

## WISCONSIN DEPARTMENT OF HEALTH SERVICES PROPOSED ORDER TO ADOPT EMERGENCY RULE

The Wisconsin Department of Health Services proposes an order to create ch. DHS 50, relating to Youth Crisis Stabilization Facilities.

### FINDING OF EMERGENCY

Pursuant to 2017 Wis. Act 59, s. 9120, the Department is not required to provide a finding of emergency to create rules implementing certification of Youth Crisis Stabilization Facilities, under s. 51.042, Stats.

### RULE SUMMARY

#### **Statutes interpreted**

Sections 51.042 (1) to (3) and 51.42 (7) (b), Stats.

#### **Statutory authority**

Sections 51.042 (4), 51.42 (7) (b), and 227.11 (2) (a), Stats.

#### **Explanation of agency authority**

Section 51.042 (4), Stats., authorizes the Department to promulgate rules to develop a certification for youth crisis stabilization facilities. In addition, s. 51.42 (7) (b), Stats., directs the Department to promulgate rules relating to a number of different facets of community mental health services, including administrative structure, requirements for certification, medication procedures, and standards for quality of professional services. Within certain parameters, s. 227.11 (2) (a), Stats., also authorizes the Department to promulgate rules interpreting provisions of any statutes it enforces or administers, if the Department considers it necessary to effectuate the purposes of the statute.

Finally, a nonstatutory provision in 2017 Wis. Act 59, s. 9120 authorizes the Department to promulgate emergency rules to implement certification of youth crisis stabilization facilities, without providing evidence that promulgating an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare.

#### **Related statutes or rules**

Section 51.42 (7) (b), Stats.

#### **Plain language analysis**

The objective of ch. DHS 50 is to create a certification for youth crisis stabilization facilities (YCSFs), a new type of facility which will serve youths ages 17 and under who are experiencing a mental health crisis. As such, the rule will cover certification requirements, program requirements, physical plant requirements, and other policy that will ensure safe and effective treatment of this population.

YCSFs are a new type of treatment that will serve youths ages 17 and under, in facilities of eight beds or fewer, to prevent or treat a mental health crisis. In Wisconsin, there is a vast shortage of community-based services for youths who are experiencing a mental health crisis. Many of these youths are sent to Winnebago Mental Health Institute (WMHI) on a s. 51.15, Stats., emergency detention to de-escalate the crisis and stabilize the youth. However, this level of

treatment exceeds the clinical needs of many youth, and often is used because of a lack of more appropriate types of treatment options in the youth's community. County emergency mental health services programs, along with other stakeholders, support the development of YCSFs as a clinically appropriate treatment option to address this existing mental health services need. This need is for short term (1- 5 days average) residential placements where professionals assist youths to de-escalate from a mental health crisis, as well as reduce the likelihood of future crises. YCSFs will collaborate with families, schools, providers, and other professionals to deliver and plan effective treatment with the youth.

There are no existing rules for YCSFs. YCSFs are a new type of mental health treatment for youth in WI. The expected outcome of ch. DHS 50 is that it will create a certification and regulation mechanism for YCSFs. The Department has the authority to limit the number of YCSF certifications. The Department initially expects it will certify 1-3 YCSFs across the state. It is expected that YCSFs will be located statewide in a number limited to the needs in the state. YCSFs will provide professional resources in a short term residential setting to a youth and their family to prevent further mental health crises with the youth. YCSFs will collaborate with the youth and other partners to address the mental health needs of each youth.

Section 51.42 (7) (b), Stats., authorizes the Department to create certification for YCSFs, and therefore there are no policy alternatives. Entities affected by this rule may include: youths participating in services and their families, county emergency mental health services programs which may be involved with the youth, and other providers of mental health treatment and other services. YCSFs will be part of a continuum of youth mental health services across the state.

#### **Summary of, and comparison with, existing or proposed federal statutes and regulations**

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

#### **Comparison with rules in adjacent states (Illinois, Iowa, Michigan, Minnesota)**

There appear to be no rules in the state that address the activities to be regulated by the proposed rules. Other states employ varying methods to provide stabilization and, in some cases, residential services to youth experiencing a mental health crisis. However, to our knowledge the YCSF model—meaning a facility with 8 beds or fewer which is specifically dedicated to short term crisis treatment stays—is unique. We do not know of any other admin rules or state statutes in nearby states which are comparable. For example, some other states may use inpatient psych or large, long term facilities or possibly foster care beds, but none of those options are similar to the YCSF model.

#### **Summary of factual data and analytical methodologies**

Data used in the creation of ch. DHS 50 was largely qualitative and based on input from numerous stakeholders and subject experts. In addition, several existing statutes and administrative rules were referenced for guidance. Data used in the creation of this rule was sourced from the following:

1. Information was provided by Department subject experts in the Division of Quality Assurance (DQA), Division of Medicaid Services (DMS), and the Division of Care and Treatment Services (DCTS). DQA provided information on the certification process, and certification and facility policies based on other small residential treatment facilities licensed by the Department. DMS provided information on crisis intervention policy, eligibility for crisis intervention services, and other subjects related to Medicaid rules relating to YCSF services. DCTS provided expertise in clinical issues facing youth experiencing mental health crises, as well as expertise in ch. DHS 34 , the Emergency Mental Health Services rule which covers crisis intervention and crisis stabilization services. ch. DHS 50 will align with certain requirements in ch. DHS 34 , such as staffing and supervision.

2. Subject experts at WMHI advised on the population, treatment needs, and program design.
3. The Department of Children and Families staff advised on the population needs and facility design.
4. Providers who work with youth in crisis, including various county crisis intervention staff and private providers. These experts provided data on clinical and facility issues to consider in drafting Code ch. DHS 50. .
5. Site visit to Homme Home, a residential care center for youth, which provided data on residential treatment needs for youth experiencing a mental health crisis.
6. Two listening sessions with the public in the fall of 2018, attended by 40-50 stakeholders each. These sessions allowed stakeholders to provide feedback on aspects of the prospective administrative rule such as length of stay, authorizations for treatment, liaisons with schools, community partners, and many more subject areas.
7. The ch. DHS 50 advisory committee, which included representatives from five counties and several consumer advocates, provider representatives and state agencies. This committee met four times in the fall of 2018 and provided extensive feedback on the draft language of DHS 50. The final rule language reflects data gathered from the expertise of the advisory committee.
8. The Office of Children's Mental Health served on the Advisory Committee and also provided data regarding youth crisis stabilization needs, utilization of services, and the statewide continuum of care.

#### **Analysis and supporting documents used to determine effect on small business**

The Department published a solicitation in the Administrative Register, requesting comments on the economic impact of the proposed rule, from April 22 to May 6, 2019.

#### **Effect on small business**

The proposed rule will not affect existing small businesses, but will create new business opportunities.

#### **Agency contact person**

Sarah Coyle, 608-266-2715, [sarah.coyle@dhs.wisconsin.gov](mailto:sarah.coyle@dhs.wisconsin.gov).

#### **Statement on quality of agency data**

The data sources referenced and used to draft the rules and analyses are accurate, reliable, and objective and are discussed in the "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, or at <https://www.dhs.wisconsin.gov/rules/permanent.htm> until the deadline given in the upcoming Notice of Public Hearing. Commenting may also be enabled at: <https://docs.legis.wisconsin.gov/code/chr/active>.

The Notice of Public Hearing and deadline for submitting comments will be published in the Administrative Register at <https://docs.legis.wisconsin.gov/code/register>.

## RULE TEXT

**SECTION 1.** Chapter DHS 50 is created to read:

### **DHS 50 Youth Crisis Stabilization Facilities**

#### **Subchapter I – General Provisions and Requirements**

##### **DHS 50.01 Authority and purpose.**

This chapter is promulgated under the authority of ss. 51.042 (4), 51.42 (7) (b), and 227.11 (2) (a), Stats., for the purpose of creating certification to operate youth crisis stabilization facilities.

##### **DHS 50.02 Definitions.**

**(1)** “Chemical restraint” means any drug, drug dosage, or drug regimen that may decrease a youth’s independent functioning, that is administered to control a youth’s behavior, and that is not prescribed to the youth for the treatment of a medical or psychiatric condition.

**(2)** “Clinical staff” means any of the following:

- (a) A psychiatrist with the qualifications stated in s. DHS 34.21 (3) (b) 1.
- (b) A psychologist with the qualifications stated in s. DHS 34.21 (3) (b) 2.
- (c) A psychology resident with the qualifications stated in s. DHS 34.21 (3) (b) 3.
- (d) A psychiatric resident with the qualifications stated in s. DHS 34.21 (3) (b) 4.
- (e) A certified independent clinical social worker with the qualifications stated in s. DHS 34.21 (3) (b) 5.
- (f) A psychiatric nurse with the qualifications stated in s. DHS 34.21 (3) (b) (6).
- (g) A professional counselor and marriage and family therapist with the qualifications stated in s. DHS 34.21 (3) (b) 7.
- (h) Licensed certified social workers, certified advance practice social workers and certified independent social workers shall meet the qualifications established in s. DHS 34.21 (3) (b) 13.
- (i) A qualified treatment trainee, who is a master's level clinician who has a master's degree and coursework in areas directly related to providing mental health services, including clinical psychology, psychology, school or educational psychology, rehabilitation psychology, counseling and guidance or counseling psychology.

**(3)** “Crisis” has the meaning given in s. 51.042 (1) (a), Stats.

**(4)** “Crisis stabilization” means a stabilization service that complies with the requirements stated in s. DHS 34.22 (4) (a) to (c).

**(5)** “Culturally responsive” means a service, or the provision of a service, in a manner that demonstrates an understanding of, and attentiveness to, a youth’s cultural history and background and how those impact the youth’s treatment needs.

**(6)** “Deficiency” means a failure to meet a requirement of this chapter.

**(7)** “Department” means the department of health services.

**(8)** “Division” means the division of care and treatment services.

**(9)** “Facility” means the physical site where the YCSF program is located. Facility is limited to the space used by the program.

**(10)** “Family” means a youth’s relatives and others who are considered family by the youth and the youth’s culture.

**(11)** “Group services” means services delivered in a group setting of two or more youth.

**(12)** “Individual services” are services delivered by staff to a youth or family.

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

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

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

**(14)** “Licensed treatment professional” means any of the following, who is practicing under a currently valid training or temporary license or certificate, except 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:

(a) An individual licensed as a physician under s. 448.03, Stats., who has completed a residency in psychiatry.

(b) A psychologist or a private practice school psychologist licensed under ch. 455, Stats.

(c) A marriage and family therapist licensed under s. 457.10 or 457.11, Stats.

(d) A professional counselor licensed under s. 457.12 or 457.13, Stats.

(e) An advanced practice social worker granted a certificate under s. 457.08 (2), Stats.

(f) An independent social worker licensed under s. 457.08 (3), Stats.

(g) A clinical social worker licensed under s. 457.08 (4), Stats.

**(15)** “Major deficiency” means a determination made by the department that any of the following have occurred:

(a) A YCSF has repeatedly or substantially failed to meet one or more requirements of this chapter.

(b) An action, condition, policy, or practice of the YCSF or the conduct of its staff created a risk of harm to a youth or violates a youth’s right created by this chapter or other state or federal statutes or rules, including any of the following:

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

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

3. A YCSF staff member’s acts or omissions placed the health or safety of a youth in imminent danger.

(c) A YCSF submits or causes to be submitted one or more false statements for purposes of obtaining certification under this chapter.

(d) A YCSF engaged in fraud or willful misrepresentation within the meaning of s. DHS 108.02 (9) (d). Willful misrepresentation under this paragraph does not include the signing of a claim for reimbursement by an authorized representative of a YCSF who did not perform the service for which reimbursement is claimed, if the individual who performed the service was qualified to do so under this chapter and was on the YCSF’s staff when the services were performed.

(Note) The department may withhold Medical Assistance (MA) payments, in whole or in part, as provided in s. DHS 108.02 (9) (d) 1. A provider is entitled to a hearing under s. DHS 106.12.

(e) A YCSF staff member has a substantiated finding of caregiver misconduct as identified in ch. DHS 13.

**(16)** “Mechanical restraint” means any physical device, used for the purpose of limiting or controlling a youth’s movement, except that the procedures in s. DHS 50.12 (4) (e) 1. to 2. are not mechanical restraints.

**(17)** “Parent” means any biological, foster, or adoptive parents who are legally recognized as a youth’s parent and legally responsible for the youth’s welfare.

**(18)** “Physical restraint” means any manual method, such as a basket hold, or a mechanical device that the individual cannot remove easily and that is intended to limit independent functioning, restrict the freedom of movement or normal range of motion of one or more limbs or the entire body, but not including any of the following:

(a) Mechanical supports used to enhance independent functioning, achieve proper body position, balance or alignment, such as arm splints to reduce contractures or leg braces to support the legs while standing or walking.

(b) Physical guidance and prompting techniques of brief duration.

**(19)** “Program” means a YCSF’s treatment and services component.

**(20).** “Trauma-informed” means a service, or the provision of a service, in a manner that demonstrates an understanding of, and attentiveness to, a youth’s trauma history and background and how those impact the youth’s treatment needs. Trauma-informed services recognize the impact of trauma on a youth’s behavior. Trauma-informed care prioritizes addressing and minimizing the impact of trauma in a youth’s life.

**(21)** “Youth” means an individual under the age of 18 who is being treated at, or seeking treatment from, a YCSF.

**(22)** “Youth crisis stabilization facility” or “YCSF” has the meaning given in s. 51.042(1)(b), Stats.

### **DHS 50.03 Certification.**

**(1) GENERAL.** No person or entity may operate a YCSF without successfully completing a background check verified by the Office of Caregiver quality and obtaining a certification from the department. A YCSF that has a certification from the department under this section is not subject to facility regulation under ch. 48, Stats.

(Note) Information about obtaining a background check is available at: <https://www.dhs.wisconsin.gov/caregiver/cbcprocess.htm>.

**(2) APPLICATION.** A YCSF may apply for a 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 as specified under s. DHS 50.05.

(e) A copy of the youth crisis stabilization facility’s policies and procedures, as specified under s. DHS 50.06.

(f) A floor plan of the YCSF, specifying dimensions, exits, and planned room usage.

- (g) All inspection reports completed during the last 12 months as defined in ss. DHS 50.15. to DHS 50.18.
- (h) Proof of building insurance, risk, and liability insurance, and agency-owned vehicle insurance if transporting youth.
- (i) Payment of any forfeitures, fees, or assessments related to any licenses or certifications issued by the department to the applicant, or a written statement signed by an authorized representative stating that no fees, forfeitures, assessments are owed.
- (j) Any other applicable fees.
- (k) Any additional information requested by the department.

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

**(4) 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 YCSF's 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.
- (c) The department may limit the number of certificates issued pursuant to s. 51.042 (2) (a), Stats.

**(5) NOTIFICATION OF CHANGES.** A YCSF 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-transferrable. A new application will be required if the department determines there is a substantial change in the YCSF..

**(6) DURATION OF CERTIFICATION.**

- (a) A certification is valid until suspended or terminated by the department.
- (b) A certification becomes invalid upon non-payment of biennial fees.
- (c) A certification becomes invalid upon suspension or termination by the department.
- (d) A certification may be suspended or terminated under s. DHS 50.03 (10).

**(7) BIENNIAL REPORT AND FEES.**

- (a) Every 24 months, by the date of renewal, the program shall submit a biennial report on the form provided by the department, and shall submit payment of certification continuation fees for the purpose of renewing certification of the program for two years.
- (b) The department will send the re-certification materials to the provider, which the provider is expected to fill out and submit to the department according to instructions provided.
- (c) A certification will be suspended or terminated if biennial reports are not submitted prior to the end of the biennial cycle.

**(8) YCSF INSPECTIONS.** The YCSF shall permit unannounced, on-site inspections of the site by the department to conduct program reviews, complaint investigations involving any aspect of the YCSF, death investigations, or to determine a YCSF's progress in correcting a deficiency cited by the department. The department may use a random selection process for reviewing client records during program reviews. Complaint-driven program reviews shall include the records related to the complaint and may include additional records and interviews.

**(9) NOTICE OF DEFICIENCIES.**

(a) If the department determines that a YCSF has a deficiency, the department shall issue a notice of deficiency to the YCSF within 10 business days. The notice of deficiency may place restrictions on the YCSF or its activities, or suspend or terminate the YCSF's certification, pursuant to s. DHS 50.03 (10).

(b) The YCSF shall submit a plan of correction to the department within 10 business days as indicated in the notice of deficiency. The plan of correction shall propose the specific steps the YCSF will take to correct the deficiency, the timelines within which the corrections will be made, and the licensed professional 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 YCSF does not adequately address the deficiencies listed in the notice of deficiency, the department may request a new plan of correction from the YCSF or may impose a plan of correction.

**(10) TERMINATION AND SUSPENSION OF CERTIFICATION.**

(a) The department may terminate certification at any time for major deficiency by issuing a notice of termination to the YCSF. The notice shall specify the reason for the department action and the appeal information under s. DHS 50.03(11).

(b) The department may suspend a YCSF's certification if the department determines that immediate action is required to protect the health, safety, and welfare of youth. Written notice of suspension shall specify the reason for the department action and the date the action becomes effective. Within 10 business days after the order is issued, the department shall either lift or impose conditions on the suspension of the YCSF's certification or proceed to terminate the YCSF's certification.

**(11) APPEALS.**

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

(b) An applicant for YCSF 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 YCSFs statewide.
3. The addition of the facility would exceed the limit determined by the department.

**DHS 50.04 Variance and waiver.**

**(1)** In this section:

(a) "Variance" means an alternate means of meeting a requirement in this chapter.

(b) "Waiver" means an exemption from a requirement of this chapter.

**(2)** The department may grant a waiver or variance if the department determines that the proposed waiver or variance will not diminish the effectiveness of the services provided and will not jeopardize the health, safety, welfare, or rights of any youth. The department may specify a timeframe or time limit for the waiver. A request for a variance or waiver must be submitted on a form provided by the department.

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

**(3)** The department may rescind or limit a waiver or variance at any time by notifying the YCSF, if any of the following occurs:

(a) The department determines the waiver or variance has adversely affected or is likely to adversely affect the health, safety or welfare of the youths.



(b) The YCSF fails to comply with any of the conditions of the waiver or variance as granted.

(4) The department shall inform a YCSF in writing if it rescinds or limits a waiver or variance.

**DHS 50.05 Program Statement.** A program statement shall contain all of the following:

(1) A description of how the YCSF fits into a continuum of care for youth crisis stabilization and treatment services.

(2) A description of services the program intends to provide, including all of the following:

(a) Referral and screening procedures.

(b) Intake procedures, including medication review.

(c) Assessment and treatment planning, including assessment of risk factors and safety planning for youth.

(d) Treatment services, including crisis prevention and emotional regulation, including, if applicable, a description of any services that will be delivered in a group setting.

(e) Care coordination.

(f) Discharge planning, including any linkages and follow-up.

(3) A description of the therapeutic environment the program proposes to create, its intended therapeutic benefits, and the rationale supporting its use for the youth served by the YCSF. This description shall include:

(a) Any evidence-based practices and other services to be implemented at the YCSF. The description should include a rationale for how the services will help the youth population achieve and sustain positive outcomes.

(b) A plan for coordination of any services that will be provided through outside providers, including with any of a youth's current providers.

(4) A description of how the YCSF and its services are trauma-informed, strengths-based, and culturally responsive.

(5) A description of how the YCSF encourages involvement of families and caregivers in treatment planning and services, and involves individuals authorized to participate in the treatment planning and services.

(6) A description of the YCSF's process for communicating with a youth's school or educational setting and the measures it will take to facilitate a youth's ability to stay up to date in educational expectations.

(7) The proposed schedule of the program, including any times allocated for treatment, recreation, study time, and meals.

(8) The YCSF's proposal for meeting staffing level requirements in s. DHS 50.07, the qualifications and roles for each position, and an analysis showing that staffing is adequate to meet the needs of the youth that the program proposes to serve.

(9) A description of food service and how it will be provided, including at least three meals a day and snacks.

(10) A description of how the program will offer appropriate indoor and outdoor recreation activities.

(11) A description of methods used to evaluate services.

## **Subchapter II - Program Requirements**

**DHS 50.06 Required Policies.** A YCSF must have written policies and procedures for the following:

(1) Admission policy and criteria, including ages and gender of youth served, and how bedrooms will be allocated.

(2) Utilization review policy addressing determination of need and length of stay, frequency of review, and other utilization policy as needed. The YCSF is meant to be a short-term crisis stabilization facility. If utilization reviews show that a youth requires stabilization longer than a 30-day period, approval from the department must be obtained.

(Note) Approval may be requested at: <https://www.dhs.wisconsin.gov/mh/ycsrf.htm>.

(3) Policy on prescriber consulting relationships and processes to access consultation with a physician, psychiatrist, physician's assistant, or advanced practice nurse prescriber, to prescribe or consult on psychiatric medications of youths. This can include a youth's own provider.

(4) Policy on how medications will be stored, secured, managed, and administered, and which staff is responsible. A description of how medical conditions, if any, will be managed.

(5) Policy on medical emergencies.

(6) Policy on clinical supervision, per s. DHS 50.09.

(7) Policies for youths' personal possessions, communication devices including phones, electronics usage, room searches, or other applicable policies.

(8) Facility rules, provided to youth and staff.

(9) Where client records will be maintained and how confidentiality requirements of those records will be safeguarded, as required under s. DHS 50.14.

(10) Policy on how the YCSF will address safety concerns specific to the youth being served.

(11) Policy on emergency safety interventions. This policy must comply with s. DHS 50.12. It must specify alternative interventions, best practices, and how the YCSF plans to implement emergency safety interventions. If seclusion or restraint will be used, it must provide a description of how it will be handled procedurally and for seclusion where the intervention will occur.

**DHS 50.07 Personnel.**

**(1) POLICIES.**

- (a) A YCSF shall have written personnel policies.
- (b) A YCSF shall maintain written documentation of employee qualifications and shall make that information available upon request for review by youths and their representatives or parents, and by the department.

**(2) GENERAL QUALIFICATIONS.**

- (a) Qualified staff shall comply with s. DHS 34.21 (3) (b) 1. to 19. and must follow current department of safety and professional services standards for licensure and scope of practice.
- (b) Peer specialists or parent peer specialists must be trained in accordance with s. DHS 34.21 (8) (a) to (d).
- (c) Each staff member shall have the professional certification, training, experience, and ability to carry out his or her assigned duties as documented through the following steps:
  - 1. Each applicant must pass a state background check as provided in s. 50.065, Stats. and ch. DHS 12, before being allowed to work for the YCSF. If the applicant lived in another state, a background check shall be obtained from that state as well.
  - 2. Programs shall comply with caregiver misconduct reporting and investigation requirements in ch. DHS 13.
  - 3. Each staff responsible for transporting youth shall have a valid Wisconsin driver's license and a driving record free of any violations specified in ss. 346.62 or 346.63, Stats, in the past 12 months.

(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>.

**(3) REQUIRED PERSONNEL.**

- (a) *Program administrator.* Each YCSF shall have a program administrator who is responsible for the overall YCSF operations and ensuring that the YCSF is in compliance with this chapter and other applicable state and federal laws.
- (b) *Clinical coordinator.* Each YCSF shall have a clinical coordinator who is responsible for the mental health services provided by the program and for ensuring that all staff members providing mental health services have the qualifications required for their roles in the program and comply with all requirements relating to assessment, treatment planning, service delivery, and service documentation. The clinical coordinator shall be qualified under s. DHS 34.21 (3) (b) 1. to 8. The program administrator may also serve as the clinical coordinator.
- (c) *Required designee.* The program administrator shall identify one or more staff members to whom authority may be delegated in the absence of the clinical coordinator. The designee must be qualified under s. DHS 34.21 (3) (b) 1. to 8.
- (d) *Staffing requirements.*
  - 1. The program administrator, clinical coordinator, or designee must be available for consultation 24/7 either on site, by phone, or by other means.
  - 2. At all times that youth are present at a YCSF, the program shall have a minimum of two staff members present that are qualified under s. DHS 50.07 (2). At least one of the two staff members present must meet one of the requirements from s. DHS 34.21 (3) (b) 1. to 14.

**DHS 50.08 Orientation and Training.**

- (1)** Initial and ongoing orientation and training requirements must comply with s. DHS 34.21 (8) (a) to (d).

(2) Training must include review of ch. DHS 50, including review and training on all YCSF policy and procedures, program statement, and other pertinent information.

(3) Training must include content specific to youth in crisis and their treatment needs.

(4) Training for standard precautions, fire safety, first aid and choking, and medication administration and management is required and must comply with ss. DHS 83.20 (1) and (2).

(5) Training must include emergency safety interventions per s. DHS 50.12 and include de-escalation techniques, redirection, and other preventative techniques.

(6) Staff must be trained on mandated reporting requirements. YCSF staff are considered mandated reporters under ss. 48.981 (2) (a) to (c), Stats.

(7) As part of its central administrative records, a YCSF shall maintain updated, written copies of its orientation program, evidence of current licensure and certification of professional staff, and documentation of orientation and ongoing training received by program staff and volunteers.

### **DHS 50.09 Clinical Supervision.**

(1) The clinical coordinator shall be responsible for oversight of the job performance and actions of each staff member who is providing clinical services and support services, and for ensuring staff compliance with all laws and regulations governing care and treatment as well as the standards of practice of their individual professions.

(2) Each YCSF shall develop and implement a written policy for clinical supervision and clinical collaboration designed to provide sufficient guidance to assure the delivery of effective services. The policy shall address all of the following:

(a) A method of assessing and evaluating treatment needs and outcomes to determine if treatment provided is effective, and a system to identify any necessary corrective measures and make changes to improve progress.

(b) Identification of clinical issues, including incidents that pose a significant risk of an adverse outcome for youth that should warrant clinical collaboration, or clinical supervision that is in addition to the supervisions specified under ch. MPSW 4, 12, or 16, or Psy 2, or for a recognized psychotherapy practitioner, whichever is applicable.

(3) Clinical supervision must be provided by staff meeting the qualifications under s. DHS 34.21 (3) (b) 1. to 8.

(4) Program staff who have not completed 3000 hours of supervised clinical experience, or who are not qualified under s. DHS 34.21 (3) (b) 1. to 8., shall receive a minimum of one hour of clinical supervision per week or for every 30 clock hours of face-to-face mental health services they provide.

(5) Program staff who have completed 3000 hours of supervised clinical experience and who are qualified under s. DHS 34.21 (3) (b) 1. to 8., shall participate in a minimum of one hour of peer clinical consultation per month or for every 120 clock hours of face-to-face mental health services they provide.

(6) Clinical supervision shall comply with chs. MPSW 4 and MPSW 12, or ch. MPSW 16, or ch. Psy 2.

(7) Clinical supervision shall be provided by one or more of the following means:

(a) Individual sessions with the staff member to review cases and assess performance.

- (b) Individual side-by-side sessions in which the supervisor is present while the staff person provides services and in which the supervisor assesses, teaches, and gives advice regarding the staff member's performance during or after the session.
- (c) Group meetings to review and assess staff performance and provide staff advice or direction regarding specific situations or strategies.
- (d) Other professionally recognized methods of supervision, such as review using videotaped sessions or peer review, if the other methods are approved by the department and are specifically described in the written policies of the program.

**(8)** Clinical supervision shall be documented in a supervision or collaboration record, containing entries that are signed and dated by the staff member providing supervision.

(9) Clinical supervision shall comply with DHS 34.21 (7) (a) to (k).

### **DHS 50.10 Admissions.**

**(1) CRITERIA FOR ADMISSION.** Admission is voluntary, except that a minor may be admitted to a YCSF under this section by a court order under s. 51.20 (13) (a) 3., Stats., or through the procedure under s. 51.13, Stats. No YCSF may accept a minor for detention under s. 51.15, Stats.

**(2) ELIGIBILITY FOR SERVICES.** A YCSF provides emergency mental health services. To receive emergency mental health services, a youth shall be in a crisis or be in a situation which is likely to develop into a crisis if supports are not provided.

- (a) Admission may be preventative.
- (b) A YCSF may accept an eligible youth from an inpatient setting.

**(3) CONSENT FOR ADMISSION.** A YCSF may admit a youth only after obtaining the written and informed consent of the youth or their legal representative, or if authorized by a county department under s. 51.42 or 51.437, Stats., to which the youth has been committed pursuant to s. 51.20 (13), Stats.

**(4) AUTHORIZATION.** Admissions must be authorized by a staff member qualified under s. DHS 34.21(3) (b) 1. to 8. within 24 hours of admission.

**DHS 50.11 Program Components.** A YCSF shall offer or arrange for all of the following minimum required services:

- (1)** A structured therapeutic milieu supervised by a clinical coordinator.
- (2)** Therapeutic interventions and skills-building which will help youth manage their emotions and behavior in ways that will benefit them and will assist them in avoiding future crises.
- (3)** A YCSF shall provide care coordination services to each youth. The care coordinator shall be staff in compliance with s. DHS 34.21 (3) (b) 1. to 14. Care coordination shall include all of the following:
  - (a) Providing the youth or legal representative, or both, with an explanation of the nature and goals of the program, and the rights and responsibilities of the youth.
  - (b) Facilitating the youth's assessment, developing and implementing the treatment plan, conducting ongoing case reviews, and identifying services to support the youth at discharge, encouraging family-driven care whenever possible.

(c) Serving as an advocate for the youth with other agencies and programs to help the youth obtain necessary services and coordinating treatment to prevent further crises.

**(4) Discharge planning shall meet all of the following requirements:**

(a) Discharge planning shall be designed to support the successful reintegration of youth into family, community, and school activities, and to prevent recurrence of a crisis.

(b) Discharge planning shall begin at the time of admission, outlining goals to be achieved during the youths' stay.

(c) Discharge planning shall include the youth, and the youth's legal representative if available.

(d) At discharge, all of the youth's belongings and medications shall accompany the youth.

(e) A discharge summary in writing shall be maintained in the youths' record.

## **DHS 50.12 Emergency Safety Interventions.**

**(1) PROHIBITED INTERVENTIONS.** Mechanical restraints and chemical restraints are prohibited.

**(2) GENERAL REQUIREMENTS.** Seclusion and physical restraint shall only be administered by YCSF staff who have completed orientation and training described in s. DHS 50.08 and shall comply with the requirements for emergency safety interventions under s. 51.61 (1) (i), Stats., s. DHS 94.10, and this chapter.

**(3) ADMINISTRATION REQUIREMENTS.** All of the following requirements apply to the administration of seclusion and physical restraint:

(a) Seclusion and physical restraint may only be administered when all other less restrictive methods have been exhausted.

(b) Seclusion and physical restraint shall be administered for the shortest time possible and only until the youth is no longer a danger to self or others.

(c) Seclusion and physical restraint shall be administered in a manner that is attentive to, and respectful of, the trauma history, dignity, and civil rights of the youth.

(d) Seclusion and physical restraint shall be administered in a manner that avoids or causes the least possible physical or emotional discomfort, harm, and pain to the youth.

(e) Regular access to bathroom facilities, drinking water, and necessary medication shall be provided according to the youth's needs during the administration of seclusion or physical restraint. Temperature and lights shall be maintained at levels which are comfortable to the youth.

**(4) SPECIFIC REQUIREMENTS FOR SECLUSION.** A YCSF that opts to seclude youths in the event of an emergency or imminent threat of injury or death to the youth or another person at the YCSF shall do all of the following:

(a) Program staff members shall provide uninterrupted supervision and monitoring of the youth and the entire seclusion area during seclusion by being in the room with the youth or by observation through a window into the room.

(b) A YCSF shall maintain an incident log to document the use of seclusion. The log shall include the time when the seclusion began, the youth's behaviors and staff member's responses to those behaviors every 5 minutes, and the time seclusion ended.

(c) Seclusion rooms shall be free of objects or fixtures with which the youth could inflict bodily harm.

(d) Only one youth at a time may be placed in a seclusion room.

(e) A youth may only be kept in the seclusion area by means of one of the following:

1. A staff member is in a position, such as in a doorway, to prevent a youth from leaving the seclusion area.

2. A door to a seclusion room is latched by positive pressure applied by a staff member's hand without which the latch would spring back allowing the door to open on its own accord, or a program may use a magnetic door lock or a lock which requires the turn of a knob to unlock a door. Other designs of door locks shall not be used, including pad lock, key lock, or other locks of similar design.

**(5) SPECIFIC REQUIREMENTS FOR PHYSICAL RESTRAINT.**

(a) Physical restraint shall only be administered to a youth during an emergency, when there is a serious threat of violence to other youth or a staff member, personal injury, or attempted suicide.

(b) At a minimum, two staff members trained in the use of emergency safety interventions shall be physically present during the administration of physical restraint, and shall continually monitor the condition of the youth and the safe use of physical restraint throughout the duration of the intervention.

(c) All of the following are prohibited forms of physical restraint:

1. Pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen, such as straddling or sitting on the torso.
2. Pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the head or neck, or that otherwise obstructs or restricts the circulation of blood or obstructs an airway, such as choke holds or sleeper holds.
3. Wrestling holds or martial arts techniques.
4. Covering the face with any object (such as a pillow, towel, washcloth, blanket, or other fabric).
5. Pain or pressure points.
6. Hyperextension of limbs, fingers, or neck.
7. Forceful take downs from a standing position to the floor.
8. Restraint in a prone position.
9. Restraint in a supine position.
10. Restraint in a vertical position, with upper body pressed against a wall or hard surface.

11. Any other physical restraint that is not administered during an emergency, that is administered for longer than necessary to prevent immediate injury to a youth or others, or that is administered for a purpose other than to prevent immediate injury to a youth or others.

(d) Immediately, upon the termination of a physical restraint, a medical staff member, such as a physician, advanced practice nurse prescriber, physician's assistant, or registered nurse shall conduct a follow-up assessment of the condition of the youth to ensure that the youth was not injured and shall document the finding of the assessment in the youth's clinical record. If a staff member who is a doctor or nurse is not present on site, a licensed treatment professional shall conduct the face-to-face assessment immediately upon termination of the physical restraint and notify a medical staff consultant.

(e) If any injury is noted following a physical restraint, a staff member shall notify the youth's legal representative and make a referral for medical care.

**(6) DEBRIEFING.**

(a) Unless clinically contraindicated, within 24 hours of administering a seclusion or physical restraint, a clinical staff member shall talk with the youth face-to-face about each of the following:

1. The circumstances that contributed to the seclusion or physical restraint and an evaluation of the appropriateness of the staff member's actions.
2. The youth's psychological well-being and the emotional impact of the intervention.

3. Any modifications that can be made in the youth's services or treatment plan to prevent seclusion, physical restraint, or both, in the future.
  - (b) A YCSF shall notify a youth's parent or legal representative of any seclusion or physical restraint within 12 hours of it being administered to the youth. The YCSF shall document in the youth's clinical record any situation in which notification has been attempted and the YCSF has been unable to contact the legal representative.
  - (c) Each administration of seclusion or physical restraint shall be documented in the youth's clinical record and shall specify all of the following:
    1. Events precipitating the seclusion or physical restraint.
    2. Less restrictive interventions attempted prior to the seclusion or physical restraint.
    3. Length of time the seclusion or physical restraint was used.
    4. Assessment of the appropriateness of the seclusion or physical restraint based on threat of harm to self or others.
    5. Assessment of any physical injury to the youth, other youth, or to staff members.
    6. The youth's response to the emergency safety intervention.
  - (d) The clinical coordinator or their designee shall review all seclusion and physical restraint documentation within 24 hours of intervention, and in consultation with others determine whether changes to the youth's safety plan or treatment plan are necessary, including whether a higher level of care is necessary. These findings and recommendations shall be documented in the youth's clinical record.
  - (e) The clinical coordinator or their designee shall debrief with other youth present in a trauma-informed manner.

#### **(7) REPORTING.**

- (a) Facilities shall report all incidences of seclusion, physical restraint, injury, elopement, or involvement of law enforcement to the department within 24 hours of the incident occurring. Reporting shall be completed through the department's online reporting system.
- (b) The department will evaluate the circumstances of each incident, conduct any appropriate follow-up, and identify programs in need of technical assistance, training, policy development, or other quality improvement.

(Note) The department's reporting link is: <https://www.dhs.wisconsin.gov/mh/ycsf.htm>. Questions and information about reporting may be directed to the Division of Care and Treatment Services at 608-266-2717.

### **DHS 50.13 Investigation, notification, and reporting requirements.**

#### **(1) DEATH REPORTING.**

- (a) *Youth death related to physical restraint, seclusion, psychotropic medication, or suicide.* No later than 24 hours after the death of a youth, the YCSF shall report the death to the department if there is reasonable cause to believe the death was related to the use of a physical restraint, seclusion, or psychotropic medication, or was a suicide, per s. 51.64, Stats.

(Note) Death reporting process and forms may be found at:  
<https://www.dhs.wisconsin.gov/regulations/report-death/proc-reportingdeath.htm>.
- (b) *Youth death related to an accident, injury, natural causes, or other reasons.* When a youth dies for any reason other than the use of a physical restraint, seclusion, psychotropic medication, or suicide, the YCSF shall send a report to the department within 3 business days of the youth's death.

(Note) The department's reporting link is: <https://www.dhs.wisconsin.gov/mh/ycsf.htm>



**(2) INVESTIGATING AND REPORTING ELOPEMENT, ABUSE, NEGLECT, OR MISAPPROPRIATION OF PROPERTY.**

(a) A YCSF shall be considered an entity, under ch. DHS 13, and shall comply with caregiver misconduct reporting requirements for entities provided in ch. DHS 13. Caregiver misconduct must be reported within 7 calendar days of the incident or the date the entity knew or should have known of the incident.

(Note) The department's caregiver misconduct reporting link is:

<https://www.dhs.wisconsin.gov/caregiver/complaints.htm>

(b) Elopement, physical, sexual or mental abuse, or neglect by non-caregivers or youth shall be reported to the department within 24 hours of the incident or the date the entity knew or should have known the incident occurred.

(Note) The department's reporting link is: <https://www.dhs.wisconsin.gov/mh/ycsrf.htm>

(c) Misappropriation of property by non-caregivers or youth shall be reported to the department within 7 calendar days of the incident or the date the entity knew or should have known of the incident.

(Note) The department's reporting link is: <https://www.dhs.wisconsin.gov/mh/ycsrf.htm>

**(3) NOTIFYING OTHER INTERESTED PARTIES.**

(a) The YCSF shall immediately notify the youth's legal representative when there is an elopement, incident or injury to the youth requiring intervention from a physician or other professional.

(b) The YCSF shall immediately notify the youth's legal representative when there is an allegation of physical, sexual or mental abuse, or neglect of a youth that occurred at the YCSF or under the supervision of YCSF staff.

(c) The YCSF shall notify the youth's legal representative within 72 hours when there is an allegation of misappropriation of property.

(d) The YCSF shall follow all procedures required of mandated reporters.

**(4) DOCUMENTATION OF THE INCIDENT.** All written reports required under this section shall include, at a minimum, the time, date place, individuals involved, details of the occurrence, and the action taken by the provider to safeguard the youths' health, safety, and well-being.

**DHS 50.14 Client Rights.** All YCSF operations and services shall comply with s. 51.61, Stats. and ch. DHS 94 on the rights of clients.

**Subchapter III – Facilities**

**DHS 50.15 General Requirements.**

**(1) GENERAL REQUIREMENTS.**

(a) A facility shall comply with the state building code requirements in chs. SPS 361 to 366, and any applicable local ordinances or municipal building regulations.

(b) The YCSF shall maintain the facility in a state of good repair and in a clean, safe and sanitary condition.

(c) A facility must be in compliance with the Americans with Disabilities Act.

(d) Any YCSF that shares a facility with another program must, at a minimum, meet the facility requirements in ss. DHS 50.15 to 50.18. The YCSF must be securely separated from other programs.

**(2) EXITS.**

- (a) Habitable rooms on the second floor shall have access to at least 2 exits. At least one of the exits shall be a stairway to the first floor or to grade.
- (b) Habitable rooms above the second floor shall have at least 2 exits that are both stairways to the second floor or to grade or that are to one stairway to the second floor and one stairway to grade. Windows and balconies may not be designated as exits.
- (c) Habitable rooms below grade shall have at least 2 exits. At least one exit shall be a stairway to grade or a door that is below grade level that leads to grade level by an outdoor stairway. The second exit may be either a stairway leading to a first floor above grade or a window that can be opened from the inside without the use of tools, is at least 22 inches in the smallest dimension, is at least 5 square feet in area, and has a lower sill not more than 4 feet from the floor and a window escape ladder for use in an emergency evacuation.

**(3) WATER AND SEWER.**

- (a) *Water supply.*
  - 1. The facility shall have an adequate and safe water supply.
  - 2. If the facility's water supply is from a private well, the well shall be approved by the department of natural resources. Water samples from an approved well shall be tested at least annually for lead and bacteria by a laboratory certified under ch. ATCP 77.
- (b) *Sewage.* The facility shall have an adequate sewage disposal system.
- (c) *Water temperature.* The facility shall be equipped with a water heater sufficient to meet the needs of all youths. The hot water delivered to the facility's sinks, tubs, and showers shall not exceed 120° Fahrenheit.

**(4) HEATING, COOLING AND VENTILATION.**

- (a) All rooms, including bedrooms must be provided with adequate heating, cooling, and ventilation.
- (b) Portable space heaters shall not be used.
- (c) Bath and toilet rooms shall have either a window that opens or be equipped with exhaust ventilation to the outside.

**(5) LIGHTING.** All habitable rooms shall have electric lighting sufficient to meet the needs of the facility and its youths.

**(6) SPACE REQUIREMENTS.** The YCSF shall ensure compliance with all of the following space requirements:

- (a) *Bathroom requirements.*
  - 1. Bathrooms shall be indoors.
  - 2. A bathroom that can be accessed only through a room used as a bedroom may not be counted as being available for use by youths who do not occupy that bedroom.
- (b) *Bedroom requirements.*
  - 1. A bedroom that is used by one youth shall have at least 80 square feet of floor space.
  - 2. A bedroom that is used by more than one youth shall have a minimum of 50 square feet of floor space for each youth.
  - 3. The minimum space between beds shall be at least 2 feet.
  - 4. Each bed shall have a clean mattress that is covered with a mattress pad and a waterproof covering when necessary, a pillow, at least 2 sheets, a bedspread, and blankets adequate for the season.
  - 5. Each youth shall be provided their own bed.
- (c) *Kitchen or food storage and preparation area.*

The YCSF must have a refrigerator, a food heating appliance such as stove or microwave, cooking and eating utensils, and any other appliance or utensil that may be

required to meet the needs of each youth. Appliances must be kept in good working order.

(d) *Lounge requirement.* A YCSF must have a common area for a youth lounge.

(e) *Study area.* A YCSF must provide adequate quiet area(s) for educational study. A youth's bedroom may be used for this purpose.

(f) *Laundry.* Laundry facilities or services shall be available to meet the needs of all youths. Any laundry equipment in the facility shall be installed and vented in accordance with the manufacturer's recommendations.

#### **DHS 50.16 General safety precautions.**

- (1) Electrical systems and appliances shall be in good repair and properly protected.
- (2) Tubs and showers shall have safety strips or other non-slip surfaces applied to prevent slipping.
- (3) The indoor and outdoor premises shall be free of hazards.
- (4) There shall be no visible flaking or deteriorating paint on exterior or interior surfaces.
- (5) No lead-based paint or other toxic finishing material may be used on the premises of the facility.
- (6) Stairways, halls, and aisles shall be maintained in good repair, adequately lighted and free from obstacles.
- (7) Stairs shall have a non-slip surface.
- (8) Each stairway and walkway ramp shall have a handrail.
- (9) Exterior stairs, walks, ramps, and porches shall be maintained in a safe condition and free from the accumulation of water, ice, or snow.
- (10) Dangerous equipment and harmful substances unnecessary for the operation of the YCSF may not be kept on the premises. All necessary but potentially dangerous equipment, toxic substances, and medications shall be kept inaccessible to youths.
- (11) All areas of the facility must be free from mold.

#### **DHS 50.17 Fire safety.**

##### **(1) SMOKE DETECTION.**

(a) Each facility shall have a smoke detection system. The system shall be an electrically interconnected system listed by Underwriter's Laboratory or a radio signal-emitting system which has at least one centrally mounted alarm horn which, when activated can be heard throughout the premises.

(b) A smoke detector shall be located at each of the following locations in the facility:

1. Head of every open stairway.
2. Next to doors leading to every enclosed stairway on each floor level.
3. Every hall. Smoke detectors located in a hall shall not be spaced more than 30 feet apart nor more than 15 feet from any wall.
4. Common use rooms, including living rooms, dining areas, lounges, family rooms, and recreation rooms, except the kitchen.
5. Bedrooms.

- 6. Basement.
- 7. Attic, if accessible.
- (c) The smoke detection system shall be tested at least monthly and results documented and kept on file at the facility.
- (d) A smoke detector that is located in a room used as a bedroom may be battery operated, free-standing, and separate from the interconnected system.

**(2) FIRE EVACUATION.**

- (a) There shall be a diagrammatic floor plan of the facility posted on each floor level of the facility clearly indicating the direction of each exit for emergency evacuation.
- (b) Evacuation drills shall be conducted quarterly and documented, including the date and time of the drill, the evacuation time, and any problems encountered during the drill.
- (c) Staff members shall personally evacuate each youth with limited mobility or having limited understanding regarding evacuation procedures from the YCSF. If the YCSF population includes a hearing impaired youth, there shall be written procedures specifying that a staff member shall immediately alert the youth in case of fire.

**(3) FIRE EXTINGUISHERS.**

- (a) Each facility shall have a fire extinguisher in the size, type, and location specified by the local fire department. At least one fire extinguisher shall be located in the kitchen and on each floor level of the facility.
- (b) Each extinguisher shall be operable at all times, inspected at least once a year by a qualified fire safety expert, and have a label indicating its present condition and date of its last inspection.

**(4) FIRE SAFETY INSPECTION.** The facility shall have an annual fire safety inspection.

**DHS 50.18 Carbon monoxide detector.**

A facility shall have a functional carbon monoxide detector installed in the basement and on each floor level, except the attic, garage, or storage area of each unit, in accordance with the requirements of s. 101.647, Stats.

**SECTION 2. EFFECTIVE DATE:** When promulgated as an emergency rule, this rule shall take effect as provided in s. 227.24 (1) (c), Stats. When promulgated as a permanent rule, this rule shall take effect as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health Services

Dated: \_\_\_\_\_

\_\_\_\_\_

Andrea Palm, Secretary-designee

SEAL: