

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 105 and 107

RELATING TO: Overdose Treatment Provider Certification and Covered Services

RULE TYPE: Emergency and Permanent

SCOPE TYPE: Original

FINDINGS OF EMERGENCY:

Preservation of the public peace, health, safety, or welfare necessitates adoption of an emergency rule. Substance use disorders remain a significant challenge for individuals, families, and communities across Wisconsin. Medicaid Assistance program certification of peer recovery coach and overdose treatment and reimbursement of peer recovery coach services will provide additional treatment and recovery services to Medical Assistance members.

SUMMARY

1. Description of rule objective/s

Section 49.45 (30j), Stats., which was created in 2019 Wis. Act 122 (“Act 122”), directs the Medical Assistance program to reimburse peer recover coach services. In accordance with ss. 49.45 (10) and 227.29 (4), Stats., and Act 122 s. 4m, the department of health services (“the department”) has determined that s. 49.45 (30j), Stats., necessitates rulemaking.

2. Existing policies relevant to the rule

- Chapter DHS 105, relating to provider certification.
- Chapter DHS 107, relating to covered services.

3. Policies proposed to be included in the rule

The department intends to promulgate administrative rules necessary to effectuate s. 49.45 (30j), Stats.—namely to establish criteria for applicable providers and reimbursement for peer recovery coach services under the Medical Assistance program.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The Wisconsin Legislature has directed the department to promulgate administrative rules for peer recovery coach services under the Medical Assistance program.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The department's authority to promulgate the proposed rules is provided in ss. 49.45 (10), 49.45 (30j), and 227.11 (2), Stats., and Act 122 s. 4m.

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

Section 49.45 (10), Stats., reads:

RULE-MAKING POWERS AND DUTIES. The department is authorized to promulgate such rules as are consistent with its duties in administering medical assistance. The department shall promulgate a rule defining the term "part-time intermittent care" for the purpose of s. 49.46.

Section 49.45 (30j), Stats., reads:

REIMBURSEMENT FOR PEER RECOVERY COACH SERVICES.

(a) In this subsection:

1. "Competent mental health professional" means a physician who has completed a residence in psychiatry; a psychologist or a private practice school psychologist licensed under ch. 455; a marriage and family therapist licensed under s. 457.10 or 457.11; a professional counselor licensed under s. 457.12 or 457.13; an advanced practice social worker granted a certificate under s. 457.08 (2); an independent social worker granted a certificate under s. 457.08 (3); a clinical social worker licensed under s. 457.08 (4); a clinical substance abuse counselor or independent clinical supervisor certified under s. 440.88, or any of these individuals practicing under a currently valid training or temporary license or certificate granted under applicable provisions of ch. 457. "Competent mental health professional" does not include an individual whose license or certificate is suspended, revoked, or voluntarily surrendered, or whose license or certificate is limited or restricted, when practicing in areas prohibited by the limitation or restriction.

2. “Peer recovery coach” means an individual who practices in the recovery field and who provides support and assistance to individuals who are in treatment or recovery from mental illness or a substance use disorder.

(b) The department shall reimburse under the Medical Assistance program under this subchapter any service provided by a peer recovery coach if the service satisfies all of the following conditions:

1. The recipient of the service provided by a peer recovery coach is in treatment for or recovery from mental illness or a substance use disorder.

2. The peer recovery coach provides the service under the supervision of a competent mental health professional who has been trained in all of the following subjects:

a. Understanding the peer role in recovery and supporting clear and meaningful peer roles.

b. Recovery orientation.

c. Model principles of recovery.

d. Training of peer recovery coaches.

e. Professional health system navigation.

f. Applicable laws and policies.

g. Community resources.

h. Quality, strength-based, and person-centered supervision.

i. Identification and evaluation of peer competencies.

j. Confidentiality, ethics, and professional boundaries.

k. Antidiscrimination in employment, staff development, and employment practices.

L. Peer-delivered services advocacy.

3. The peer recovery coach provides the service in coordination with the Medical Assistance recipient’s individual treatment plan and in accordance with the recipient’s individual treatment goals.

4. The peer recovery coach providing the service has completed all of the following training requirements, as established by the department by rule, after consulting with members of the recovery community:

a. Forty hours of training in advocacy, mentoring and education, recovery and wellness support, and ethical responsibility that includes training of at least 10 hours in advocacy, at least 10 hours in mentoring and education, at least 10 hours in recovery and wellness support, and at least 10 hours in ethical responsibility.

b. Twenty-four hours of supervised volunteer or paid work experience involving advocacy, mentoring and education, recovery and wellness support, ethical responsibility, or a combination of those areas.

(c) The department shall certify under Medical Assistance peer recovery coaches to provide services in accordance with this subsection.

(d) The department shall request from the federal department of health and human services any waiver of federal Medicaid law, state plan amendment, or other federal approval necessary to implement this subsection and s. 49.46 (2) (b) 14p.

Section 227.11 (2), 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 nonstatutory 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 contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated

under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

2019 Wis. Act 122 s. 4m reads:

RULES REGARDING TRAINING OF PEER RECOVERY COACHES. The department of health services may promulgate the rules required under s. 49.45 (30j) (b) 4. as emergency rules under s. 227.24. Notwithstanding s. 227.24 (1) (a) and (3), the department of health services is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until the date the permanent rules take effect.

- c. Statute/s or rule/s that will affect the proposed rule or be affected by it
- Chapter DHS 105, relating to provider certification.
 - Chapter DHS 107, relating to covered services.

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

The estimated time for state employees to develop the rule is 2,080 hours.

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 ratepayers who may reasonably be anticipated to be affected by the rule

- Members receiving Medical Assistance overdose treatment services.
- The department.
- Providers providing overdose treatment services.

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

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

9. Anticipated economic impact, locally or statewide

The proposed rule may have a moderate economic impact.

10. Agency contacts

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