

**WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT PERMANENT RULES**

The Wisconsin Department of Health Services (the Department) proposes an order to **create** DHS 72, 105.259, and 107.13 (8), relating to peer recovery service providers and reimbursement under the Medical Assistance program.

RULE SUMMARY

Statute interpreted

Sections 46.482 (2) and (3), 49.45 (10) and (30j), 49.471 (12), 51.04, and 51.61, Stats.

Statutory authority

The department is authorized to promulgate the proposed rules based upon Sections 46.482 (2), (3), 49.45 (10) and (30j) (b) 4., 49.471 (12), 51.04, and 227.11 (2), Stats.

Explanation of agency authority

The Department is the single state agency for administering and supervising Wisconsin's Medicaid ("MA") program, per 42 CFR 431.10 and the MA State Plan. Under s. 49.45 (2) (a) 11., Stats., the Department's obligation in administering MA includes establishing criteria for certification of MA providers, setting for the conditions of participation and reimbursement, and promulgating rules to implement those requirements. Section 49.45 (10), Stats., further authorizes the Department to "promulgate such rules as are consistent with its duties in administering [MA]," and s. 49.471 (12), Stats., relates to the BadgerCare Plus program and permits the Department to "promulgate any rules necessary for and consistent with its administrative responsibilities" in overseeing the MA program.

Peer recovery coach certification standards.

2019 Wis. Act 122 (hereinafter "Act 122") created ss. 49.45 (30j) and 49.46 (2) (b) 14p., which collectively directed the Department to certify "peer recovery coaches" (hereinafter "PRC" or "PRCs") and provide MA reimbursement to peer recovery coaches who do all of the following:

- (1) Provide services to recipients who are in treatment for recovery from mental illness or a substance use disorder.
- (2) Provide services under the supervision of a competent mental health professional.
- (3) Provide recovery services in accordance with the recipient's individual treatment plan.
- (4) Complete statutorily identified training requirements. *See* s. 49.45 (30j) (b) 4, Stats.

Act 122 directed the Department to establish the training requirements under s. 49.45 (30j) (b) 4. "after consulting with members of the recovery community" and to request a waiver of any Federal Medicaid law or regulations in order to provide reimbursement for certified peer recovery support services. In addition to promulgating the training requirements provided in s. 49.45 (30j) (b) 4., Stats., the Department has determined, after consulting with members of the recovery community, that rulemaking establishing additional certification criteria for peer recovery coaches is necessary to secure Federal Medicaid reimbursement for PRC services. This interpretation is consistent with The Centers for Medicare & Medicaid Services' ("CMS") State Medicaid Director Letter #07-011 (SMDL 07-011 (hereinafter "SMDL #07-011"), which provides guidance on supervision, care coordination, and training and credentialing in the delivery of peer support services.¹

¹ An electronic copy of this letter is available at <https://downloads.cms.gov/cmsgov/archived-downloads/smdl/downloads/smdl081507a.pdf>.

Coordination of care in substance use overdose certification standards.

The Department, in accordance with s. 227.11 (2) (a), Stats., has also interpreted s. 46.482, Stats., which requires the Department to require rulemaking to effectuate the intent to the statute. The Department has determined that rules are necessary to establish and maintain a program to facilitate overdose treatment providers to: (1) use PRCs to assist in the provision of treatment; (2) provide access to medications to reverse overdose; and (3) coordinate and continue care and treatment through an integrated model of care following an overdose—which includes assessment, follow-up services, transportation, and referrals to social services and community organizations.

These rules are necessary because under s. 51.04, Stats., the Department does not certify or license individual professionals for reimbursement under MA: it certifies programs, facilities, and services. This includes treatment facilities as defined in s. 51.01 (19), Stats., which the department certifies for MA reimbursement under s. 51.04, Stats. Because PRCs are not separately licensed by the Department of Safety and Professional Services, they cannot operate as independent practitioners and must have connection to a certified program or agency to be eligible for Medicaid reimbursement. Guidance from CMS states that peer support services should be provided as a component of a comprehensive mental health or substance use service, and coordinated within the context of a comprehensive individualized plan of care. SMDL #07-011.² Peer providers on the advisory committee for the proposed rule confirmed that they do not create comprehensive plans of care. Therefore, rules to certify and reimburse under MA treatment facilities that offer peer recovery coach services as a component of comprehensive mental health and substance use services are necessary and permitted under s. 51.04, Stats.

Consistent with the Department's authority to create rules consistent with, or necessary to, its duties to administer MA under ss. 49.45 (10) and 49.471 (12), the Department has determined that a waiver or variance process for coordination of care in substance use overdose programs is necessary. Waivers or variances would be limited to any non-statutory requirements under subchapter III of the proposed rule, and any program applying for a waiver would be required to show that the proposed waiver would not jeopardize the health, safety, or welfare of participants and would not diminish the effectiveness of services provided.

Additionally, the Department has determined that the policies and procedures regarding the provision of medications and referral to evidence-based treatment services for patients with substance use disorder authorized under s. 46.482 (3), Stats., should be established as rules to affirm compliance with s. 51.61 (5) (a), Stats., which requires that the department shall establish procedures to assure protection of patients' rights guaranteed under Chapter 51 of the Wisconsin Statutes.

Related statute or rule

The following statutes or rules relate to certification of peer recovery coaches and overdose treatment providers and reimbursement of peer recovery support services:

Section 1905 (a) (13) and 1915(b) and (c) of the Social Security Act (both of which are interpreted by SMDL #07-011)

Section 51.04, Stats.

Plain language analysis

Section 49.45 (30j), Stats., which created in Act 122, directs the Department to certify PRCs for reimbursement under MA. There are no existing rules related to certification standards for peer recovery coaches, so the department intends to promulgate rules to effectuate Act 122 by creating a new

² *Id.* See also “Clarifying Guidance on Peer Support Services Policy” (May 1, 2013), available at <https://health.wyo.gov/wp-content/uploads/2016/06/Clarifying-Guidance-Support-Policy-1.pdf>, and “Frequently Asked Questions on Medicaid and CHIP coverage of Peer Support Services” (June 5, 2024), available at <https://www.medicaid.gov/federal-policy-guidance/downloads/faq06052024.pdf>.

administrative rule chapter numbered DHS 72. Subchapter I of the proposed ch. DHS 72 creates general applicability provisions and definitions.

Subchapter II of the proposed ch. DHS 72 specifies training requirements related to the provision of services by a PRC, supervision by a competent mental health professional, training requirements, and documentation to be certified for reimbursement under MA. Notably, and based on extensive consultation with the advisory committee, the proposed rules would provide for all of the following:

1. Specifying which services (as indicated in an individual's treatment goals and service plan) a PRC may provide and seek reimbursement for.
2. Requiring 40 hours of training under s. 49.45 (30j) (b) 4. a., Stats.
3. Requiring 24 hours of paid or volunteer experience under s. 49.45 (30j) (b) 4. b., Stats.
3. Co-supervision by a PRC supervisor (who is an experienced PRC with additional training specified in the rule) working under the direction of a competent mental health professional. Doing so will increase access to PRCs statewide by reducing the administrative strain on supervising competent mental health professionals while still providing the requisite oversight of the competent mental health professional to ensure PRC services are coordinated within the context of a comprehensive, individualized plan of care. The proposed rules prescribe the minimum amount of time that a competent mental health professional working with a co-supervisor must provide supervision to a PRC directly in order to meet the supervision requirements in the rule.

Subchapter III of the proposed ch. DHS 72 also establish requirements for Substance Use Overdose Program which are a new class of overdose treatment and peer recovery service provider in which PRC services may be provided. These providers are treatment facilities under s. 51.04, Stats., and must be certified for reimbursement under MA. The proposed rule seeks to establish all of the following:

1. Certification application requirements, including durational and biennial renewal requirements.
2. Program statement requirements.
3. Required policies and procedures.
4. General qualification requirements.
5. Orientation, training, and continuing education requirements.
6. Participant rights.
7. Service records and discharge summary requirements.
8. A process for any program certified as a Substance use overdose program to request a waiver or variance for any non-statutory requirements in subchapter III of proposed ch. DHS 72.

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

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

Section 1905(a)(13) of the Social Security Act provides for Medical Assistance program coverage of "other diagnostic, screening, preventive, and rehabilitative services," such as overdose treatment services. Additionally, CMS has identified mental health and substance use peer support providers, such as peer recovery coach providers, as allowable providers in SMDL #07-011.

Comparison with rules in adjacent states

Illinois:

Illinois certifies peer recovery support specialists through the Illinois Certification Board, Inc., a professional organization that includes the *Illinois Alcohol and Other Drug Abuse Professional Certification Association, Inc.* While they have training and certification requirements, these are not based on statute or administrative rule. Instead, the certified peer recovery specialist competencies

include the knowledge and skill base which is defined in the “Peer Recovery Credential, Role Delineation Study, and Final Report,” for IC&RC, dated January 2013 and completed by the Schroeder Measurement Technologies, Inc.

The International Certification and Reciprocity Consortium (“IC&RC”) is an international non-profit organization that promotes public protection by developing internationally recognized credentials and examinations for prevention, substance use disorder treatment, and recovery professionals, including peer recovery specialists.

Iowa:

Iowa certifies peer recovery specialists through the Iowa Board of Certification, which is very similar to the Illinois system. The Iowa Board of Certification (IBC) credentials prevention and treatment professionals in addictions and other behavioral health fields by promoting adherence to competency and ethical standards. These standards are based on professional standards based on IC&RC and not by any statute or administrative rule.

Michigan:

Michigan certifies recovery coaches through their Department of Health and Human Services, based on the IC&RC Peer Recovery Credentials and the MDHHS Peer Recovery Coach training requirements. Requirements are not based on statute or administrative rule.

Minnesota:

Like the above states, Minnesota certifies its peer recovery specialists through its MN state board responsible for alcohol and other drug certifications. Its policies and tests are based on IC&RC standards mentioned above, and they even have a state reciprocity certification. Requirements are not based in statute or administrative rule.

Summary of factual data and analytical methodologies

Information about other states was found in the State-by-State Directory of Peer Recovery Coaching Training and Certification Programs published by the Substance Abuse and Mental Health Services Administration (SAMHSA), along with each state’s certification board website.

Analysis and supporting documents used to determine effect on small business

According to the U.S. Small Business Administration, a small business is defined as a for-profit business of any legal structure. Section 227.114 (1) defines a small business as “a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales or less than \$5,000,000.” Based on information gathered from peer providers during meetings of the advisory committee organizations conducting this work are not-for-profit or have more than 25 employees and would not meet the definition of a small business as defined by the U.S. Small Business Administration or in s.227.114 (1), Stats. It is therefore anticipated that the proposed rules will have minimal impact on small businesses.

Effect on small business

Based on the foregoing analysis, the proposed rules are anticipated to have little to no economic impact on small businesses.

Agency contact person

Sarah Coyle, Dept. of Health Services, Division of Care and Treatment Services, 1 W. Wilson St., Room 850, Madison, WI 53716

Statement on quality of agency data

See summary of factual data and analytical methodologies.

Place where comments are to be submitted and deadline for submission

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

RULE TEXT**SECTION 1. DHS 72 is created to read:****Chapter DHS 72****OVERDOSE TREATMENT PROVIDER CERTIFICATION AND COVERED SERVICES****Subchapter I – General Provisions**

DHS 72.01 Authority and purpose.

DHS 72.02 Applicability.

DHS 72.03 Definitions.

Subchapter II – Peer Recovery Support Services Standards

DHS 72.04 Peer recovery support services.

DHS 72.05 Training, orientation, and continuing education requirements.

DHS 72.06 Supervision of peer recovery coaches.

DHS 72.07 Documentation.

Subchapter III – Coordination of Care in Substance Use Overdose Program Requirements

DHS 72.08 Application requirements and policies.

DHS 72.09 Program statement.

DHS 72.10 Required policies and procedures.

DHS 72.11 General qualifications.

DHS 72.12 Orientation, training, and continuing education.

DHS 72.13 Participant rights.

DHS 72.14 Participant service records.

DHS 72.15 Discharge summary.

Subchapter I — General Provisions

DHS 72.01 Authority and purpose. This chapter is promulgated under ss. 46.482 (2) and (3), 49.45 (10), (30j) (b), 49.471 (12), 51.04, 51.61, and 227.11 (2) (a), Stats., to establish certification criteria for reimbursement under the medical assistance program for all of the following:

(1) Peer recovery support services.

(2) Treatment programs for coordination and continuation of care following an overdose.

DHS 72.02 Applicability.

(1) This chapter shall apply to all of the following seeking reimbursement under the medical assistance program for recovery support services:

(a) A publicly or privately operated facility, clinic, or organization providing peer recovery support services, coordination and continuation of care for individuals at high risk for overdose, or both, in response to or following a substance use overdose.

(b) A county department or Tribal nation providing peer recovery support services, coordination of care in substance use overdose, mental health, or substance use treatment services.

(c) A publicly or privately operated service that requests certification by the department.

DHS 72.03 Definitions. In this chapter:

- (1) “Behavioral health” means the spectrum encompassing mental health and substance use disorders occurring either independently or simultaneously.
- (2) “Certification” means the approval of the service by the department’s division of quality assurance.
- (3) “Co-supervision” means a shared model of supervision where a peer recovery coach is supervised by both a competent mental health professional and a peer recovery coach supervisor, either individually or in groups, to ensure that all aspects of peer recovery coaching can be modeled and supervised.
- (4)
 - (a) “Competent mental health professional” means any of the following:
 1. A physician who has completed a residence in psychiatry or is certified in addiction medicine.
 2. A psychologist or a private practice school psychologist licensed under ch. 455, Stats.
 3. A marriage and family therapist licensed under s. 457.10 or 457.11, Stats.
 4. A professional counselor licensed under s. 457.12 or 457.13, Stats.
 5. An advanced practice social worker granted a certificate under s. 457.08 (2), Stats.
 6. An independent social worker granted a certificate under s. 457.08 (3), Stats.
 7. A clinical social worker licensed under s. 457.08 (4), Stats.
 8. A clinical substance abuse counselor or independent clinical supervisor certified under s. 440.88, Stats.
 9. Any of the individuals under subds. 1. to 8. who are practicing under a currently valid training or temporary license or certificate granted under applicable provisions of ch. 457, Stats.
 - (b) “Competent mental health 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. “
- (5) “Continuum of behavioral health and peer recovery support services” means an integrated system of care that includes a comprehensive array of behavioral health services spanning all levels of intensity of care including prevention, early intervention, harm reduction, treatment, psychosocial rehabilitation services, continuing care, and recovery services.
- (6) “County department” means a county department of human services under s. 46.23, Stats., or a county department of community programs established under s. 51.42, Stats., to administer community mental health and alcohol and drug abuse programs on a single-county or multi-county basis.
- (7) “Department” means the Wisconsin department of health services.
- (8) “DSM” means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013), published by the American psychiatric association.
- (9) “Medical assistance” means the assistance program under 42 USC 1396 and ss. 49.43 to 49.475 and 49.49 to 49.497, Stats.
- (10) “Mental illness” means a diagnosis meeting the criteria in the DSM.
- (11) “Overdose” means the ingestion or application of a drug or other substance in a quantity greater than is recommended that results in serious negative health effects or death.
- (12) “Overdose treatment provider” means an entity, including an emergency department of a hospital, that offers treatment or other services to individuals in response to or following a substance use overdose or an individual at high risk for a substance use overdose.
- (13) “Peer recovery coach” means an individual who practices in the recovery field and who provides support and assistance to individuals who are in treatment or recovery from mental illness, a substance use disorder, or both.
- (14) “Peer recovery coach supervisor” means a person who can co-supervise peer recovery coaches with a competent mental health professional if the peer recovery coach supervisor meets all the qualifications of a peer recovery coach in this chapter, has one year experience providing peer recovery coaching, and training in providing peer supervision.

- (15) "Peer recovery support services" are non-clinical services designed to meet the needs of individuals in or seeking recovery. These services are provided by peer recovery coaches and are designed to engage, educate, support, and assist individuals engaged in the recovery process.
- (16) "Recovery" means a process of change through which an individual improves their health and wellness, lives a self-directed life, and strives to reach their full potential.
- (17) "Service plan" means identified goals, objectives, and resources agreed upon by the participant and the service provider to be used in facilitation of the participant's recovery.
- (18) "Substance use disorder" means a diagnosis of substance use disorder listed in the DSM.
- (19) "Substance use overdose treatment program" is a program certified under this chapter that offers an array of coordinated treatment and services, including peer recovery support services, in an integrated model of care to individuals at risk of or in response to a substance use overdose.
- (20) "Supervision" means a professional and collaborative activity between a supervisor and staff which provides guidance and support to assure quality work and promote staff development.
- (21) "Tribe" means a federally recognized American Indian tribe or band.
- (22) "Treatment" means the planned provision of services that are responsive to a participant's individual needs to assist them through the process of mental health recovery, substance use recovery, or both.
- (23) "Variance" means an alternate means of meeting a requirement in this chapter.
- (24) "Waiver" means an exemption from a requirement of this chapter.

Subchapter II – Peer Recovery Support Services Standards

DHS 72.04 Peer recovery support services.

- (1) Peer recovery coaches may provide peer recovery support services in accordance with this subchapter to individuals with mental health or substance use challenges in any of the following:
- (a) Substance use overdose treatment program certified under subch. III.
 - (b) A behavioral health program certified under ch. DHS 34,35, 36, 63, 75, or 124.
- (2) Peer recovery coaches shall do all of the following:
- (a) Possess personal lived experience with mental health challenges, substance use challenges, or both. This may include experience as a parent or as an adult family member of an individual who has experienced mental health or substance use challenges.
 - (b) Use their lived experience and recovery, combined with training and supervision, to support participants with mental health or substance use challenges in their recovery.
 - (c) Provide services in coordination with the participant's individual treatment goals noted on the service plan.
 - (d) Guide the recovery process and support the participant's recovery choices, goals, and decisions.
 - (e) Provide trauma informed, person-centered, and strength-based peer recovery support services.
- (3) If indicated in a participant's treatment goals noted on the service plan, peer recovery coaches may provide any of the following services:
- (a) Peer recovery support services in a variety of settings to assist the participant in positively engaging in their community.
 - (b) Coaching participants to increase their needed skills and assist them on accomplishing tasks and goals noted on the service plan.
 - (c) Connecting a participant to needed resources, services, and supports that will assist participants to enhance their recovery.
 - (d) Mentoring the participant and using their lived experience to provide mutual support and inspire hope.
 - (e) Planning, developing, and facilitating groups using peer recovery supports or peer recovery support activities to enhance recovery.
 - (f) Assisting in the development of formal and informal supports, serve as an advocate, mentor, or facilitator for the resolution of challenges.
 - (g) Performing a range of peer support tasks to assist the parents/legal guardians of youth participants during the recovery process.

- (h) Assisting participants to engage in behavioral health or to address barriers to their recovery.
- (i) Supporting the participant's use of harm reduction strategies and a variety of pathways to recovery.
- (j) Engaging other supports that facilitate the participant's engagement and active participation in their own recovery.

DHS 72.05 Training, orientation, and continuing education requirements.

- (1) GENERAL REQUIREMENTS. Training, orientation, and continuing education is required for all peer recovery coaches. All programs covered under s. DHS 72.04 (1) are required to provide orientation to peer recovery coaches. Written verification of training, orientation, and continuing education shall be maintained in the employee's file and made available to the department upon request.
- (2) REQUIRED TRAINING FOR PEER RECOVERY COACHES. Prior to providing recovery support services, a peer recovery coach shall complete training that will provide a basic set of competencies necessary to perform the peer support function. Prior to providing recovery support services, a peer recovery coach shall complete and document completion of 40 hours of peer recovery coach training that includes all of the following:
 - (a) 10 hours of training in advocacy related to the population served.
 - (b) 10 hours of training in mentoring and education related to the population served.
 - (c) 10 hours of training in recovery and wellness support related to the population served.
 - (d) 10 hours of training in ethical responsibility related to the population served.
- (3) REQUIRED RELEVANT VOLUNTEER OR PAID EXPERIENCE. In addition to the training specified in sub. (2), and prior to providing recovery support services, a peer recovery coach shall complete 24 hours of supervised volunteer or paid work experience involving advocacy, mentoring and education, recovery and wellness support, ethical responsibility, or a combination of those areas. This experience may be part of new employee orientation or prior work or volunteer experience.
- (4) CONTINUING EDUCATION. Peer recovery coaches shall receive 8 hours of annual training pertinent to the services they provide.

DHS 72.06 Supervision of peer recovery coaches.

- (1) GENERAL SUPERVISION REQUIREMENT. A peer recovery coach shall provide peer recovery support services under the supervision of a competent mental health professional. Supervision may be provided in an individual session between the competent mental health professional and peer recovery coach, or in a group session involving one competent mental health professional and more than one peer recovery coach. Supervision should support peer recovery coaches' competent and appropriate contribution to treatment via services that are complementary to but distinct from treatment professionals.
- (2) MINIMUM AMOUNT OF SUPERVISION REQUIRED. When individual supervision is provided, a peer recovery coach shall receive a minimum of one hour of supervision by a competent mental health professional for every 30 hours of face-to-face peer recovery support services the peer recovery coach provides.
- (3) COMPETENT MENTAL HEALTH PROFESSIONAL TRAINING OR EXPERIENCE REQUIREMENTS. The supervising competent mental health professional shall be trained or have documented experience, in all of the subjects listed in s. 49.45 (30j) (b) 2. a. to L., Stats., in addition to their formal education and licensure.
- (4) CO-SUPERVISION BY A PEER RECOVERY COACH SUPERVISOR.
 - (a) A peer recovery coach may also be co-supervised by a peer recovery coach supervisor and a competent mental health professional.
 - (b) The competent mental health professional and peer recovery coach supervisor may provide direct supervision to a peer recovery coach together or individually with the peer recovery coach.
 - (c) A peer recovery coach supervisor providing co-supervision shall be trained or experienced in all of the subjects listed in s. 49.45 (30j) (b) 2. a. to L., Stats.
- (5) REQUIREMENTS FOR CO-SUPERVISION MODEL. When co-supervision is provided, all of the following apply:

- (a) A peer recovery coach shall receive a minimum of one hour of supervision by a peer recovery coach supervisor for every 30 hours of face-to-face peer recovery support services the peer recovery coach provides.
- (b) A peer recovery coach shall also receive a minimum of one hour of supervision by a competent mental health professional for every 60 hours of face-to-face peer recovery support services the peer recovery coach provides.
- (c) A peer recovery coach supervisor shall receive a minimum of one hour of supervision by a competent mental health professional for every 60 hours of supervision hours and face-to-face peer recovery support services provided. Supervision may be provided in an individual or a group setting.
- (d) The peer recovery coach supervisor and competent mental health professional must keep a log of supervision hours provided, which shall be made available to the Department upon request.
- (6) **GOALS OF SUPERVISION.** Supervision shall ensure that peer recovery support services provided by the peer recovery coach is in coordination with the participant's service plan and adheres to the basic set of competencies listed in s. DHS 72.05 (2) (a) to (d).

DHS 72.07 Documentation. Peer recovery coaches must document all peer recovery support services delivered by retaining all of the following records:

- (1) Service provider notes.
- (2) Documentation of the participant's progress toward goals and changes to treatment plan.
- (3) Discharge summary and any related information.
- (4) Any other information that is appropriate for the participant service record.

Subchapter III — Substance Use Overdose Treatment Program

DHS 72.08 Exemption. The certification requirements in this subchapter shall not apply to any of the following:

- (1) An emergency mental health service program certified under ch. DHS 34.
- (2) An outpatient mental health clinic certified under ch. DHS 35.
- (3) A comprehensive community services program certified under ch. DHS 36.
- (4) A community support program for chronically mentally ill persons under ch. DHS 63.
- (5) A publicly or privately operated facility providing substance use treatment services that is certified under ch. DHS 75.
- (6) A hospital approved by the department under ch. DHS 124.

DHS 72.09 Application requirements and policies

- (1) **APPLICATION.** A county department, Tribal nation, or other qualified agency may apply for certification by submitting all of the following application materials to the department at the address given on the application:
 - (a) A completed application form.
Note: Application forms are available at <https://www.dhs.wisconsin.gov/regulations/mentalhealth/certification.htm>.
 - (b) Payment for the application fee required under s. 51.04, Stats.
Note: Fee information is available at <https://www.dhs.wisconsin.gov/regulations/mentalhealth/certification.htm>.
 - (c) A program statement developed under s. DHS 72.09.
 - (d) A copy of the program's policies and procedures developed under s. DHS 72.10.
 - (e) Any other information requested by the department.
 - (f) Any other applicable fees.
- (2) **CERTIFICATION DETERMINATION.**
 - (a) The department shall make a certification determination within 60 days of receiving all completed application materials.
 - (b) If the department does not approve the program statement or determines that an applicant does not comply with the requirements of this chapter, the department may deny the

certification. 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. 227.42, Stats.

(3) COMPLIANCE REVIEW. Upon receipt of all completed application materials described in sub. (2), the applicant shall permit the department to conduct an on-site inspection of the program and a review of any documentation necessary to determine compliance with this chapter.

(4) NOTIFICATION OF CHANGES. A program that has received certification from the department shall notify the department of any change of administration, ownership, program name, or any other change that may affect compliance with this chapter before the effective date of the change. A certification is non-transferable. A new application will be required if the department determines there is a substantial change in the program.

(5) DURATION OF CERTIFICATION.

(a) Certification remains valid until it is terminated or suspended by the department in accordance with sub. (8).

(b) Certification becomes invalid due to non-submission of the biennial report or non-payment of biennial fees in accordance with sub. (6).

(6) BIENNIAL REPORT AND FEES.

(a) Every 24 months, on a date determined by the department, the program shall submit a biennial report on the form provided by the department and shall submit payment of certification continuation fees under s. 51.04, Stats.

(b) The department shall send the certification continuation materials to the provider, which the provider is expected to complete and submit to the department according to instructions provided.

(c) A certification will be suspended or terminated if biennial reports and fees are not submitted prior to the end of the biennial cycle.

(7) STATEMENT OF DEFICIENCY.

(a) If the department determines that a program has a deficiency, the department shall issue a statement of deficiency to the program within 14 calendar days. The statement of deficiency may place restrictions on the program or its activities, or suspend or terminate the program's certification, pursuant to sub. (8).

(b) The program shall submit a plan of correction to the department within 14 calendar days upon receipt of the statement of deficiency. The plan of correction shall propose the specific steps the program will take to correct the deficiency, the timelines within which the corrections will be made, and the staff members who will implement the plan and monitor for future compliance.

(c) If the department determines that the plan of correction submitted by the program does not adequately address the deficiencies listed in the statement of deficiency, the department may request a new plan of correction from the program or may impose a plan of correction.

(8) TERMINATION AND SUSPENSION OF CERTIFICATION. The department may suspend or revoke certification for any of the reasons specified under s. 51.032, Stats., or for failure to comply with this chapter. The department shall provide the reasons for suspension or revocation and the process for appeal of the suspension or revocation in a written notice to the applicant.

(9) APPEALS.

(a) If the department denies, suspends, or terminates certification, or imposes conditions on a certification, the program may request a hearing under ch. 227, Stats.

(b) An applicant for program certification does not have a right to appeal when all of the following apply:

1. The issue is the denial of the application for certification.
2. The department has determined to limit the number of programs statewide.
3. The addition of the facility would exceed the limit determined by the department.

(10) EXCEPTIONS TO A REQUIREMENT.

(a) *Waivers and variances.*

1. A substance use overdose treatment program that is certified under this subchapter may apply for a discretionary waiver or variance to any non-statutory requirements in this subchapter. A written request for a waiver or variance shall be sent to the department on a form provided by the department and shall address all of the criteria identified in subd. 2 of this paragraph.

Note: A variance and waiver request form is available by accessing <https://www.dhs.wisconsin.gov/library/f-60289.htm>.

2. The department may grant a substance use overdose treatment program's application for a waiver or variance if the department determines that all of the following criteria are met:

- a. Strict enforcement of the non-statutory requirements identified in the waiver or variance application would result in an unreasonable hardship for the substance use overdose treatment program.
- b. The proposed waiver or variance will not diminish the effectiveness of the services provided.
- c. The proposed waiver or variance will not jeopardize the health, safety, welfare, or rights of any participant.
- d. Any waiver or variance proposed in the application is consistent with all state and federal laws.

3. If a substance use overdose treatment program's proposed waiver or variance is granted, the department may specify a timeframe or time limit for the waiver or variance

(b) *Rescinding or further limiting a waiver or variance.* The department may rescind or limit a waiver or variance at any time by notifying the program, if any of the following occurs:

1. The department determines the waiver or variance has adversely affected or is likely to adversely affect the health, safety, or welfare recipients of the program.
2. The substance use overdose treatment program fails to comply with any of the conditions of the waiver or variance as granted.
3. The department shall inform a program in writing if it rescinds or limits a waiver or variance.

DHS 72.09 Program Statement. A substance use overdose treatment program shall complete a statement that describes the treatment and services provided by the program. The program statement must include all of the following:

(1) A description of the substance use overdose treatment program's organizational and service structure which may include a mixture of employed or contracted staff or agencies to fulfill the program's objectives.

(2) A description of the continuum of behavioral health and recovery support services the substance use overdose treatment program intends to provide to participants to prevent or respond to an overdose, including all of the following:

- (a) Participants that will be served.
- (b) How participants are referred to the program.
- (c) Screening and admission criteria, including participant eligibility criteria.
- (d) Assessment and service planning requirements.
- (e) Mental health or substance use treatment and services provided.
- (f) Care coordination activities.
- (g) Peer recovery support services provided by peer recovery coaches including encouraging individuals to seek treatment for a substance use disorder following an overdose.
- (h) Additional services that may be provided or coordinated with the program's services, including any of the following:
 1. Community organizations that support recovery.
 2. Education, training, and employment services; housing services
 3. Child welfare agencies.
- (i) Transportation to and from services.
- (j) Discharge planning and follow-up services.
- (k) How the services are trauma informed, strengths based, and culturally responsive.

(3) A description of how the substance use overdose treatment program will provide access to medications to reverse overdose.

(4) A description of the education on preventing and reversing an overdose that the substance use overdose treatment program will provide to patients and families.

(5) A description of how the substance use overdose treatment program will collect and evaluate data on the outcomes of individuals receiving peer recovery support services and coordination of care services.

DHS 72.10 Required policies and procedures. A substance use overdose treatment program certified under this chapter shall have written personnel policies and procedures that describe all of the following:

- (1) Clinical assessment and treatment planning procedures.
- (2) Care coordination and continuation of care.
- (3) Peer recovery support services that are provided.
- (4) Treatment or other services provided.
- (5) Orientation and training requirements of program staff, including those found in s. DHS 72.05.
- (6) Supervision of program staff.
- (7) If co-supervising peer recovery coaches under s. DHS 72.06 (4), information on how peer recovery coaches will be co-supervised, including all of the following:
 - (a) The structure of the co-supervision arrangement between the competent mental health professional and the peer recovery coach supervisor.
 - (b) Requirements for those who provide peer recovery coach supervision, consistent with s. DHS 72.06 (5), and their responsibilities.
- (8) Discharge planning, including follow-up services, and referral services.
- (9) Where participant records will be maintained and how confidentiality requirements of those records will be safeguarded, as required under s. DHS 72.14 (4).

DHS 72.11 General qualifications.

- (1) Supervisors and staff licensed or certified by the department of safety and professional services to provide behavioral health services must follow the current scope of practice established by applicable rules.
- (2) Each staff member shall have the professional certification, training, experience, and ability to carry out their assigned duties.
- (3) The peer recovery coach providing peer recovery support services must complete all of the training and work experience required in s. DHS 72.05.
- (4) Each applicant must pass a state background check as provided in s. 50.065, Stats. and ch. DHS 12. If the applicant lived in another state, any time in the three years preceding the date of the background check, a background check shall be obtained from that state as well.
- (5) Programs shall comply with caregiver misconduct reporting and investigation requirements in ch. DHS 13.

Note: For a state of Wisconsin background check, obtain the name, sex, race, and date of birth of the person about whom you are requesting the check. Information on the process and fees for a background check can be found online at <https://www.dhs.wisconsin.gov/caregiver/cbcprocess.htm>.

- (6) Employee personnel records shall be available upon request for review by the department. A separate record for each employee shall be maintained, kept current, and at a minimum, include all of the following:
 - (a) A written job description including duties, responsibilities, and qualifications required for the employee.
 - (b) Beginning date of employment.
 - (c) Qualifications based on education or experience.
 - (d) A completed caregiver background check following procedures under s. 50.065, Stats., and ch. DHS 12.
 - (e) A copy of a signed statement regarding confidentiality of participant information.
 - (f) Documentation of any required training.
 - (g) A copy of any required licenses or certifications.
- (7) The program shall employ all of the following personnel:
 - (a) *A program administrator.* Each program shall have a program administrator who is responsible for the overall operations of the program and to ensure that the program complies with this rule chapter and other applicable state and federal laws.

(b) *A competent mental health professional.* Each program shall employ or contract with at least one competent mental health professional who is responsible for providing direct supervision for peer recovery coaches, peer recovery coach supervisors, or both. The competent mental health professional may also provide clinical or administrative services, or both.

(c) *A peer recovery coach.* Each program shall employ or contract with at least one peer recovery coach who is responsible for providing peer recovery support and assistance to participants in response to or following a substance use overdose, or who have mental illness or substance use challenges, or who are at high risk for a substance use overdose.

(d) *If utilizing a co-supervision model, a peer recovery coach supervisor.* A peer recovery coach supervisor shall meet all of the applicable requirements under subch. II of this rule. The Peer Recovery Coach Supervisor can only provide direct supervision to other peer recovery coaches in conjunction with a competent mental health professional in a co-supervision model.

(8) Required personnel must comply with continuing education requirements for their licensure or certification. This must include at least eight hours continuing education required under s. DHS 72.05 (4).

DHS 72.12 Orientation, training, and continuing education. All personnel must receive relevant orientation, training, and education. The substance use overdose treatment program shall have a designee who is responsible for informing the staff of all expected orientation, on-going training, and continuing education. Both internal or external trainings, or both, may be used to satisfy these requirements. All updated, written copies of the orientation, ongoing training, and continuing education shall be maintained as part of the central administrative records of the program.

DHS 72.13 Participant rights.

(1) The substance use overdose treatment program shall comply with the participant rights and grievance resolution procedures in s. 51.61, Stats., and ch. DHS 94.

(2) The substance use overdose treatment program administrator shall ensure that the participant understands the options of using the formal and informal grievance resolution process in s. DHS 94.40 (4) and (5).

DHS 72.14 Participant service records.

(1) The substance use overdose treatment program shall maintain in a central location a service record for each participant. Each record shall include sufficient information to demonstrate that the program has an accurate understanding of the participant, the participant's needs, desired outcomes, and progress toward goals. Entries shall be legible, dated and signed.

(2) Each participant record shall be organized in a consistent format and include a legend to explain any symbol or abbreviation used. All of the following information shall be included in the participant's record:

(a) Results of the assessment.

(b) Initial and updated plans.

(c) Treatment and service delivery information, including all of the following:

1. Service provider notes in accordance with standard professional documentation practices.

2. Records of referrals of the participant to outside resources.

3. Documentation of the participant's progress toward goals and changes in services provided.

4. Discharge summary and any related information.

5. Any other information that is appropriate for the participant service record.

(3) Peer recovery support service delivery information shall be kept in accordance with s. DHS 72.07.

(4) Each participant service record shall be maintained pursuant to the confidentiality requirements under the health insurance portability and accountability act of 1996, 42 USC 1320d-2, s. 51.30, Stats., ch. DHS 92 and, if applicable, 42 CFR Part 2. Electronic records and electronic signatures shall meet the requirements in 45 CFR 164, Subpart C.

DHS 72.15 Discharge summary.

(1) Within 30 days after a participant's date of discharge the substance use overdose treatment program shall prepare a discharge summary and enter it into the participant file. The discharge summary shall be signed and dated by a competent mental health professional and include all of the following:

(a) A description of the reasons for discharge.

(b) Any remaining participant needs at the time of discharge and the recommendations for meeting those needs.

SECTION 2. DHS 105.259 is created to read:

DHS 105.259 Peer recovery support services. For MA certification under s. 49.45 (30j), Stats., a provider agency shall be certified to operate as one of the following:

(1) A substance use overdose treatment program under subch. III of ch. DHS 72.

(2) A service under ch. DHS 34, 35, 36, 63, 75, or 124, that also provides peer services that meet all requirements described in subch. II of ch. DHS 72, in conjunction with treatment services.

SECTION 3. DHS 107.13 (8) is created to read:

DHS 107.13 (8) Peer recovery support services.

(a) *Covered services.*

Peer recovery support services provided shall be covered services when provided through a program certified under ch. DHS 34, 35, 36, 63, 72, 75, or 124, and when peer services and staff meet all requirements described in subch. II of ch. DHS 72. The service must be ordered or prescribed by a qualified prescriber or included in a plan of care developed by a competent mental health professional, as defined in DHS 72.03(4). Covered behavioral health peer support services must be included in the participant's plan of care according to the rules and requirements for the certified program.

(b) *Other limitations.*

1. Group recovery is limited to a group consisting of at least 2 participants but not more than 16 participants with a minimum of one peer support provider for every 10 participants.

2. No more than one peer support provider, per member may be reimbursed for services at one time.

3. A professional with lived experience may not be reimbursed for peer services while rendering a different professional service

(c) *Non-covered services.* The following are not covered services under this subsection:

1. Case management services provided under s. DHS 107.32.

2. Services provided to a resident of an intermediate care facility, skilled nursing facility, or to a hospital inpatient unless the services are performed to prepare the recipient for discharge from the facility to reside in the community.

3. Purely social or recreational activities that are not connected to specific goals in the participant's plan of care.

4. Services performed by volunteers.

5. Legal advocacy performed by an attorney or paralegal.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Wis. Stats.