

CHAPTER: DHS 34, 35, 36, 61 AND 63
RELATING TO: ALLOWING NON-EXPIRING CERTIFICATES AND BIENNIAL REPORTING AND SUBMISSION OF FEES
RULE TYPE: PERMANENT
SCOPE TYPE: ORIGINAL
FINDINGS OF EMERGENCY: NOT APPLICABLE

SUMMARY

1. Description of rule objective/s

Chapters DHS 34, 35, 36, 61 and 63 pertain to behavioral health services provided on emergency, outpatient, and community bases. Chapters 34, 35, 36 and 63 currently require a program to recertify every one, two, or three years, depending on the governing rule. Such recertification processes are a burden to the department and service providers due to their lack of uniformity and costs to implement. Chapter DHS 61 does not have certification language although it does have policies for decertification and certificate termination. The goal in modifying these rules are to create a more uniform, easy-to-apply standard and to reduce administrative burdens on the department and regulatory burdens on certified facilities. The department therefore proposes to revise these chapters to:

- Make certification requirements uniform.
- Allow non-expiring certificates.
- And allow for biennial reporting and submission of fees.

2. Existing policies relevant to the rule

Chapters DHS 34, 35, 36, and 63 all currently have sections relating to duration of certifications and policies for re-certifications. Chapter 61 is lacking such a section but has a section on decertification and termination. Current rules require recertification periods ranging from one to three years. Such recertification requirements have created a cost burden to the department.

3. Policies proposed to be included in the rule

The department proposes that the various recertification standards and requirements contained in chs. DHS 34, 35, 36, 61 and 63 be revised to create a new, uniform duration of certification for each rule specified which would remain valid until suspended or revoked by the department. Revising the rules in this manner will help align the department's other certification standards, which will further reduce regulatory and administrative burdens on the department and service providers. Additionally, the department proposes these rules be updated to require that, as a condition of retaining certification, all certified programs submit a biennial report and payment of certification continuation fees every 24 months, on a date determined by the department.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The department is authorized to promulgate the rule based upon explicit statutory language.

b. Statute/s that authorize/s the promulgation of the proposed rule

Section 49.45 (30e) (b) 3., Stats:

(b) Rules. The department shall promulgate rules regarding all of the following:

- ...
3. Requirements for certification of community-based psychosocial service programs.

Section 51.04, Stats.:

Treatment facility certification. Except as provided in s. 51.032, any treatment facility may apply to the department for certification of the facility for the receipt of funds for services provided as a benefit to a medical assistance recipient under s. 49.46 (2) (b) 6. f. or 49.471 (11) (k) or to a community aids funding recipient under s. 51.423 (2) or provided as mandated coverage under s. 632.89. The department shall annually charge a fee for each certification.

Section 51.42 (7) (b) 11., Stats:

(b) The department shall promulgate rules which do all of the following:

...

11. Prescribe requirements for certification of community mental health programs, except as provided in s. 51.032, including all of the following:

- a. A requirement that, as part of the certification process, community mental health programs must demonstrate that their staff have knowledge of laws, regulations and standards of practice which apply to the program and its clients.
- b. A requirement that, when conducting certifications, certification staff must use a random selection process in reviewing client records.
- c. A requirement that certification staff conduct client interviews as part of the certification process.
- d. A requirement that certification staff provide certification results to the community mental health program reviewed, to subunits within the department responsible for community mental health program monitoring and to the county department under this section in which the community mental health program is located upon completion of certification.

Section 51.421 (3) (a) and (c), Stats:

(3) DEPARTMENTAL DUTIES. The department shall:

(a) Promulgate rules establishing standards for the certified provision of community support programs by county departments under s. 51.42, except as provided in s. 51.032. The department shall establish standards that ensure that providers of services meet federal standards for certification of providers of community support program services under the medical assistance program, 42 USC 1396 to 1397e. The department shall develop the standards in

consultation with representatives of county departments under s. 51.42, elected county officials and consumer advocates.

...

(c) Monitor the establishment and the continuing operation of community support programs and ensure that community support programs comply with the standards promulgated by rule. The department shall ensure that the persons monitoring community support programs to determine compliance with the standards are persons who are knowledgeable about treatment programs for persons with serious and persistent mental illness

Section 227.11 (2) (a), Stats., reads:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold in the statutory provision.

c. Statute/s or rule/s that will affect the proposed rule or be affected by it

- Chapters DHS 34, 35, 36, 61, and 63.

6. Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources

The department estimates that approximately 100 hours of staff time will be required to promulgate the proposed rule changes.

7. Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility rate payers who may reasonably be anticipated to be affected by the rule

The proposed rule changes will affect the behavioral health programs which are certified by these rules: emergency mental health services programs, outpatient mental health clinics, comprehensive community services programs for persons with mental disorders and substance use disorders, community mental health programs, adult inpatient psychiatric, child and adolescent inpatient psychiatric, adult day treatment, and community support programs for chronically mentally ill

persons. Programs under chs. DHS 34, 36, and 63 are administered by the county. Programs under chs. DHS 35 and 61 may be administered publicly or privately.

8. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule

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

9. Anticipated economic impact, locally or statewide

The proposed rule will have minimal or no economic impact.

10. Agency contacts

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