

Clearinghouse Rule 25-054

WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services (“the department”) proposes an order to: **repeal** DHS 75.56 (3) (b) 3., 75.60 (4) (a) and (b), 75.60 (7) (a) 10. and 11., 75.60 (8) (a) and (b), 105.23 (2) (a) 2. (Note), (a), (b) and (Note) 105.25 (2) (c), 107.13 (3m) (c) 2., 107.13 (3m) (d) 2.; **renumber** DHS 75.60 (4) (c) 1. to 6., and 101.13 (12m); **renumber and amend** DHS 75.60 (8) (intro.), 101.03 (13) and (Note), and 105.23 (3) (intro.); **consolidate, renumber, and amend** DHS 75.60 (4) (intro.) and (c); **amend** DHS 75.24 (11) (L) and (13) (m), 75.48 (1) (table) row (f), (2) (Table) first row and row (m), 75.51 (1), 75.52, 75.56 (title), (1), (2) (a) and (c), (3) (a) and (b) (intro.), 75.59 (6) (e) 1. and (19) (c), 101.03 (144), 104.01 (1) (a) 1. o., 105.07 (2) and (5), 105.21 (1) (a) to (e), 105.23 (title), (1) (intro) and (a) to (c), (2) (title), (a) (intro.) 2. and (b), (3) (title), 105.25 (title) and (1), 105.25 (2) (b), 105.52 (4) (c) 1. to 10., 107.08 (4) (d) 2., 107.11 (5) (a) to (u), 107.112 (4) (a) to (d), 107.13 (1) (a) and (b) 1. and 2. (intro.), (f) 1. to 7., and (2) (d) 3. (Note), (3) (title), (a) (intro.) and 1. to 6., and (c) 1. and 3., (3m) (title), (a) (intro.) and 1. to 4., (b) 1. and 3., (c) 1., (c) 3., 107.13 (3m) (d) 1., 3. to 6., 107.13 (4) (b) 1. a. to d., and (d) 1. to 7., 107.23 (2) (d), and 107.32 (1) (b); **repeal and recreate** DHS 105.25 (2) (a) and 107.13 (3m) (c) 4.; and **create** DHS 75.49 (3), 75.50 (4), 101.03 (172q), 105.235, and 107.13 (8), relating to community substance use services standards and medical assistance certification and reimbursement for certain substance use services.

RULE SUMMARY

Statutes interpreted

Sections 46.973 (2), 49.45 (2) (a) 1., 11., 12., 49.46 (2) (b) 6. f., 51.4224, and 51.45 (8), Stats.

Statutory authority

The department is authorized to promulgate the proposed rules under the authority of ss. 49.45 (10) and (30e) (b), 51.42 (7) (b), and 51.45 (9), Stats.

Explanation of agency authority

Section 46.973 (2), Stats., authorizes the department to establish a drug dependence and drug abuse program. The secretary may develop and carry out programs concerned with education about and prevention of drug dependence and drug abuse, and programs concerned with treatment and rehabilitation of drug dependent persons and persons who abuse drugs. The secretary shall appoint a drug dependence program coordinator to handle liaison with other departments and agencies, including the state council on alcohol and other drug abuse. These programs may include, but are not limited to: (c) Development of standards and provision of consultation for local drug dependence and drug abuse programs.

Section 51.42 (7) (b), Stats., authorizes the department to promulgate rules governing the provision of community substance use disorder (“SUD”) services. The department determines and monitors standards and requirements to administer services for community mental health, developmental disabilities, and substance use.

Section 51.4224, Stats., provides that the department shall promulgate rules establishing standards for certification of community support programs by county departments.

Section 51.45 (8) directs the department to establish minimum health and treatment standards for approval as a public or private treatment facility, and to set fees to be charged for the department to inspect those facilities. Subsection (9) requires that the department promulgate rules for accepting

individuals into substance use treatment programs, with guidance to prioritize voluntary treatment on an outpatient basis, with individualized treatment plans for each patient and a continuum of services provided.

The department's authority to administer medical assistance ("MA") is provided in s. 49.45, Stats. Section 49.45 (2) (a) s. 49.45, Stats., lists the department's duties in administering the state MA program, including all of the following relevant obligations:

- Exercising responsibility relating to fiscal matters and eligibility for benefits under ss. 49.46 to 49.471, Stats. Section 49.45 (2) (a) 1., Stats.
- "[C]ooperat[ing] with federal authorities for the purpose of providing assistance and services under Title XIX to obtain the best financial reimbursement available to the state from federal funds." Section 49.45 (2) (a) 2., Stats.
- Establishing criteria for the certification of providers of medical assistance and promulgating rules to implement that authority. Section 49.45 (2) (a) 11, Stats.

Additionally, s. 49.45 (10), Stats., authorizes the department "to promulgate such rules as are consistent with its duties in administering medical assistance." Section 49.45 (30e) (b), Stats., requires that the Department promulgate rules for community-based psychosocial services programs with respect to eligibility, the scope of services provided, certification, and any other conditions of coverage.

Section 49.46 (2). Stats., lists benefits for which "the department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipient," including all of the following, identified in pars. (a) 1., and (b) 6.f., h., k. Lr. and (15) :

- "Physicians' services, excluding services provided under par. (b) 6. f."
- "Medical day treatment services, mental health services and alcohol and other drug abuse services, including services provided by a psychiatrist" when prescribed or ordered by a provider acting within the scope of their practice.
- "Legend drugs, as listed in the Wisconsin medical assistance drug index."
- "Alcohol and other drug abuse day treatment services."
- "Psychotherapy and alcohol and other drug abuse services, as specified under s. 49.45 (30f)."
- Crisis intervention services under s. 49.45 (41), Stats.

Related statute or rule

42 CFR parts 2 and 8.

45 CFR parts 92, 96 and 164.

Chapters 46, 49, 51, 455 and 457, Stats.

Wis. Admin Code Chapters DHS 12, 13, 34, 35, 36, 62, 83, 92, 94 and 124.

Chapters MPSW 1 to 20.

Chapters SPS 160 to 168.

Chapter Psy 2.

Plain language analysis

Since Chapter DHS 75 was repealed and recreated in October 2022 via Clearinghouse Rule CR 20-047, there has been extensive consultation with stakeholders regarding the implementation of these community substance use standards and needed revisions to ch. DHS 75 and related medical assistance ("MA") rules. The proposed rules seek to remove regulatory barriers and increase access to treatment services by doing all of the following:

- Amending language in ch. DHS 75 to align with updated federal requirements and allowances regarding prescribing Schedule III Buprenorphine medication for opioid use disorders to more than 30 individuals.

- Amending the outpatient applicability standards in ch. DHS 75 to include exemptions for ch. DHS 35 certified outpatient mental health clinics and licensed rural health clinics to expand the eligible provider pool for treatment services.
- Amending ss. DHS 75.51 and 75.52 to expand integrated treatment for mental health and substance use disorders to the intensive outpatient and day treatment/partial hospitalization levels of care respectively.
- Amending ss. DHS 75.56 to allow for the provision of integrated crisis stabilization services in community-based settings.
- Amending DHS 75.56 to allow individuals experiencing suicidal ideation admission into crisis stabilization services.
- Removing all references in ch. DHS 75 requiring hepatitis testing in various settings.

In addition, the department proposes to revise chs. 101, 104, 105, and 107 to align MA program coverage with the program updates for intensive outpatient and day treatment/partial hospitalization services. The proposed rules also identify the staff who are qualified to provide and be reimbursed for substance use disorder (SUD). The proposed rules also include the following revisions:

- Creating s. DHS 105.235 to outline provider certification requirements for integrated intensive outpatient services providers to enroll in Wisconsin Medicaid.
- Creating s. DHS 107.13 (8) to outline the integrated intensive outpatient program services that will be covered by Wisconsin Medicaid.
- Amending s. DHS 105.25 to align provider certification requirements for DHS 75.52 integrated day treatment/partial hospitalization services to enroll in Wisconsin Medicaid.
- Amending s. DHS 107.13 (3m) to align the covered services for integrated day treatment/partial hospitalization services by Wisconsin Medicaid.
- Amending s. DHS 105.23 to include additional qualified staff of substance use disorders, including qualified treatment trainees.
- Amending DHS s. 107.13 (2) (a) 3. to clarify allowable psychotherapy providers, including qualified treatment trainees.
- Replacing “alcohol or drug abuse” or “AODA” in various provisions in chs. DHS 101, 104, 105, and 107 with “substance use disorder” or “SUD.” The existing AODA and related terminology is outdated and has been replaced by SUD in federal regulations and ch. DHS 75.
- When one of the above edits is made to a subunit and that subunit does not match the formatting conventions in the Administrative Rules Procedures Manual (namely s. 1.11 (3), regarding subunits ending with periods instead of semicolons), revising all accompanying subunits to align with the Rules Manual.

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

Federal regulations outline expectations with regard to substance use patient confidentiality protections in 42 CFR Part 2, the administration of opioid treatment programs by the state opioid treatment authority in 42 CFR Part 8, federal Medicaid coverage policies for behavioral health services in 42 CFR Part 440, and requirements for recipients of substance abuse prevention and treatment block grant funds in 45 CFR Part 96. The federal regulations and requirements are incorporated into the proposed rule and updated for any recent changes in federally required standards of practice.

Comparison with rules in adjacent states

Illinois:

Illinois rules for substance use treatment align with ASAM levels of care, although they do not appear to include specific requirements related to hepatitis testing, crisis stabilization, or integrated co-occurring treatment services for individuals with mental health and substance use disorders. Ill. Admin. Code tit. 77, p. 2060. As of October 2024, Illinois Medicaid rules reference the certification requirements noted above. There are no additional Medicaid details for comparison.

Iowa:

Iowa rules for substance use disorder treatment align with ASAM levels of care, although they do not appear to include specific requirements related to hepatitis testing, crisis stabilization, or integrated co-occurring treatment services for individuals with mental health and substance use disorders. I.C.A. ch. 155. As of October 2024, Iowa Medicaid rules reference the certification requirements noted above. There are no additional Medicaid details for comparison.

Michigan:

Michigan rules were revised in 2023 in the following areas: branch locations; mobile units; naloxone access; staff development and training; outpatient counseling providers; medication assisted treatment; prevention, residential and inpatient programs. The rule does not address the provision of hepatitis testing, crisis stabilization, or integrated co-occurring treatment services for individuals with mental health and substance use disorders. Mich. Admin. Code, R. 325.1301 to 235.1399. As of October 2024, Michigan Medicaid rules reference the certification requirements noted above. There are no additional Medicaid details for comparison.

Minnesota:

Minnesota rules utilize their statewide placement tool that is consistent with ASAM levels of care. Minnesota has provisions for integrated care of co-occurring treatment services for individuals with mental health and substance use disorders. Minnesota's rules and statutes also incorporate language related to behavioral health crisis facilities grants. The statute does not address the provision of hepatitis testing. Minn. Stat. ch. 245G; Minn. Stat. s. 245.4863. As of October 2024, Minnesota Medicaid rules reference the certification requirements noted above. There are no additional Medicaid details for comparison.

Summary of factual data and analytical methodologies

During the 2022 implementation of ch. DHS 75, the department created a resource website for substance use providers that included frequently asked questions, network meetings, presentations, and an email account for inquiries. The department's internal ch. DHS 75 workgroup utilized the feedback obtained from this outreach in the identification of possible revisions to the rule. This workgroup consisted of subject-matter experts from the Division of Care and Treatment Services and the Division of Medicaid Services, as well as consultation with our partners from the Division of Quality Assurance.

The department formed an advisory committee to advise on changes to chs. DHS 75, 105, and 107 related to the Statement of Scope for these proposed rules. The committee included representatives of Tribal Affairs Office; Wisconsin County Human Services Association; Wisconsin Hospital Association; Wisconsin Primary Health Care Association; Dewey Center at Aurora Psychiatric Hospital; Safe Communities; Addiction Medical Solutions; Wisconsin Society of Addiction Medicine; National Association of Social Workers-Wisconsin Chapter; National Association for Alcoholism and Drug Abuse Counselors; Tellurian, Wisconsin Association of Family and Children's Agencies; and Clean Slate. Advisory committee members were provided a copy of draft language of the proposed rules and asked to provide comments.

Analysis and supporting documents used to determine effect on small business

The department solicited the input of Medical Assistance providers, including small businesses, throughout the rulemaking process.

Effect on small business

The proposed rules have the potential to impact Medical Assistance providers that are small businesses. These providers have the opportunity to provide integrated services at the intensive outpatient and day treatment/partial hospitalization levels of care, which will eliminate the duplicative cost for separate mental health and substance use program certifications. Providers certified under s. DHS 75.56 will be able to provide integrated behavioral health stabilization services in the community, thereby minimizing the costs associated with residential care. The proposed rules also aligns with federal regulations

regarding the prescription of Buprenorphine and removes requirements for hepatitis testing. Existing hepatitis testing requirements result in additional costs when patients are uninsured or underinsured, and removing those requirements will result in cost savings.

Agency contact person

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Statement on quality of agency data

See summary of factual data and analytical methodologies.

Place where comments are to be submitted and de adline for submission

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

RULE TEXT

SECTION 1. DHS 75.24 (11) (L) and (13) (m) are amended to read:

DHS 75.24 **(11) (L)** For a patient receiving mental health services under s. DHS 75.50, 75.51, 75.52, or 75.56 who does not have a co-occurring substance use disorder, the requirement for ASAM or other department-approved level of care placement criteria is not required.

DHS 75.24 **(13) (m)** For a patient receiving mental health services under s. DHS 75.50, 75.51, 75.52, or 75.56 who does not have a co-occurring substance use disorder, the requirement for ASAM or other department-approved level of care placement criteria is not required.

SECTION 2. DHS 75.48 (1) (table) row (f) is amended to read:

(f) Mental health		Required to be available during the hours of operation of clinical services.	Required either as an employee of the service or through a written agreement, to be available during the provision of <u>provide</u> coordinated and concurrent services for the treatment of patients with co-occurring mental health disorders services.	Required to be available during <u>the provision of mental health</u> hours of operation of clinical services.
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SECTION 3. DHS 75.48 (2) (table) second row is amended to read:

DHS 75.48 (2) Services requirements by level of care, residential
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<u>Code citation and service name</u>	DHS 75.53 Transitional Residential Treatment Service	DHS 75.54 Medically Monitored Residential Treatment Service	DHS 75.55 Medically Managed Inpatient Treatment Service	DHS 75.56 Adult Residential Integrated Behavioral Health Stabilization Service
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SECTION 4. DHS 75.48 (2) (table), row (m) is amended to read:

(m) Treatment plan completion				<p>1. A preliminary treatment plan is required within 48 hours of admission. <u>A treatment plan may be waived if an individual resides at the facility for less than 48 hours.</u></p> <p>2. A treatment plan consistent with ss. DHS 75.24 (13) is required within 4 days of admission.</p>
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SECTION 5. DHS 75.49 (3) is created to read:

DHS 75.49 (3) APPLICABILITY.

- (a) In this subsection, "co-occurring with the provision of mental health treatment services" means when any of the following occur during the provision of mental health services:
1. A client discloses symptoms of a substance use disorder for which treatment is requested by the current provider versus a referral to a ch. DHS 75 program.
 2. A client is clinically assessed to be in need of substance use services but the client declines.
- (b) This section shall not apply to outpatient substance use treatment services when co-occurring with the provision of mental health treatment services in any of the following settings:
1. An outpatient mental health clinic certified under ch. DHS 35, providing services in accordance with s. DHS 35.16 (5).
 2. A rural health clinic as defined under 42 CFR 491, Subpart A.

SECTION 7. DHS 75.50 (4) is created to read:

DHS 75.50 (4) APPLICABILITY.

- (a) In this subsection, "co-occurring with the provision of mental health treatment services" means when any of the following occur during the provision of mental health services:
1. A client discloses symptoms of a substance use disorder for which treatment is requested by the current provider versus a referral to a ch. DHS 75 program.
 2. A client is clinically assessed to be in need of substance use services but the client declines.
- (b) This section shall not apply to outpatient substance use treatment services when co-occurring with the provision of mental health treatment services in any of the following settings:
1. A ch. DHS 35 outpatient mental health clinic, in accordance with s. DHS 35.16 (5).
 2. A rural health clinic as defined under 42 CFR 491, Subpart A.

SECTION 8. DHS 75.51 (1) is amended to read:

DHS 75.51 (1) SERVICE DESCRIPTION. In this section, “intensive outpatient treatment service” means a non-residential treatment service totaling at least 9 hours of treatment services per patient per week for adults and at least 6 hours of treatment services per patient per week for minors, in which substance use and mental health treatment personnel provide assessment and treatment for substance use and mental health disorders under the oversight of a medical director. Patients in this setting may receive treatment services for a substance use disorder, a mental health disorder, or both. The intensive outpatient treatment service may choose to provide treatment for only substance use disorders. Intensive outpatient treatment services may include screening, intake, evaluation and diagnosis, medication management, nursing services, case management, drug testing, counseling, individual therapy, group therapy, family therapy, psychoeducation, vocational services, peer support services, recovery coaching, outreach activities, and recovery support services to ameliorate symptoms and restore effective functioning. Intensive outpatient treatment services address patient needs for mental health, psychiatric, or medical services through integrated co-occurring treatment or through coordinated services, consultation, and referrals.

SECTION 9. DHS 75.52 is amended to read:

DHS 75.52 Day treatment or partial hospitalization treatment service. In this section, “day treatment service” or “partial hospitalization service” means a medically-monitored and non-residential substance use and mental health treatment service totaling 15 or more hours of treatment services per patient per week for adults and 12 or more hours of treatment services per patient per week for minors, in which substance use and mental health treatment personnel provide assessment and treatment for substance use and ~~co-occurring~~ mental health disorders under the oversight of a medical director. Patients in this setting may receive treatment services for a substance use disorder, a mental health disorder, or both. The day treatment or partial hospitalization service may choose to provide treatment for only substance use disorders. Day treatment or partial hospitalization services may include screening, intake, evaluation and diagnosis, medication management, nursing services, case management, drug testing, counseling, individual therapy, group therapy, family therapy, psychoeducation, vocational services, peer support services, recovery coaching, outreach activities, and recovery support services, to ameliorate symptoms and restore effective functioning.

SECTION 10. DHS 75.56 (title), (1), (2) (a), (c), and (3) (a), (b) (intro) are amended to read:

DHS 75.56 Adult ~~residential~~ integrated behavioral health stabilization service.

(1) SERVICE DESCRIPTION. In this section, “adult ~~residential~~-integrated behavioral health stabilization service” means a ~~residential~~-behavioral health treatment service, delivered under the oversight of a medical director, that provides withdrawal management and intoxication monitoring, as well as integrated behavioral health stabilization services, and includes nursing care on-site for medical monitoring during all hours of operation available on a 24-hour basis. Patients in this setting may receive treatment services for a substance use disorder, a mental health disorder, or both. Adult ~~residential~~-integrated behavioral health stabilization services are appropriate for adult patients whose acute withdrawal signs and symptoms or behavioral health needs are sufficiently severe to require ~~24-hour care consistent monitoring~~; however, the full resources of a hospital are not required. Services delivered in this setting may include screening, assessment, intake, evaluation and diagnosis, medical care, observation and monitoring, physical examination, determination of medical stability, medication management, nursing services, case management, drug testing, counseling, individual therapy, group therapy, family therapy, psychoeducation, peer support services, recovery coaching, recovery support services, and crisis intervention services, to ameliorate acute behavioral health symptoms and stabilize functioning.

DHS 75.56 (2) (a) An adult ~~residential~~-integrated behavioral health stabilization service shall develop and implement an orientation program for all staff and volunteers. The orientation shall be designed to ensure that staff and volunteers know and understand all of the following:

DHS 75.56 (2) (c) Staff of an adult ~~residential~~-integrated behavioral health stabilization service shall receive at least 8 hours per year of training on emergency behavioral health services, rules and procedures relevant to the operation of the program, compliance with state and federal regulations, cultural competency in behavioral health services, and current issues in client's rights and services.

DHS 75.56 (3) (a) An adult ~~residential~~-integrated behavioral health stabilization service shall have written policies and procedures for the assessment of safety and consideration of safety risks to the patient and others prior to admitting a patient.

DHS 75.56 (3) (b) An individual with any of the following symptoms, behaviors, or concerns shall be excluded from admission to an adult ~~residential~~-integrated behavioral health stabilization service:

SECTION 11. DHS 75.56 (3) (b) 3. is repealed.

SECTION 12. DHS 75.59 (6) (e) 1. is amended to read:

DHS 75.59 (6) (e) 1. For each patient eligible for admission, the service shall arrange for a comprehensive physical examination and clinically indicated laboratory work-up. The comprehensive physical examination shall be ordered by the service physician on the day of admission and shall include a complete blood count and liver function testing. ~~The service shall test for Hepatitis A, B, C and HIV if the patient gives informed consent in writing. If the patient declines permission to test shall be documented in the patient's record.~~ An updated comprehensive physical examination including lab work shall be completed annually.

SECTION 13. DHS 75.59 (19) (c) is amended to read:

DHS 75.59 (19) (c) *Screening.* A service shall screen all patients via a risk factor assessment at admission and annually thereafter for ~~viral hepatitis and sexually transmitted diseases~~ and shall ensure that any necessary medical follow-up occurs, either on site or through referral to community medical services. ~~Positive screening results or disease risks must have a management plan that is seen through to completion regardless of whether this is accomplished via services provided directly on site or by referral and care coordination.~~

SECTION 14. DHS 75.60 (4) (intro.) and (c) are consolidated, renumbered to DHS 75.60 (4) (intro.), and amended to read:

DHS 75.60 (4) **DEFINITION.** In this section, ~~(c)~~ “Primary primary care service” means outpatient general health care services provided by a clinic for regular health care services, preventive care, or for a specific health concern, and includes all of the following:

SECTION 15. DHS 75.60 (4) (a) and (b) are repealed.

SECTION 16. DHS 75.60 (4) (c) 1. to 6. are renumbered DHS 75.60 (a) to (f).

SECTION 17. DHS 75.60 (7) (a) 10. and 11. are repealed.

SECTION 18. DHS 75.60 (8) (intro.) is renumbered DHS 75.60 (8) and amended to read:

DHS 75.60 (8) INTAKE. An OBOT service shall comply with all ~~of the following requirements: federal~~ and state laws and regulations governing the prescribing of medication for opioid use disorder.

SECTION 19. DHS 75.60 (8) (a) and (b) are repealed.

SECTION 20. DHS 101.13 (12m) is renumbered DHS 101.03 (17wm) and amended to read:

DHS 101.03 (17wm) “~~AODA~~ Behavioral health day treatment” means ~~alcohol and other drug abuse~~ substance use disorder treatment services provided by a provider certified under s. DHS 105.25 to a recipient who, in the clinical judgement of a qualified treatment professional, is experiencing a problem with alcohol or other drugs and requires intensive services of a prescribed duration, which may include assessment and evaluation, treatment planning, group and individual counseling, recipient education when necessary for effective treatment, and rehabilitative services, to ameliorate or remove the disability and restore effective functioning.

SECTION 21. DHS 101.03 (13) and (Note) are renumbered DHS 101.03 (172x) and (Note) and amended to read:

DHS 101.03 (172x) “~~AODA~~ SUD treatment services” means ~~alcohol and other drug abuse~~ substance use disorder treatment services provided by a provider certified pursuant to s. DHS 105.22 or 105.23 to assist ~~alcoholics and drug abusers~~ individuals with substance use disorder and persons affected by problems related to ~~the abuse of alcohol or drugs~~ substance use.

Note: Examples of ~~AODA~~ SUD treatment services are client evaluation, orientation and motivation, treatment planning, consultation and referral, client education, individual counseling, group counseling and crisis intervention

SECTION 22. DHS 101.03 (144) is amended to read:

DHS 101.03 (144) “Psychiatric hospital” or “psychiatric facility” means an institution which is primarily engaged in providing, by or under the supervision of a physician, inpatient psychiatric services for the diagnosis and treatment of mental illness which may include services for the diagnosis and treatment of ~~the abuse of alcohol or other drugs~~ substance use disorder.

SECTION 23. DHS 101.03 (172q) is created to read:

DHS 101.03 (172q) “Substance use disorder” or “SUD” has the meaning provided in s. DHS 75.03 (87).

SECTION 24. DHS 104.01 (1) (a) 1. o. is amended to read:

DHS 104.01 (1) (a) 1. o. Services provided are ~~alcohol and other drug abuse (AODA)~~ behavioral health day treatment services

SECTION 25. DHS 105.07 (2) and (5) are amended to read:

DHS 105.07 (2) A hospital providing outpatient ~~alcohol and other drug abuse (AODA)~~ SUD treatment services shall meet the requirements specified in s. DHS 105.23;

DHS 105.07 (5) A hospital providing ~~(AODA)~~ behavioral health day treatment services shall be certified under s. DHS 105.25.

SECTION 26. DHS 105.21 (1) (a) to (e) are amended to read:

DHS 105.21 (1) (a) Meet the requirements of s. DHS 105.07, ~~and~~ including all of the following:

1. ~~Maintain~~ Maintaining clinical records on all patients, including records sufficient to permit determination of the degree and intensity of treatment furnished to MA recipients, as specified in 42 CFR 482.61; ~~and~~.
 2. ~~Maintain~~ Maintaining numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures and engage in discharge planning, as specified in 42 CFR 482.62;.
- (b) Have a utilization review plan that meets the requirements of 42 CFR 405.1035, 405.1037 and 405.1038;.
- (c) If participating in the PRO review program, meet the requirements of that program and any other requirements established under the state contract with the PROs;.
- (d) If providing outpatient psychotherapy, comply with s. DHS 105.22;.
- (e) If providing outpatient ~~alcohol and other drug abuse~~ SUD treatment services, comply with s. DHS 105.23; ~~and~~.

SECTION 27. DHS 105.23 (title), (1) (intro.) and (a) to (c) are amended to read:

DHS 105.23 ~~Alcohol and other drug abuse (AODA)~~ **SUD treatment providers.**

(1) TYPES OF PROVIDERS. For MA certification, an outpatient ~~alcohol and other drug abuse (AODA)~~ SUD treatment provider shall be any of the following:

- (a) An outpatient facility operated by a board and certified under ss. DHS 75.49 and 75.50 ~~and 75.51~~;
- (b) An outpatient facility or hospital outpatient ~~AODA~~ SUD facility certified under ss. DHS 75.49, 75.50, and 75.51; ~~or~~.
- (c) A provider certified under s. DHS 105.05 (1), 105.22 (1) (b), 105.22 (1) (bn), 105.22 (1) (bo), 105.22 (1) (bp), 105.22 (1) (bq), or 105.22 (1) (br). ~~Providers that hold a training or temporary license under s. DHS 105.22 (1) (bn) or (bo) are excluded.~~

SECTION 28. DHS 105.23 (2) (title), (a) (intro) and 2. are amended to read:

DHS 105.23 (2) STAFFING REQUIREMENTS FOR OUTPATIENT SUD FACILITIES.

- (a) To provide ~~AODA~~ SUD treatment services reimbursable under MA, personnel employed by an outpatient facility under sub. (1) (a) or (b) shall:

DHS 105.23 (2) (a) 2. ~~Be an AODA counselor certified by the Wisconsin alcoholism and drug as a substance abuse counselor certification board and work under the supervision of a provider who is a licensed physician or licensed psychologist and employed by the same facility, clinical supervisor, or prevention specialist in accordance with s. 400.88(3), Stats., or be exempt from substance abuse certification under s. 440.88(3m), Stats.~~

SECTION 29. DHS 105.23 (2) (a) 2. (Note) is repealed.

SECTION 30. DHS 105.23 (2) (b) is amended to read:

DHS 105.23 (2) (b) The facility shall provide the department with a list of persons employed by the facility who perform ~~AODA~~ SUD treatment services for which reimbursement may be claimed under MA. The listing shall identify the credentials possessed by the named persons which would qualify them for certification under the standards specified in par. (a). A facility, once certified, shall promptly advise the department in writing of the employment or termination of employees who will be or have been providing ~~AODA~~ SUD treatment services under MA.

SECTION 31. DHS 105.23 (3) (title) is amended to read:

DS 105.23 (3) REIMBURSEMENT FOR ~~AODA~~ SUD SERVICES.

SECTION 32. DHS 105.23 (3) (intro) is renumbered DHS 105.23 (3) and amended to read:

DHS 105.23 (3) Reimbursement ~~for outpatient AODA treatment services~~ shall be as follows: made to any certified SUD provider whose practice, as described by individual licensure or clinic certification regulations, allows for the delivery of SUD services without clinical supervision. For outpatient SUD services delivered by certified providers who are required, under individual licensure or clinic certification regulations, to practice under a clinical supervisor, reimbursement shall be made to the supervising provider. The supervising provider must be MA certified.

SECTION 33. DHS 105.23 (3) (a), (b), and (Note) are repealed.

SECTION 34. DHS 105.235 is created to read:

DHS 105.235 **Intensive outpatient behavioral health service providers.**

(1) REQUIREMENTS. For MA certification, an intensive outpatient behavioral health service provider shall do all of the following:

(a) Be certified as one of the following:

1. An intensive outpatient treatment service under s. DHS 75.51.
2. A federally qualified health center in which intensive outpatient behavioral health services are included in the approved scope of practice.

(b) Have all of the following on staff:

1. A medical director, as defined in s. DHS 75.03 (51), who provides medical oversight and consultation regarding operations of services.
2. At least one substance abuse counselor, as defined in s. DHS 75.03 (85), who is available during the provision of substance use services.
3. At least one mental health professional, as defined in s. DHS 75.03 (56), who is available during the provision of mental health services.

(c) Conduct clinical staffing, as defined in s. DHS 75.03 (18) and in s. accordance with DHS 75.24 (15) and DHS 75.48 (1), every 14 days

(d) Provide services at times that allow most patients to maintain employment or attend school.

(2) REIMBURSEMENT FOR INTEGRATED OUTPATIENT SERVICE PROGRAMS. For the services of any provider employed by or under contract to a certified intensive outpatient behavioral health facility, reimbursement shall be made to the facility certified under sub. (1).

SECTION 35. DHS 105.25 (title) and (1) are amended to read:

DHS 105.25 ~~Alcohol and other drug abuse (AODA)~~ **Behavioral health day treatment providers.**

(1) TYPES OF PROVIDERS. For MA certification, ~~an alcohol and other drug abuse (AODA)~~ a behavioral health day treatment provider shall be certified under ~~ss. s. DHS 75.52 and 105.23.~~

SECTION 36. DHS 105.25 (2) (a) is repealed and recreated to read:

DHS 105.25 (2) (a) Facilities shall adhere to general requirements for service staff under s. DHS 75.18, and specific requirements for on-site and available staff under s. DHS 75.48 (1) (table), column DHS 75.52, rows (c) to (g) and (n) and s. DHS 75.52.

SECTION 37. DHS 105.25 (2) (b) is amended to read:

105.25 (2) (b) A treatment plan for each participating recipient shall be developed, directed and monitored by designated members of an interdisciplinary treatment team ~~which includes an alcohol and drug counselor II or III, certified as provided in ss. DHS 75.03 (85) and 75.18 (2)~~

~~(c) and (6) (b), a physician or licensed psychologist, and other health care professionals in accordance with s. DHS 75.24(13).~~ The treatment team shall maintain a written record of each recipient's treatment and progress toward meeting the goals described in the recipient's plan of care.

SECTION 38. DHS 105.25 (2) (c) is repealed.

SECTION 39. DHS 105.52 (4) (c) 1. to 10. are amended to read:

DHS 105.52 **(4) (c) 1.** Women, infants, and children ~~(WIC)~~ programs;_

2. Maternal and child health services;_

3. The county, city, or combined city and county public health agency;_

4. Child day care services;_

5. Mental health and ~~alcohol or other drug~~ substance abuse prevention ~~and~~ treatment agencies;_

6. The county protective service agency;_

7. Domestic abuse agencies;_

8. Translator and interpreter services including services for the hearing-impaired;_

9. Family support services;_

10. Transportation services; ~~and~~_

SECTION 40. DHS 107.08 (4) (d) 2. is amended to read:

DHS 107.08 **(4) (d) 2.** Services of psychiatrists and psychologists, except when performing group therapy and medication management, including services provided to a hospital inpatient when billed by a hospital, clinic or other mental health or ~~AODA-SUD~~ SUD treatment service provider.

SECTION 41. DHS 107.11 (5) (a) to (u) are amended to read:

DHS 107.11 **(5) (a)** Services that are not medically necessary;

(b) Skilled nursing services provided for 8 or more hours per recipient per day;_

(c) More than one initial visit per day by a home health skilled nurse, home health aide, physical or occupational therapist or speech and language pathologist;_

(d) Private duty nursing services under s. DHS 107.12, unless the requirements of sub. (4) (d) 2. apply;_

(e) Services requiring prior authorization that are provided without prior authorization;_

(f) Supervision of the recipient when supervision is the only service provided at the time;

(g) Hospice care provided under s. DHS 107.31;_

(h) Mental health and ~~alcohol or other drug abuse~~ SUD treatment service provided under s. DHS 107.13 (2), (3), (3m), (4) and (6);_

(i) Medications administration by a personal care worker or administration by a home health aide which has not been delegated by an RN according to the relevant provisions of ch. DHS 133.

(j) Skilled nursing services contracted for by a home health agency unless the requirements of s. DHS 133.19 are met and approved by the department;_

(k) Occupational therapy, physical therapy or speech pathology services requiring only the use of equipment without the skills of the therapist or speech pathologist;_

(L) ~~Skilled~~ Any of the following skilled nursing visits:

1. Solely for the purpose of ensuring that a recipient who has a demonstrated history of noncompliance over 30 days complies with the medications program;_

2. To administer or assist with medication administration of an adult recipient who is capable of safely self-administering a medication as determined and documented by the RN;_

3. To inject a recipient who is capable of safely self-injecting a medication, as described and documented by the RN;_

4. To prefill syringes for self-injection when, as determined and documented by the RN, the recipient is capable of prefilling or a pharmacy is available to prefill; ~~and~~_

5. To set up medication for self-administration when, as determined and documented by the RN, the recipient is capable or a pharmacy is available to assist the recipient;
- (m) Home health services to a recipient who is eligible for covered services under the medicare program or any other insurance held by the recipient;
- (n) Services that are not medically appropriate. In this paragraph, “medically appropriate” means a service that is proven and effective treatment for the condition for which it is intended or used;
- (o) Parenting;
- (p) Services to other members of the recipient’s household;
- (q) A visit made by a skilled nurse, physical or occupational therapist or speech pathologist solely to train other home health workers;
- (r) Any home health service included in the daily rate of the community-based residential facility where the recipient is residing;
- (s) Services when provided to a recipient by the recipient’s spouse or parent if the recipient is under age 18;
- (u) Any service which is performed in a place other than the recipient’s residence; ~~and~~.

SECTION 42. DHS 107.122 (4) (a) to (d) are amended to read:

DHS 107.122 **(4) (a)** Mental health and ~~alcohol and other drug abuse~~ SUD treatment services:

- (b) Services provided to nursing home residents or hospital inpatients which are included in the daily rates for a nursing home or hospital;
- (c) Rural health clinic services;
- (d) Dispensing durable medical equipment; ~~and~~.

SECTION 43. DHS 107.13 (1) (a) and (b) 1. and 2. (intro.), (f) 1. to 7., and (2) (d) 3. (Note) are amended to read:

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

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

2. ‘General conditions.’ Inpatient hospital mental health and ~~AODA~~ SUD treatment services provided in a hospital IMD for recipients under age 21 shall be provided under the direction of a physician and, if the recipient was receiving the services immediately before reaching age 21, coverage shall extend to the earlier of the following:

- DHS 107.13 **(1) (f) 1.** Activities which are primarily diversional in nature such as services which act as social or recreational outlets for the recipient;
2. Mild tranquilizers or sedatives provided solely for the purpose of relieving the recipient’s anxiety or insomnia;
 3. Consultation with other providers about the recipient’s care;
 4. Conditional leave, convalescent leave or transfer days from psychiatric hospitals for recipients under the age of 21;
 5. Psychotherapy or ~~AODA~~ SUD treatment services when separately billed and performed by masters level therapists or ~~AODA counselors~~ substance abuse counselors certified under s. DHS 105.22 or 105.23;
 6. Group therapy services or medication management for hospital inpatients whether separately billed by an IMD hospital or by any other provider as an outpatient claim for professional services;

7. Court appearances, except when necessary to defend against commitment; ~~and~~.

DHS 107.13 (2) (d) 3. **Note:** Section 49.45 (45), Stats., provides for in-home community mental health and ~~alcohol and other drug abuse (AODA)~~ SUD treatment services for individuals age 21 and over. However, these services are available to an individual only if the county, city, town or village in which the individual resides elects to make the services available and agrees to pay the non-federal share of the cost of those services.

SECTION 44. DHS 107.13 (3) (title), (a) (intro.) and 1. to 6, and (c) 1. and 3. are amended to read:

DHS 107.13 (3) ~~ALCOHOL AND OTHER DRUG ABUSE~~ SUBSTANCE USE AND SUD OUTPATIENT TREATMENT SERVICES. (a) *Covered services.* Outpatient ~~alcohol and drug abuse~~ SUD treatment services shall be covered when prescribed by a physician, provided by a provider who meets the requirements of s. DHS 105.23, and when the following conditions are met:

1. The treatment services furnished are ~~AODA~~ SUD treatment services;
2. Before being enrolled in an ~~alcohol or drug abuse~~ SUD treatment program, the recipient receives a complete medical evaluation, including diagnosis, summary of present medical findings, medical history and explicit recommendations by the physician for participation in the ~~alcohol or other drug abuse~~ SUD treatment program. A medical evaluation performed for this purpose within 60 days prior to enrollment shall be valid for reenrollment;
3. The supervising physician or psychologist develops a treatment plan which relates to behavior and personality changes being sought and to the expected outcome of treatment;
5. ~~AODA~~ SUD treatment services are performed only in the office of the provider, a hospital or hospital outpatient clinic, an outpatient facility, a nursing home or a school or by telehealth when functionally equivalent to services provided in person;
6. The provider who performs ~~AODA~~ SUD treatment services shall engage in contact with the recipient in person, via real-time interactive audio-visual telehealth, or real-time interactive audio-only telehealth for at least 5/6 of the time for which reimbursement is claimed.

DHS 107.13 (3) (c) 1. No more than one provider may be reimbursed for the same ~~AODA~~ SUD treatment session, unless the session involves a couple, a family group or is a group session. In this paragraph, "group session" means a session not conducted in a hospital for an inpatient recipient at which there are more than one but not more than 10 recipients receiving services together from one or 2 providers. No more than 2 providers may be reimbursed for the same session. No recipient may be held responsible for charges for services in excess of MA coverage under this paragraph.

DHS 107.13 (3) (c) 3. Professional ~~AODA~~ SUD treatment services other than group therapy and medication management provided to hospital inpatients in general or to inpatients in IMDs are not considered inpatient services. Reimbursement shall be made to the psychiatrist or psychologist billing provider certified under s. DHS 105.22 (1) (a) or (b) or 105.23 who provides ~~AODA~~ SUD treatment services to hospital inpatients in accordance with requirements under this subsection.

SECTION 45. DHS 107.13 (3m) (title), (a) (intro.) and 1. to 4., (b) 1. and 3., and (c) 1. are amended to read:

DHS 107.13 (3m): ~~ALCOHOL AND OTHER DRUG ABUSE~~ BEHAVIORAL HEALTH DAY TREATMENT SERVICES.

- (a) *Covered services.* ~~Alcohol and other drug abuse~~ Behavioral health day treatment services shall be covered when ~~prescribed by a physician, provided by a provider certified under s. DHS 105.25~~ and there is a documented need for services at the level of care as determined by a department-approved assessment in accordance with s. DHS 75.23(2). Services must be performed according

to the recipient's treatment program in a non-residential, medically supervised setting, and consistent with all of the following ~~when the following conditions are met:~~

1. ~~An initial~~ A clinical assessment is performed by qualified ~~medical~~ professionals under s. DHS 75.24 (11) for a potential participant. Services under this section shall be covered if the assessment concludes that AODA behavioral health day treatment is medically necessary and that the recipient is able to benefit from treatment;.
2. A treatment plan ~~based on the initial assessment under s. DHS 75.24(13)~~ is developed by the interdisciplinary team ~~in consultation with the medical professionals who conducted the initial assessment~~ and in collaboration with the recipient;.
3. ~~The supervising physician or psychologist approves the~~ When a plan is developed by a counselor who requires supervision, the recipient's written treatment plan shall be reviewed and signed by the primary counselor as defined in s. DHS 75.03 (72), or by a clinical supervisor, as defined in s. DHS 75.03 (19).
4. The treatment plan includes measurable individual goals, treatment modes to be used to achieve these goals and descriptions of expected treatment outcomes; ~~and.~~

DHS 107.13 (3m) (b) 1. All ~~AODA~~ behavioral health day treatment services except the initial assessment shall be prior authorized.

DHS 107.13 (3m) (b) 3. Department representatives who review and approve prior authorization requests shall meet the same minimum training requirements as those mandated for ~~AODA~~ behavioral health day treatment providers under s. DHS 105.25.

DHS 107.13 (3m) (c) 1. ~~AODA~~ Behavioral health day treatment services in excess of 5 hours per day are not reimbursable under MA.

SECTION 46. DHS 107.13 (3m) (c) 2. is repealed.

SECTION 47. DHS 107.13 (3m) (c) 3. is amended to read:

DHS 107.13 (3m) (c) 3. Reimbursement for ~~AODA~~ behavioral health day treatment services may not include time devoted to meals, rest periods, transportation, recreation or entertainment.

SECTION 48. DHS 107.13 (3m) (c) 4. is repealed and recreated to read:

DHS 107.13 (3m) (c) 4. Services involving family members may only be reimbursed when they are directly related to the treatment goals of the recipient.

SECTION 49. DHS 107.13 (3m) (d) 1. is amended to read:

DHS 107.13 (3m) (d) 1. Collateral interviews and consultations, except as provided in s. DHS 107.06 (4) (d);.

SECTION 50. DHS 107.13 (3m) (d) 2. is repealed.

SECTION 51. DHS 107.13 (3m) (d) 3. to 6. are amended to read:

- DHS 107.13 (3m) (d) 3. ~~AODA day treatment~~ Services which are primarily recreation-oriented ~~or which are provided in non medically supervised settings and not directly related to the treatment goals of the recipient. These include but are not limited to sports activities, exercise groups, and activities such as crafts, leisure time, social hours, trips to community activities and tours;.~~
4. Services provided to a AODA behavioral health day treatment recipient which are primarily social or only educational in nature. Educational-Individual and group psychoeducational

sessions are covered as long as these sessions are part of an overall treatment program ~~and include group processing of the information provided;~~

5. Prevention or education programs provided as an outreach service or as case-finding; ~~and~~
6. ~~AODA~~ Behavioral health day treatment provided in person in the recipient's home.

SECTION 52. DHS 107.13 (4) (b) 1. a. to d., and (d) 1. to 7. are amended to read:

DHS 107.13 **(4) (b) 1. a.** Day treatment services provided beyond 90 hours of service in a calendar year;

- b. All day treatment or day hospital services provided to recipients with inpatient status in a nursing home. Only those patients scheduled for discharge are eligible for day treatment. No more than 40 hours of service in a calendar year may be authorized for a recipient residing in a nursing home;
- c. All day treatment services provided to recipients who are concurrently receiving psychotherapy, occupational therapy or ~~AODA~~ SUD treatment services;
- d. All day treatment services in excess of 90 hours provided to recipients who are diagnosed as ~~acutely mentally ill~~ with acute mental illness.

DHS 107.13 **(4) (d) 1.** Day treatment services which are primarily recreation-oriented and which are provided in non-medically supervised settings such as 24 hour day camps, or other social service programs. These include sports activities, exercise groups, activities such as craft hours, leisure time, social hours, meal or snack time, trips to community activities and tours;

2. Day treatment services which are primarily social or educational in nature, in addition to having recreational programming. These shall be considered non-medical services and therefore non-covered services regardless of the age group served;
3. Consultation with other providers or service agency staff regarding the care or progress of a recipient;
4. Prevention or education programs provided as an outreach service, case-finding, and reading groups;
5. Aftercare programs, provided independently or operated by or under contract to boards;
6. Medical or ~~AODA~~ SUD day treatment for recipients with a primary diagnosis of ~~alcohol or other drug abuse~~ substance use or substance use disorder;
7. Day treatment provided in person in the recipient's home; ~~and~~

SECTION 53. DHS 107.13 (8) is created to read:

DHS 107.13 **(8) INTENSIVE OUTPATIENT BEHAVIORAL HEALTH SERVICES.**

- (a) Covered services.** Intensive outpatient behavioral health services shall be covered when provided with a program which is certified under s. DHS 105.235 and when all of the following conditions are met:

1. There is a documented need for services at the level of care as determined by a department approved assessment as described in s. DHS 75.23 (2). Services must be performed according to the recipient's treatment program in a non-residential, supervised setting.
2. A clinical assessment under s. DHS 75.24 (11) is performed for a potential participant. Services under this section shall be covered if the assessment concludes that intensive outpatient is medically necessary and that the recipient is able to benefit from treatment.
3. A treatment plan under s. DHS 75.24 (13) is developed by the interdisciplinary team and in collaboration with the recipient.
4. The recipient's written treatment plan shall be signed by the primary counselor, and if performed by a counselor who requires supervision, is also signed by a clinical supervisor, as defined in s. DHS 75.03 (19).
5. The treatment plan includes measurable individual goals, treatment modes to be used to achieve these goals and descriptions of expected treatment outcomes.

6. The interdisciplinary team monitors the recipient's progress, adjusting the treatment plan as required.
- (b) *Utilization management.* All intensive outpatient behavioral health services shall be subject to utilization control guidelines established by the department.
- (c) *Other limitations.*
 1. Services involving family members may only be reimbursed when they are directly related to the treatment goals of the recipient.
 2. Psychoeducational sessions are covered as long as these sessions are part of an overall treatment program. Services provided to an intensive outpatient recipient which are primarily social or only educational in nature are not covered.
 3. Reimbursement for integrated intensive outpatient behavioral health services may not include time devoted to meals, rest periods, transportation, recreation or entertainment, or vocational services.
- (d) *Non-covered services.* All of the following are not covered services:
 1. Collateral interviews and consultations, except as provided in s. DHS 107.06 (4) (cm).
 2. Services which are primarily recreation-oriented and not directly related to the treatment goals of the recipient are not reimbursed for intensive outpatient behavioral health services.
 3. Individual and group prevention or psychoeducational programs provided as an outreach service or as case-finding.
 4. Intensive outpatient behavioral health services provided in person in the recipient's home.

SECTION 54. DHS 107.23 (2) (d) is amended to read:

DHS 107.23 (2) (d) Trips by ambulance to obtain physical therapy, occupational therapy, speech therapy, audiology services, chiropractic services, psychotherapy, methadone treatment, ~~alcohol abuse treatment, other drug abuse treatment~~ SUD treatment, mental health day treatment or podiatry services;

SECTION 55. DHS 107.32 (1) (b) 15. is amended to read:

DHS 107.32 (1) (b) 15. Assessment of drug and alcohol use and misuse, for ~~AODA~~ SUD target population recipients.

SECTION 56. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.