAL OF THE TREATMENT PLAN. As treatment services are rendered, the consumer or the consumer's legal representative must approve and sign the treatment plan and

agree with staff on a course of treatment. If the consumer does not approve of the schedules, frequency, and nature of the services recommended, then appropriate notations regarding the consumer's refusal shall be made in the consumer file. The treatment plan under this subsection shall include a written statement immediately preceding the consumer's or legal representative's signature that the consumer or legal representative had an opportunity to be informed of the services in the treatment plan, and to participate in the planning of treatment or care, as required by s. 51.61 (1) (fm), Stats.

(3) CLINICAL REVIEW OF THE TREATMENT PLAN. (a) Staff shall establish a process for a clinical review of the consumer's treatment plan and progress toward measurable outcomes. The review shall include the participation of the consumer and be an ongoing process. The results of each clinical review shall be clearly documented in the consumer file. Documentation shall address all of the following:

1. The degree to which the goals of treatment have been met.

2. Any significant changes suggested or required in the treatment plan.

3. Whether any additional assessment or evaluation is recommended as a result of information received or observations made during the course of treatment.

4. The consumer's assessment of functional improvement toward meeting treatment goals and suggestions for modification.

(b) A mental health professional shall conduct a clinical review of the treatment plan with the consumer as described in par. (a) at least every 90 days or 6 treatment sessions, whichever covers a longer period of time.

(4) The clinic shall develop and implement written policies and procedures for referring consumers to other community service providers for services that the clinic does not or is unable to provide to meet the consumer's needs as identified in the comprehensive assessment required under s. HFS 35.17 (1) (b). The policies shall identify community services providers to which the clinic reasonably determines it will be able to refer consumers for services the clinic does not or cannot provide.

35.20 Medication management.

(1) A clinic may choose whether to provide medication management as part of its services.

(2) Consumers receiving only medication management from a clinic shall be referred by the clinic's prescriber for psychotherapy when appropriate to the consumer's needs and recovery.

(3) All medications prescribed by the clinic shall be documented in the consumer file as required under s. HFS 35.23 (1) (a) 10.

35.21 Treatment approaches and services. (1) The clinic shall have and implement a written policy that identifies the selection of treatment approaches and the role of clinical supervision and clinical collaboration in treatment approaches. The treatment approaches shall be based on guidelines published by a professional organization or peer-reviewed journal. The final decision on the selection of treatment approaches for a specific consumer shall be made by the consumer's therapist in accordance with the clinic's written policy.

(2) The clinic shall make reasonable efforts to ensure that each consumer receives the recommended interventions and services identified in the consumer's treatment plan or revision of the treatment plan that is created under s. HFS 35.19 (1), that the consumer is willing to receive as communicated by an informed consent for treatment.

35.215 Group therapy. The maximum number of consumers receiving services in a single group therapy session is 16, and the minimum staff to consumer ratio in group therapy is one to 8. If different limits are justified based on guidelines published by a governmental entity, professional organization or peer-reviewed journal indicate, the clinic may request a variance of either the limit of group size or the minimum staff to consumer ratio.

35.22 Discharge summary. (1) Within 30 days after a consumer's date of discharge, the licensed treatment professional, mental health practitioner, or recognized psychotherapy practitioner who was primarily responsible for providing outpatient mental health services for the consumer shall prepare a discharge summary and enter it into the consumer file. The discharge summary shall include all of the following:

(a) A description of the reasons for discharge.

(b) A summary of the outpatient mental health services provided by the clinic, including any medications.

(c) A final evaluation of the consumer's progress toward the goals of the treatment plan.

(d) Any remaining consumer needs at the time of discharge and the recommendations for meeting those needs, which may include the names and addresses of any facilities, persons or programs to which the consumer was referred for additional services following discharge.

(2) The discharge summary shall be signed and dated by the licensed treatment professional, mental health practitioner, or recognized psychotherapy practitioner who was primarily responsible for providing services to the consumer.

HFS 35.23 Consumer file. (1) RECORDS REQUIRED. (a) The clinic shall maintain a consumer file for each consumer who receives outpatient mental health services. Each consumer file shall be arranged in a format that provides for consistent recordkeeping that facilitates accurate and efficient retrieval of record information. All entries in the consumer file shall be factual, accurate, legible, permanently recorded, dated, and authenticated with the signature and license or title of the person making the entry. Treatment records contained in a consumer file are confidential to the extent required under s. 51.30, Stats. An electronic representation of a person's signature may be used only by the person who makes the entry. The clinic shall possess a statement signed by the person, which certifies that only that person shall use the electronic representation via use of a personal password. Each consumer file shall include accurate documentation of all outpatient mental health services received including all of the following:

1. Results of each assessment conducted.

2. Initial and updated treatment plans.

3. The recommendation or prescription for psychotherapy.

4. For consumers who are diagnosed with substance abuse disorder, a completed copy of the most current approved placement criteria summary if required by HFS 35.16 (5).

5. Documentation of referrals of the consumer to outside resources.

6. Descriptions of significant events that are related to the consumer's treatment plan and contribute to an overall understanding of the consumer's ongoing level and quality of functioning.

7. Progress notes, which shall include documentation of therapeutic progress, functional status, treatment plan progress, symptom status, change in diagnosis, and general management of treatment.

8. Any recommended changes or improvement of the treatment plan resulting from clinical collaboration or clinical supervision.

9. Signed consent forms for disclosure of information and for medication administration and treatment, and court orders, if any.

10. A listing of medications prescribed by staff prescribers, and a medication administration record if staff dispenses or administers medications to the consumer.

11. Discharge summary and any related information.

12. Notice of involuntary discharge, if applicable.

13. Any other information that is appropriate for the consumer file.

(b) Clinics may keep composite consumer files of a family in treatment as a unit. When information is released, provisions shall be made for individual confidentiality pursuant to s. 51.30, Stats., and ch. HFS 92.

(2) CONFIDENTIALITY. Treatment records shall be kept confidential as required under s. 51.30, Stats., ch. HFS 92, and 45 CFR Parts 160, 162 and 164, and 42 CFR Part 2 in a designated place in each clinic office at which records are stored that is not accessible to consumers or the public but is accessible to appropriate staff members at all times.

Note: If notes or records, recorded in any medium, maintained for personal use by an individual providing treatment services are available to others, the notes or records become part of the treatment records. See s. 51.30 (1) (b), Stats., and ss. HFS 92.02 (16) and HFS 92.03 (1) (b).

(3) TRANSFERRING TREATMENT RECORDS. Upon written request of a consumer or former consumer or, if required, that person's legal representative, the clinic shall transfer to another licensed treatment professional, clinic or mental health program or facility the treatment records and all other information in the consumer file necessary for the other licensed treatment professional, clinic or mental health program or facility to provide further treatment to the consumer or former consumer.

(4) RETENTION AND DISPOSAL. (a) The clinic shall implement a written policy governing the retention of treatment records that is in accordance with s. HFS 92.12 and any other applicable laws.

(b) Upon termination of a staff member's association with the clinic, the treatment records for which the staff member was responsible shall remain in the custody of the clinic.

(5) ELECTRONIC RECORD-KEEPING SYSTEMS. (a) Clinics may maintain treatment records electronically if the clinic has a written policy describing the record and the authentication and security policy.

(b) Electronic transmission of information from treatment records to information systems outside the outpatient mental health clinic may not occur without voluntary written consent of the consumer unless the release of confidential treatment information is permitted under s. 51.30, Stats., or other applicable law.

Note: Transmission of information must comply with 45 CFR parts 160, 162, and 164, s. 51.30, Stats., and ch. HFS 92.

(c) If treatment records are kept electronically, the confidentiality of the treatment records shall be maintained as required under subs. (2) to (4). A clinic shall maintain a paper or electronic back-up system for any treatment records maintained electronically.

Note: If notes or records, recorded in any medium, maintained for personal use by an individual providing treatment services are available to others, the notes or records become part of the treatment records. See s. 51.30 (1) (b), Stats., and ss. HFS 92.02 (16) and HFS 92.03 (1) (b).

HFS 35.24 Consumer rights. (1) A clinic shall implement written polices and procedures that are consistent with s. 51.61, Stats., and ch. HFS 94 to protect the rights of consumers.

(2) If a staff member no longer is employed by or contracts with the outpatient mental health clinic, the clinic shall offer consumers who had been served by that staff member options for ongoing services.

(3) (a) A consumer may be involuntarily discharged from treatment because of the consumer's inability to pay for services or for behavior that is reasonably a result of mental health symptoms only as provided in par. (b).

(b) Before a clinic may involuntarily discharge a consumer under par. (a), the clinic shall notify the consumer in writing of the reasons for the discharge, the effective date of the discharge, sources for further treatment, and of the consumer's right to have the discharge reviewed, prior to the effective date of the discharge, by the subunit of the department that certifies clinics under this chapter, with the address of that subunit. A review under this paragraph is in addition to and is not a precondition for any other grievance or legal action the consumer may bring in connection with the discharge, including a grievance or action under s. 51.61, Stats. In deciding whether to uphold or overturn a discharge in a review under this paragraph, the department may consider:

1. Whether the discharge violates the consumer's rights under s. 51.61, Stats.

2. In cases of discharge for behavior that is reasonably a result of mental health symptoms, whether the consumer's needs can be met by the clinic, whether the safety of staff or other consumers of the clinic may be endangered by the consumer's behavior, and whether another provider has accepted a referral to serve the consumer.

Note: The address of the subunit of the department that certifies clinics under this chapter is Behavioral Health Certification Unit, Division of Quality Assurance, PO Box 7851, Madison, WI 53707-7851.

HFS 35.25 Death reporting. The clinic shall report the death of a consumer to the department if required under s. 51.64 (2), Stats.

SECTION 3. HFS 105.22 (1) (bm) is created to read:

HFS 105.22 (1) (bm) An advanced practice nurse prescriber who is certified under s. 441.16 (2), Stats., and holds current certification in a psychiatric specialty from the American Nurses Credentialing Center.

SECTION 4. HFS 105.22 (1) (c) is amended to read:

An ~~A board-operated~~ outpatient clinic ~~facility or hospital outpatient mental health facility~~ certified under ch. HFS 35 ~~ss. HFS 61.91 to 61.98~~; or

SECTION 5. HFS 105.22 (1) (d) is repealed and recreated to read.

A hospital outpatient mental health clinic located on the hospital's physical premises.

SECTION 6. HFS 105.22 (2) (title), (a) and (3) are amended to read:

HFS 105.22 (2) STAFFING OF OUTPATIENT FACILITIES. (a) To provide psychotherapy reimbursable by MA, personnel employed by an outpatient clinic ~~facility deemed a provider~~ under sub. (1) (c) ~~(d) shall be individually certified and~~ shall meet applicable requirements under ch. HFS 35 ~~work under the supervision of a physician or psychologist who meets the requirements of sub. (1) (a) or (b)~~. Persons employed by a ~~board-operated or~~ hospital outpatient mental health ~~facility~~ clinic under sub. (1) (d) need not be individually certified as providers but may provide psychotherapy services upon the department's issuance of certification to the ~~facility~~ mental health clinic by which they are employed. ~~In this case, the facility~~ A hospital outpatient mental health clinic shall maintain a list of the names of persons employed by the ~~facility~~ clinic who are performing psychotherapy services for which reimbursement may be claimed under MA. This listing shall document the credentials possessed by the named persons which would qualify them for certification under the standards specified in this subsection and shall include the dates that the named persons began employment.

(3) REIMBURSEMENT FOR OUTPATIENT PSYCHOTHERAPY SERVICES. Reimbursement shall be made to any certified outpatient ~~facility~~ mental health clinic meeting the requirement under sub. (1) (c) for services rendered by any provider ~~under sub. (2) and~~ who meets the applicable requirements under ch. HFS 35 and working for that ~~facility~~ clinic, except that a provider certified under sub. (1) (a) ~~or~~, (b), or (bm)http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=23317296&infobase=code.nfo&jump=HFS%20105.22%281%29%28a%29&softpage=Document - JUMPDEST_HFS_105.22(1)(a)http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=23317296&infobase=code.nfo&jump=HFS%20105.22%281%29%28b%29&softpage=Document - JUMPDEST_HFS_105.22(1)(b) may be reimbursed directly.

SECTION 7. HFS 105.22 (2) (b) is repealed.

SECTION 8. HFS 107.13 (2) (a) (intro.) and 1. (intro.) are amended to read:

HFS 107.13 (2) (a) *Covered services.* ~~Outpatient~~ Except as provided in par. (b), outpatient psychotherapy services shall be covered services when prescribed by a physician, when provided by a provider ~~who meets the requirements of~~http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=23320053&infobase=code.nfo&jump=HFS%20105.22&softpage=Document - JUMPDEST_HFS_105.22 certified under s. HFS 105.22, and when the following conditions are met:

1. A strength-based assessment, including differential diagnostic examination, is performed by a certified psychotherapy provider. A physician's prescription is not necessary to perform the ~~examination;~~ assessment. The assessment shall include:

SECTION 9. HFS 107.13 (2) (a) 1. a. to g. and (2m) are created to read:

HFS 107.13 (2) (a) 1. a. The recipient's presenting problem.

b. Diagnosis established from the current Diagnostic and Statistical Manual of Mental Disorders including all 5 axes or, for children up to age four, the current Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood.

c. The recipient's symptoms which support the given diagnosis.

d. The recipient's strengths, and current and past psychological, social, and physiological data; information related to school or vocational, medical, and cognitive function; past and present trauma; and substance abuse.

e. The recipient's unique perspective and own words about how he or she views his or her recovery, experience, challenges, strengths, needs, recovery goals, priorities, preferences, values and lifestyle, areas of functional impairment, and family and community support.

f. Barriers and strengths to the recipient's progress and independent functioning.

g. Necessary consultation to clarify the diagnosis and treatment.

(2m) The goals of psychotherapy and specific objectives to meet those goals shall be documented in the recipient's recovery and treatment plan that is based on the strength-based assessment. In the recovery and treatment plan, the signs of improved functioning that will be used to measure progress towards specific objectives at identified intervals, agreed upon by the provider and recipient shall be documented. A mental health diagnosis and medications for mental health issues used by the recipient shall be documented in the recovery and treatment plan.

SECTION 10. HFS 107.13 (2) (a) 3. a. and b, 4. a. to f., 6., 7., (b) 1., 4. a. to d., (c) 4. and 6. and (d) 2. are amended to read:

HFS 107.13 (2) (a) 3. a. A provider who is a licensed physician ~~or a~~, licensed psychologist, or a licensed and certified advanced practice nurse prescriber ~~as provided~~ who is individually certified underhttp://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=27483746&hitsperheading=on&infobase=code.nfo&jump=HFS%20105.22%281%29%28a%29&softpage=Document - JUMPDEST_HFS_105.22(1)(a) s. HFS 105.22 (1) (a) ~~or~~,(b), or (bm) and who is working in an outpatient ~~facility~~ mental health clinic certified

underhttp://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=27483746&hitsperheading=on&infobase=code.nfo&jump=HFS%2010 5.22%281%29%28c%29&softpage=Document - JUMPDEST_HFS_105.22(1)(c) s. HFS 105.22 ~~(1) (c) or (d);~~ or ~~who is working~~ in private practice~~; or~~.

b. A provider under s. HFS 105.22 (3)http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=27483746&hitsperheading=on&infobase=code.nfo&jump=HFS%2010 5.22%283%29&softpage=Document - JUMPDEST_HFS_105.22(3) who is working in an outpatient ~~facility~~ mental health clinic that is certified under s. HFS 105.22 (1) ~~(c) or (d) which is certified~~http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=27483746&hitsperheading=on&infobase=code.nfo&jump=HFS%2010 5.22%281%29%28c%29&softpage=Document - JUMPDEST_HFS 105.22(1)(c)http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=27483746&hitsperheading=on&infobase=code.nfo&jump=HFS%2010 5.22%281%29%28d%29&softpage=Document - JUMPDEST_HFS_105.22(1)(d) to participate in MA~~;~~.

4. Psychotherapy is performed only in:

a. The office of a provider~~;~~ for providers who may bill directly.

b. A hospital outpatient ~~clinic;~~ mental health clinic on the hospital's physical premises.

c. An outpatient ~~facility;~~ mental health clinic.

d. A nursing home~~;~~.

e. A school~~; or~~.

f. A hospital~~;~~.

6. Outpatient psychotherapy services of up to $~~500~~825 per recipient, per provider in a calendar year for hospital outpatient ~~service~~ mental health clinic providers billing on the hospital claim form, or 15 hours or $~~500~~825 per recipient, per provider, in a calendar year for non−hospital outpatient mental health clinic providers, whichever limit is reached first, may be provided without prior authorization by the department~~; and~~

7. If reimbursement is also made to ~~any~~ the same provider for ~~AODA~~ substance abuse treatment services under sub. (3) during the same year for the same recipient, the hours reimbursed for these services shall be considered part of the $~~500~~825 or 15-hour psychotherapy treatment services limit before prior authorization is required. For hospital outpatient mental health clinic providers billing on the hospital claim form, these services shall be included in the $~~500~~825 limit before prior authorization is required. ~~If several psychotherapy or AODA treatment service providers are treating the same recipient during the year, all the psychotherapy and AODA treatment services shall be considered in the $500 or 15−hour total limit before prior authorization is required~~. ~~However, if~~ If a recipient is hospitalized as an inpatient in an acute care general hospital or IMD with a diagnosis of, or for a procedure associated with, a psychiatric or ~~alcohol or other drug~~ substance abuse condition, reimbursement for any inpatient psychotherapy or ~~AODA~~ substance abuse treatment services is not included in the $~~500~~825, 15−hour limit before prior authorization is required for outpatient psychotherapy or ~~AODA~~ substance abuse treatment services. For hospital inpatients, the strength-based assessment, including differential diagnostic examination for psychotherapy and

the medical evaluation for ~~AODA~~ substance abuse treatment services also are not included in the limit before prior authorization is required.

(b) *Prior authorization.* 1. Reimbursement may be claimed for treatment services beyond 15 hours or ~~$500~~825, whichever limit is attained first, after receipt of prior authorization from the department. ~~Services reimbursed by any third-party payer shall be included when calculating the 15 hours or $500 of service.~~

4. a. The names, addresses and MA provider or identifier numbers of the providers conducting the strength-based assessment, including diagnostic examination or medical evaluation and performing psychotherapy services~~;~~.

b. A copy of the physician's prescription for treatment~~;~~.

c. A detailed summary of the strength-based assessment, including differential diagnostic examination, setting forth the ~~severity of the mental illness or medically significant emotional or social dysfunction, the medical necessity for psychotherapy and the expected outcome of treatment;~~ elements of an assessment in s. HFS 107.13 (2) (a) 1.

d. A copy of the treatment plan ~~which shall relate to the findings of the diagnostic examination or medical evaluation and specify behavior and personality changes being sought;~~ and setting forth the elements required in s. HFS 107.13 (2m).

(c) 4. ~~Diagnostic testing and~~ Strength-based assessment, including a differential diagnostic evaluation for mental health, day treatment and ~~AODA~~ substance abuse services shall be limited to ~~6~~8 hours every ~~2 years~~ calendar year per recipient as a unique procedure before prior authorization is required. ~~Any diagnostic testing and evaluation in excess of 6 hours shall be counted toward the therapy prior authorization limits and may, therefore, be subject to prior authorization.~~

6. Professional psychotherapy services provided to hospital inpatients in general hospitals, other than group therapy and medication management, are not considered inpatient services. Reimbursement shall be made to the psychiatrist ~~or~~, psychologist, or advanced practice nurse prescriber billing providers certified under http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=40888069&infobase=code.nfo&jump=HFS%20105.22%281%29%28a%29&softpage=Document - JUMPDEST_HFS_105.22(1)(a) s. HFS 105.22 (1) (a) ~~or~~, (b), or (bm) who provide mental health professional services to hospital inpatients in accordance with requirements of this subsection.

(d) 2. Psychotherapy for persons with the primary diagnosis of developmental disabilities, including mental retardation, except when they experience psychological problems that necessitate psychotherapeutic intervention;

SECTION 11. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health Services

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Rea Holmes, Executive Assistant

Dated: January 16, 2009

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