

## Chapter DHS 35

### OUTPATIENT MENTAL HEALTH CLINICS

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#### Subchapter I — General Provisions

**DHS 35.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 49.45 (2) (a) 11., 51.04, 51.42 (7) (b) 11., and 227.11 (2) (a), Stats., to establish minimum standards for certification of outpatient mental health clinics that receive reimbursement for outpatient mental health services from the Wisconsin medical assistance and BadgerCare Plus programs or private insurance under s. 632.89 (2) (d), Stats., or that utilize federal community mental health services block grant funds under 42 USC section 300x, et.seq., or receive state community aids funds under s. 51.423 (2), Stats.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.02 Applicability.** (1) This chapter applies to public and private outpatient mental health clinics that request reimbursement for services from the Wisconsin medical assistance and BadgerCare Plus programs and from private insurance required under s. 632.89 (2), Stats., or who utilize federal community mental health services block grant funds under 42 USC section 300x, et.seq., or receive state community aids funds under s. 51.423 (2), Stats.

(2) This chapter does not apply to outpatient programs governed under ch. DHS 75 that provide services to persons who have alcohol or other drug abuse related treatment needs but do not provide mental health services.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.03 Definitions.** (1) “Advanced practice nurse” has the meaning given in s. N 8.02 (1).

(1g) “Advanced practice nurse prescriber” means an advanced practice nurse certified to issue prescription orders under s. 441.16 (2), Stats.

(1m) “Approved placement criteria” means a placement instrument that is used to develop a placement recommendation for an appropriate level of care for a consumer who has a substance use disorder such as the Wisconsin Uniform Placement Criteria (WI-UPC); the American Society of Addiction Medicine (ASAM); or similar placement instrument that is approved by the department.

**Note:** A copy of the publications, *Wisconsin Uniform Placement Criteria and Patient Placement Criteria for the Treatment of Substance-Related Disorders*, published by the American Society of Addiction Medicine (ASAM), may be obtained by writing the Bureau of Mental Health and Substance Abuse Services, 1 W. Wilson Street, Room 437, PO Box 7851, Madison, Wisconsin 53707-7851. Send inquiries about the ASAM placement criteria to American Society of Addiction Medicine, 4601 N. Park Ave., Suite 101 Upper Arcade, Chevy Chase, MD 20815, or check ASAM’s internet site at [www.asam.org](http://www.asam.org).

(2) “Available to provide outpatient mental health services” means physical presence at any of the clinic’s offices.

(4) “Clinical collaboration” means mental health professionals working together in a joint intellectual and clinical approach for the therapeutic benefit and favorable outcome of consumers.

(5) “Clinical supervision” means any of the following:

(a) The supervised practice of psychotherapy as described under ch. MPSW 4, 12, or 16, or Psy 2, as applicable. For a recognized psychotherapy practitioner, “clinical supervision” means the supervised practice of psychotherapy by a licensed treatment professional of at least one hour per week.

(b) For any staff member, including a substance abuse counselor, who provides services to consumers who have a primary diagnosis of substance abuse, “clinical supervision” has the meaning given under s. SPS 160.02 (6) by a clinical supervisor as defined under s. SPS 160.02 (7).

**Note:** Any staff member, including a substance abuse counselor-in training, substance abuse counselor, or clinical substance abuse counselor, providing services to consumers who have a primary diagnosis of substance abuse is required under s. DHS 35.14 (4) (b) to receive clinical supervision from a clinical supervisor as defined under s. SPS 160.02 (7).

(6) “Consumer” means an individual who receives or requests outpatient mental health services from a clinic.

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

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

(8) “Discharge” has the meaning given in s. 51.01 (7), Stats.

**Note:** Section 51.01 (7) Stats., defines “discharge” for a patient who is under involuntary commitment orders as meaning termination of custody and treatment obligations of the patient to the authority to which the patient was committed by court action. For voluntary admissions to a treatment program or facility, s. 51.01 (7), Stats., defines “discharge” as meaning termination of treatment obligations between the patient and the treatment program or facility.

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

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

(b) A health care agent as defined in s. 155.01 (4), Stats., if the principal has a finding of incapacity pursuant to s. 155.05 (2), Stats., and if the power to make decisions regarding outpatient mental health services is included in the scope of the agency.

(c) 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.

(9g) “Licensed treatment professional” means an individual licensed as a physician under s. 448.03, Stats., who has completed a residency in psychiatry; a psychologist or a private practice

school psychologist licensed under ch. 455, Stats., a marriage and family therapist licensed under s. 457.10 or 457.11, Stats., a professional counselor licensed under s. 457.12 or 457.13, Stats., an advanced practice social worker granted a certificate under s. 457.08 (2), Stats., an independent social worker licensed under s. 457.08 (3), Stats., or a clinical social worker licensed under s. 457.08 (4), Stats.; and includes any of these individuals practicing under a currently valid training or temporary license or certificate granted under applicable provisions of ch. 457, Stats. "Licensed treatment 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.

**(9m)** "Major deficiency" means the clinic has repeatedly or substantially failed to meet one or more requirements of this chapter or the department determines that an action, condition, policy or practice of the clinic or the conduct of its staff does any of the following:

(a) Creates a risk of harm to a consumer or violates a consumer right created by this chapter or other state or federal statutes or rules, including any of the following:

1. A staff member has had sexual contact or intercourse, as defined in s. 940.225 (5) (b) or (c), Stats., with a consumer.
2. A staff member has been convicted of abuse under s. 940.285, 940.29 or 940.295, Stats.
3. The health or safety of a consumer is in imminent danger because of any act or omission by the clinic or a staff member.

(b) Submits or causes to be submitted one or more statements for purposes of obtaining certification under this chapter that were false.

(c) A license, certification or required local, state or federal approval of the clinic has been revoked or suspended or has expired, including termination of a provider's Medicaid or Medicare certification for any basis under s. DHS 106.06 or federal law.

(d) Constitutes fraud or willful misrepresentation within the meaning of s. DHS 108.02 (9) (d).

**Note:** Under s. DHS 108.02 (9) (d) 1., the department may withhold MA payments, in whole or in part, to a provider upon receipt of reliable evidence that the circumstances giving rise to the need for withholding of payments involve fraud or willful misrepresentation under the MA program. Reliable evidence of fraud or willful misrepresentation includes, but is not limited to, the filing of criminal charges for those activities against the provider or one of its agents or employees by a prosecuting attorney. The department may withhold payments without first notifying the provider of its intention to withhold the payments. A provider is entitled to a hearing under s. DHS 106.12.

**Note:** Willful misrepresentation under this paragraph does not include the signing of a claim for reimbursement by an authorized representative of a clinic 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 applicable professional licensure or certification law and was on the clinic's staff when the services were performed.

(e) A staff member has a substantiated finding of caregiver misconduct as identified in chs. DHS 12 and 13.

**(10)** "Mental health practitioner" means a person who before January 1, 2012, holds a graduate degree from an accredited college or university in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field, and either has completed the applicable supervised practice requirements under ch. MPSW 4, 12, or 16, or Psy 2 or has 3,000 hours of supervised clinical post-graduate degree experience including at least 1,000 hours of face-to-face contact with consumers, and who commences work at a clinic required to be certified under this chapter no later than January 1, 2013. "Mental health practitioner" does not include an individual whose professional license is suspended, revoked, or voluntarily surrendered, or whose professional license or certificate is limited or restricted, when practicing in areas prohibited by the limitation or restriction, irrespective of whether that individual otherwise meets the terms of this definition. Whether a person's graduate degree is in a "closely related" field will be determined by the department on a case-by-case basis upon application by a clinic.

**(11)** "Mental health professional" means a licensed treatment professional, a mental health practitioner, a qualified treatment trainee, or a recognized psychotherapy practitioner.

**(12)** "Minor" means an individual who is 17 years old or younger.

**(13)** "Outpatient mental health clinic" or "clinic" means an entity that is required to be certified under this chapter to receive reimbursement for outpatient mental health services to consumers.

**(14)** "Outpatient mental health services" means the services offered or provided to a consumer, including intake, assessment, evaluation, diagnosis, treatment planning, psychotherapy and medication management.

**(15)** "Physician" means an individual licensed under ch. 448, Stats., as a physician.

**(15m)** "Physician assistant" means an individual licensed under ch. 448, Stats., as a physician assistant.

**(16)** "Prescriber" means a physician, a physician assistant acting within the conditions and limitations set forth in s. Med 8.07, or an advanced practice nurse prescriber acting within the conditions and limitations set forth in s. N 8.06.

**(17)** "Psychotherapy" means any activity that falls within the definitions set forth at s. 457.01 (8m) or 455.01 (6), Stats.

**(17m)** "Qualified treatment trainee" means either of the following:

(a) A graduate student who is enrolled in an accredited institution in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field.

(b) A person with a graduate degree from an accredited institution and course work in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field who has not yet completed the applicable supervised practice requirements described under ch. MPSW 4, 12, or 16, or Psy 2 as applicable.

**(17r)** "Recognized psychotherapy practitioner" means an individual who may lawfully practice psychotherapy within the scope of a license, permit, registration or certificate granted by this state other than under ch. 455 or 457, Stats.

**Note:** Section 457.02 (6) (a), Stats., provides that a license or certificate under ch. 457, Stats., is not required for a person to "lawfully practice within the scope of a license, permit, registration, or certificate granted by this state or the federal government." The department will recognize as a "recognized psychotherapy practitioner" for purposes of this chapter any person legally recognized as permitted to provide psychotherapy within the scope of his or her professional credential issued by a state agency.

**(18)** "Recovery" means the process of a consumer's growth and improvement, despite a history of a mental or substance use disorder, in attitudes, values, feelings, goals, skills and behavior measured by a decrease in dysfunctional symptoms and an increase in maintaining the person's highest level of health, wellness, stability, self-determination and self-sufficiency.

**(19)** "Staff" or "staff member" means an owner of a clinic or an individual employed by or under contract with an outpatient mental health clinic.

**(20)** "Substance" has the meaning given under s. SPS 160.02 (25).

**(21)** "Substance abuse counselor" has the meaning given under s. SPS 160.02 (26).

**(22)** "Substance use disorder" has the meaning given under s. SPS 160.02 (28).

**(22m)** "Treatment records" has the meaning given in s. 51.30 (1) (b), Stats., namely, all records created in the course of providing services to individuals for mental illness, which are maintained by the department, by boards and their staffs, and by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by an individual providing treatment services for the department, a board, or a treatment facility if the notes or records are not available to others.

(23) “Trauma” means a single experience, or an enduring or repeating event or events that results in significant distress or impairment in social, occupational, or other important areas of functioning for a person.

(24) “Variance” means an alternate requirement in place of a non-statutory requirement of this chapter by the department.

(25) “Waiver” means an exemption from a non-statutory requirement of this chapter by the department.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09; correction in (5) (b), (20), (21), (22) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; correction in (16) made under s. 13.92 (4) (b) 7., Stats., Register February 2014 No. 698.

## Subchapter II — Certification

**DHS 35.06 Effect of certification. (1) PUBLIC FUNDING.** Unless certified under this chapter, an outpatient mental health clinic is not eligible to receive funding from the Wisconsin medical assistance or BadgerCare Plus programs under ss. 49.45 and 49.471, Stats., federal community mental health services block grant funds under 42 USC section 300x, et. seq., or state community aids funds under s. 51.423 (2), Stats., in connection with the provision of outpatient mental health services.

(2) **PRIVATE INSURANCE.** An outpatient mental health clinic certified under this chapter is certified by the department within the meaning of s. 632.89 (1) (e) 1., Stats., for purposes of the provisions of s. 632.89 (2), Stats., relating to required coverage of treatment for certain conditions under certain policies issued by private insurers.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.07 Location of service delivery. (1)** A clinic may provide outpatient mental health services at one or more offices. If a clinic provides outpatient mental health services at more than one office, all of the following apply:

- (a) The clinic shall designate one office as its main office.
- (b) All notices under this chapter will be sent to the main office.
- (c) The clinic administrator shall be primarily located at the main office.
- (d) Both the clinic as a whole and the main office shall comply with the staffing requirements of s. DHS 35.123 (2).
- (e) The clinic shall adopt policies and procedures that are adequate to ensure that the clinic administrator is able to carry out the oversight and other responsibilities specified under ss. DHS 35.123 (1), 35.14 (1), and 35.15 (1) and (2) with respect to all other offices, given the location of the clinic’s offices and their distance from the main office.

(2) A clinic may provide outpatient mental health services only at its offices, except in instances where therapeutic reasons are documented in the consumer file to show that it is appropriate to use an alternative location such as a nursing home, school, medical clinic, the consumer’s home, or other location appropriate to support the consumer’s recovery.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.08 Certification process. (1) APPLICATION. (a)** Application to the department for initial or renewal outpatient mental health clinic certification shall be made to the department on a form provided by the department and shall include applicable fees, proof of malpractice and liability insurance for the clinic and each staff member who provides psychotherapy or who is a prescriber, and all of the information requested in the application. Additional offices do not require separate certification, but the clinic shall identify each office location and respond to any questions regarding each office in the application for initial or renewal certification.

**Note:** Fees are set and periodically revised by the department’s Division of Quality Assurance. Fees may vary based on a number of factors including the number of offices at which the clinic provides services.

(b) If a clinic applying for renewal certification holds current accreditation as an outpatient mental health clinic from a national accrediting body that has developed behavioral health standards for outpatient mental health clinics, the clinic shall in addition to the materials required under par. (a), include materials prepared by the clinic for the accrediting agency’s inspection, the accrediting entity’s standards, all documents and data collected during the accrediting body’s certification survey, and survey findings and report resulting from the accrediting body’s most current inspection.

**Note:** Application materials may be obtained from and submitted to the Behavioral Health Certification Section, Division of Quality Assurance, PO Box 2969, Madison, WI 53701-2969

(2) **COMPLIANCE REVIEW. (a)** Upon receipt of a complete initial or renewal application, department staff, except as provided in par. (d), may conduct an on-site inspection of any office identified in the clinic application and may review any of the following information to determine if the clinic is in compliance with this chapter:

1. Statements made by the applicant or a staff member.
2. Documentary evidence.
3. On-site observations by a representative of the department.
4. Reports by consumers regarding the clinic’s operations.

(b) The clinic shall make available for review by the department’s designated representative all documentation necessary to establish whether the applicant and each of the applicant’s offices is in compliance with the standards in this chapter, including written policies and procedures of the clinic, work schedules of staff members, credentials of staff members, consumer files and treatment records, information from grievances filed concerning the clinic, records of consumers who have been discharged, and evidence of contractual staffing.

(c) The designated representative of the department shall preserve the confidentiality of all consumer information obtained during the certification process, to the extent required by ch. DHS 92 and 45 CFR Parts 160, 162 and 164 and other applicable state and federal statutes and regulations.

(d) The department shall waive an on-site inspection of a clinic applying for renewal certification that holds current accreditation as an outpatient mental health clinic from a national accrediting body that has developed standards for outpatient mental health clinics if all of the following apply:

1. The clinic has submitted a complete application and all of the materials required under sub. (1).
2. The department determines that the standards of the accrediting body are at least as stringent as the requirements under this chapter.
3. The department determines that the clinic’s record of compliance with this chapter or with the standards of the accrediting body shows no indication that an on-site inspection may be necessary.

(3) **ISSUANCE OF CERTIFICATION. (a) Action on application. 1.** Within 60 days after receiving a complete application for initial or renewal certification, the department shall grant the clinic initial or renewal certification, whichever is applicable, or deny certification.

2. If the department determines that a clinic applying for initial or renewal certification has a deficiency that is not a major deficiency as defined under s. DHS 35.03 (9m), the department may grant or deny certification to the clinic. If the department grants initial or renewal certification to a clinic with a deficiency, the department shall issue a notice of deficiency under s. DHS 35.11 (1m) (a).

3. If the department determines that a clinic applying for initial or renewal certification has a major deficiency, the department shall issue a notice of deficiency under s. DHS 35.11 (1m) (a) and may deny initial or renewal certification, whichever is applicable.

(b) *Duration of certification.* 1. The department may grant initial certification up to one year.

2. Certification may be renewed for up to 2 years, provided the clinic annually submits an application for renewal and continues to meet the requirements for certification.

3. Certification of a clinic that receives a waiver of the on-site inspection of a clinic for renewal certification under s. DHS 35.08 (2) (d) may be renewed for up to 3 years, provided the clinic annually submits an application for renewal and continues to meet the requirements for certification.

4. Initial and renewal certification is subject to denial under sub. (5) or summary suspension or termination under s. DHS 35.11 (2).

**(4) EXPIRATION OF CERTIFICATION.** (a) The department shall send written notice of expiration of a clinic's certification and an application for renewal of certification to the clinic at least 60 days before expiration of the clinic's certification.

(b) If the department does not receive an application for renewal of certification from the clinic before the clinic's certification expires, the clinic's certification shall expire. A clinic whose certification has expired may not bill Medicaid, or utilize federal community mental health block grant or state community aids funds for services provided after the expiration date of the clinic's certification. If a clinic's certification expires, to be certified again the clinic shall apply for certification under sub. (1).

**(5) DENIAL OF CERTIFICATION.** The department may deny certification based on any major deficiency. 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. DHS 35.11 (3).

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.09 Notification of clinic changes.** The clinic shall notify the department of any changes in administration, ownership or control, office location, clinic name, or program, and any change in the clinic's policies or practices that may affect clinic compliance by no later than the effective date of the change.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.10 Scope and transferability of certification.** Certification is issued only for the offices identified in the application for initial or renewal certification and only for the individual or individuals, corporations or other legal entities named in the application for initial and renewal certification. Certification may not be transferred or assigned, including by change of ownership or control of a corporation or other legal entity named in the certification. A change in ownership or control includes a majority change in the shares of stock held or in the board of directors of a corporation certified under this chapter, or any other change that results in transfer of control or transfer of a majority share in the control of the operations of a clinic. A change in ownership requires application for new certification. Additional offices at which services are provided do not require separate certification but shall be identified in the application for initial and renewal certification.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.11 Enforcement actions. (1) UNANNOUNCED VISITS.** The department may make unannounced on-site inspections of any office of a clinic at any time to conduct complaint or death investigations involving the clinic, its staff members, or outpatient mental health services provided by the clinic, or to determine a clinic's progress toward compliance after citation of a major deficiency.

**(1m) NOTICE OF DEFICIENCIES.** (a) If the department determines that a clinic has a deficiency, the department shall issue a notice of deficiency to the clinic. The department may place restrictions on the activities of the clinic, or terminate or summarily suspend the clinic's certification.

(b) 1. If requested by the department, the clinic shall submit a plan of correction to the department within 30 days of the date of the notice of deficiency issued under par. (a), or other time designated by the department in the notice of deficiency. If the plan of correction submitted by the clinic is not acceptable to the department, the department may impose a plan of correction.

2. A plan of correction submitted by a clinic or imposed by the department under subd. 1. shall identify the specific steps the clinic will take to correct the deficiency; the timeline within which the corrections will be made; and the staff members who will implement the plan and monitor for future compliance.

**(2) TERMINATION AND SUMMARY SUSPENSION OF CERTIFICATION.** (a) The department may terminate certification at any time for any major deficiency upon written notice to the clinic. The notice shall specify the reason for the department action and the appeal information under sub. (3).

(b) 1. The department may summarily suspend a clinic's certification if the department believes immediate action is required to protect the health, safety, and welfare of consumers. Notice of summary suspension of certification may be written or verbal and shall specify the reason for the department action and the date the action becomes effective. Within 10 working days after the order is issued, the department shall either allow continuance of the clinic's certification or proceed to terminate the clinic's certification.

2. Unless waived by the clinic, the division of hearings and appeals shall hold a hearing within 10 working days after the effective date of the order in subd. 1. to determine if certification should remain suspended during termination proceedings. The division of hearings and appeals shall give written notice of the hearing to the clinic and the department.

**(3) APPEALS.** (a) If the department denies or terminates certification, the clinic may request a contested case hearing under ch. 227, Stats.

(b) A clinic's request for hearing shall be submitted in writing to the department of administration's division of hearings and appeals within 30 days after the date of the notice of the department's action. If the clinic makes a timely request for hearing on the department's decision to terminate or deny renewal certification, that action is stayed pending a decision on the appeal, unless the certification has been summarily suspended.

**Note:** A request for hearing may be delivered in person or mailed to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53707-7875. An appeal may be sent by fax to the Division's facsimile transmission number at (608) 264-9885.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.12 Waivers and variances. (1)** A clinic may apply to the department for a waiver or a variance at any time. Each request shall be made in writing to the department and shall include all of the following:

(a) Identification of the rule provision from which the waiver or variance is requested.

(b) The time period for which the waiver or variance is requested.

(c) If the request is for a variance, the specific alternative action that the outpatient clinic proposes.

(d) The reasons for the request.

(e) Supporting justification.

(f) Any other information requested by the department.

**Note:** An application for a waiver or variance should be addressed to the Behavioral Health Certification Section, Division of Quality Assurance, P.O. Box 2969, Madison, WI 53701-2969.

**(2)** The department may grant a waiver or variance permitting a clinic to use new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects in the interest of better care or management, if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any consumer.

**(2m)** The department may grant a variance to a clinic that is unable to meet the minimum staffing requirements under s. DHS 35.123 (2). To be eligible for a variance under this subsection, the clinic shall establish that it has made and continues to make a good faith effort to recruit and retain a sufficient number of staff with the qualifications specified in s. DHS 35.123 (2). In addition to any other conditions the department may impose on a variance issued under this paragraph, the department shall require that the clinic submit evidence on a continuous basis of the clinic's good faith efforts to recruit and retain qualified staff.

**(3)** The department shall provide its determination on a request for a waiver or variance to the clinic in writing. The department may impose restrictions on any waiver or variance it grants, including limiting the duration of any waiver or variance and may withdraw the waiver or variance if a clinic is not in compliance with one or more of the restrictions. The terms or restrictions of a variance may be modified upon agreement between the department and the clinic.

**(4)** (a) Within 60 days of the receipt of a request for waiver, the department shall grant or deny the waiver in writing. If the department denies a request for a waiver or variance, or revokes a waiver or variance, the reason for the denial or revocation shall be included in the notice.

(b) The department may revoke a waiver or variance if any of the following occurs:

1. The actions taken as a result of the waiver or variance have or will adversely affect the health, safety or welfare of a consumer.
2. The clinic has failed to comply with the variance as granted.
3. The clinic notifies the department that it wishes to relinquish the waiver or variance.
4. There is a change in applicable law.
5. For any other reason the department finds the revocation is necessary to protect the health, safety, or welfare of a consumer.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

### Subchapter III — Personnel

#### DHS 35.123 Staffing requirements for clinics.

**(1)** Each clinic shall have a clinic administrator who is responsible for clinic operations, including ensuring that the clinic is in compliance with this chapter and other applicable state and federal law. A clinic administrator may be a licensed treatment professional or mental health practitioner.

**(2)** In addition to the clinic administrator, the clinic shall have a sufficient number of qualified staff members available to provide outpatient mental health services to consumers admitted to care. Except as provided in s. DHS 35.12 (2m), the clinic shall implement any one of the following minimum staffing combinations to provide outpatient mental health services:

(a) Two or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 60 hours per week.

(b) One or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 30 hours per week and one or more mental health practitioners or recognized psychotherapy practitioners who combined are available to provide outpatient mental health services at least 30 hours per week.

(c) One or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 37.5 hours per week, and at least one psychiatrist or advanced practice nurse prescriber who provides outpatient mental health services to consumers of the clinic at least 4 hours per month.

**(2m)** If a clinic has more than one office, both the clinic as a whole and its main office shall comply with the requirements of sub. (2).

**(3)** If a clinic provides services to persons 13 years old or younger, the clinic shall have staff qualified by training and experience to work with children and adolescents.

**(4)** A clinic that is certified before June 1, 2009 shall meet the requirements of subs. (1) and (3) upon June 1, 2009, but shall have until January 1, 2012 to meet the minimum staffing requirements under sub. (2).

**(5)** A person whose professional license is revoked, suspended, or voluntarily surrendered may not be employed or contracted with as a mental health professional, or a prescriber. A person whose professional license is limited or restricted, may not be employed or contracted with to practice in areas prohibited by the limitation or restriction.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09; correction to numbering of (4) and (5) made under s. 13.92 (4) (b) 1., Stats., Register May 2009 No. 641.

#### DHS 35.127 Persons who may provide psychotherapy services through an outpatient mental health clinic.

**(1)** Any mental health professional may provide psychotherapy to consumers through a clinic required to be certified under this chapter.

**(2)** A qualified treatment trainee may provide psychotherapy to consumers only under clinical supervision as defined under s. DHS 35.03 (5) (a).

**(3)** A clinic may choose to require clinical supervision of a mental health practitioner or recognized psychotherapy practitioner.

**(4)** A person who has a suspended, revoked, or voluntarily surrendered professional license may not provide psychotherapy to consumers. A person whose license or certificate is limited or restricted, may not provide psychotherapy under circumstances prohibited by the limitation or restriction.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.13 Personnel policies.** The clinic shall have and implement written personnel policies and procedures that ensure all of the following:

**(1)** Each staff member who provides psychotherapy or who prescribes medications is evaluated to determine if the staff member possesses current qualifications and demonstrated competence, training, experience and judgment for the privileges granted to provide psychotherapy or to prescribe medications for the clinic.

**(2)** Compliance with the caregiver background check and misconduct reporting requirements in s. 50.065, Stats., and ch. DHS 12, and the caregiver misconduct reporting and investigation requirements in ch. DHS 13.

**Note:** Forms for conducting a caregiver background check including the background information disclosure form may be obtained from the department's website at <http://dhs.wisconsin.gov/caregiver/index.htm> or by writing the department at Office of Caregiver Quality, Division of Quality Assurance, P.O. Box 2969, Madison, WI 53701-2969. Phone: (608) 266-8481, Fax: (608) 267-0352.

**(3)** A record is maintained for each staff member and includes all of the following:

(a) Confirmation of an applicant's current training or professional license or certification, if a training or professional license or certification is necessary for the staff member's prescribed duties or position. All limitations and restrictions on a staff member's license shall be documented by the clinic.

(b) The results of the caregiver background check including a completed background information disclosure form for every background check conducted, and the results of any subsequent investigation related to the information obtained from the background check.

(c) A vita of training, work experience and qualifications for each prescriber and each person who provides psychotherapy.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.14 Clinical supervision and clinical collaboration.** **(1)** (a) The clinic administrator shall have responsibility

for administrative oversight of the job performance and actions of each staff member and require each staff member to adhere to all laws and regulations governing the care and treatment of consumers and the standards of practice for their individual professions.

(b) Each clinic shall implement a written policy for clinical supervision as defined under s. DHS 35.03 (5), and clinical collaboration as defined under s. DHS 35.03 (4). Each policy shall address all of the following:

1. A system to determine the status and achievement of consumer outcomes, which may include a quality improvement system or a peer review system to determine if the treatment provided is effective, and a system to identify any necessary corrective actions.

2. Identification of clinical issues, including incidents that pose a significant risk of an adverse outcome for one or more consumers of the outpatient mental health clinic that should warrant clinical collaboration, or clinical supervision that is in addition to the supervision specified under ch. MPSW 4, 12, or 16, or Psy 2, or for a recognized psychotherapy practitioner, in accordance with s. DHS 35.03 (5) (a), whichever is applicable.

(2) Except as provided under sub. (4) (b), the clinic's policy on clinical supervision shall be in accordance with ch. MPSW 4, 12, or 16, or Psy 2, or for a recognized psychotherapy practitioner, whichever is applicable. The clinic's policy on clinical collaboration shall require one or more of the following:

(a) Individual sessions, with staff case review, to assess performance and provide feedback.

(b) Individual side-by-side session while a staff member provides assessments, service planning meetings or outpatient mental health services and in which other staff member assesses, and gives advice regarding staff performance.

(c) Group meetings to review and assess quality of services and provide staff members advice or direction regarding specific situations or strategies.

(d) Any other form of professionally recognized method of clinical collaboration designed to provide sufficient guidance to assure the delivery of effective services to consumers by the staff member.

(3) Clinical supervision and clinical collaboration records shall be dated and documented with the signature of the person providing these functions in a supervision or collaboration record, or in the staff record of each staff member who attends the session or review. If clinical supervision or clinical collaboration results in a recommendation for a change to a consumer's treatment plan, the recommendation shall be documented in the consumer file.

(4) (a) A qualified treatment trainee who provides psychotherapy shall receive clinical supervision.

(b) If any staff member, including a staff member who is a substance abuse counselor-in training, substance abuse counselor, or clinical abuse counselor, provides services to consumers who have a primary diagnosis of substance abuse, the staff member shall receive clinical supervision from a clinical supervisor as defined under s. SPS 160.02 (7).

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09; correction in (4) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

**DHS 35.15 Orientation and training.** (1) **GENERAL REQUIREMENT.** The clinic administrator shall ensure each staff member receives initial and continuing training that enables the staff member to perform staff member's duties effectively, efficiently, and competently. Documentation of training shall be made available to department staff upon request.

(2) **ORIENTATION.** (a) The clinic shall maintain documentation that each staff member who is a mental health professional and who is new to the clinic has completed the training requirements specified under par. (b), either as part of orientation to the clinic or as part of prior education or training. The clinic administrator shall require all other staff members to complete only the orienta-

tion training requirements specified under par. (b) that are necessary, as determined by the clinic administrator, for the staff member to successfully perform the staff member's assigned job responsibilities.

(b) The orientation training requirements under this subsection are:

1. A review of the pertinent parts of this chapter and other applicable statutes and regulations.

2. A review of the clinic's policies and procedures.

3. Cultural factors that need to be taken into consideration in providing outpatient mental health services for the clinic's consumers.

4. The signs and symptoms of substance use disorders and reactions to psychotropic drugs most relevant to the treatment of mental illness and mental disorders served by the clinic.

5. Techniques for assessing and responding to the needs of consumers who appear to have problems related to trauma; abuse of alcohol, drug abuse or addiction; and other co-occurring illnesses and disabilities.

6. How to assess a consumer to detect suicidal tendencies and to manage persons at risk of attempting suicide or causing harm to self or others.

7. Recovery concepts and principles that ensure services, and supports connection to others and to the community.

8. Any other subject that the clinic determines is necessary to enable the staff member to perform the staff member's duties effectively, efficiently, and competently.

(3) **MAINTAINING ORIENTATION AND TRAINING POLICIES.** A clinic shall maintain in its central administrative records the most current copy of its orientation and training policies.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

## Subchapter IV — Outpatient Mental Health Services

**DHS 35.16 Admission.** (1) The clinic shall establish written selection criteria for use when screening a consumer for possible admission. The criteria may include any of the following limitations as applicable:

(a) Sources from which referrals may be accepted by the clinic.

(b) Restrictions on acceptable sources of payment for services, or the ability of a consumer or a consumer's family to pay.

(c) The age range of consumers whom the clinic will serve based on the expertise of the clinic staff members.

(d) Diagnostic or behavioral requirements that the clinic will apply in deciding whether or not to admit a consumer for treatment.

(e) Any consumer characteristics for which the clinic has been specifically designed, including the nature or severity of disorders that can be managed on an outpatient basis by the clinic, and the expected length of time that services may be necessary.

(2) A clinic shall refer any consumer not meeting the clinic's selection criteria for admission to appropriate services.

(3) If a clinic establishes priorities for consumers to be served, a waiting list for consumers to be admitted, or a waiting list for consumers who have been admitted but resources to provide services to these consumers are not yet available, the priorities or the procedures for the operation of the waiting list shall be maintained in writing and applied fairly and uniformly.

(4) Only a licensed treatment professional, or a recognized psychotherapy practitioner, may diagnose a mental illness of a consumer on behalf of a clinic. The licensed treatment professional, or recognized psychotherapy practitioner shall document, in the consumer file, the recommendation for psychotherapy specifying the diagnosis; the date of the recommendation for psychotherapy; the length of time of the recommendation; the services that are expected to be needed; and the name and signature of the person issuing the recommendation for psychotherapy.

(5) If a clinic provides substance use services to a consumer, the clinic shall use a department approved placement criteria tool to determine if a consumer who has a co-occurring substance use disorder requires substance abuse treatment services. If the consumer is determined to need a level of substance use services that are above the level of substance use services that can be provided by the clinic, the consumer shall be referred to an appropriate department certified provider.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09; CR 14-066: renun. (4) (a) to (4), r. (4) (b) Register August 2015 No. 716, eff. 9-1-15.

**DHS 35.165 Emergency services.** (1) The clinic shall have and implement a written policy on how the clinic will provide or arrange for the provision of services to address a consumer's mental health emergency or crisis during hours when its offices are closed, or when staff members are not available to provide outpatient mental health services.

**Note:** The phrase "available to provide outpatient mental health services" is defined under s. DHS 35.03 (2).

(2) The clinic shall include, in its written policies, the procedures for identifying risk of attempted suicide or risk of harm to self or others.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.17 Assessment.** (1) (a) A mental health professional, shall complete an initial assessment of a consumer before a second meeting with a staff member. The information collected during the initial assessment shall be sufficient to identify the consumer's need for outpatient mental health services.

(b) A comprehensive assessment shall be valid, accurately reflect the consumer's current needs, strengths and functioning, be completed before beginning treatment under the treatment plan established under s. DHS 35.19 (1), and include all of the following:

1. The consumer's presenting problems.
2. A diagnosis, which shall be established from the current Diagnostic and Statistical Manual of Mental Disorders, or for children up to age 4, the current Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood.

**Note:** The Diagnostic and Statistical Manual of Mental Disorders is published by the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders. Washington, DC, American Psychiatric Association, 2013. The Diagnostic and Statistical Manual of Mental Disorders may be ordered through <http://www.appi.org/Pages/DSM.aspx> or other sources. Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood is published by the National Center for Clinical Infant Programs: Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood. Arlington, VA, National Center for Clinical Infant Programs, 1994. The Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood may be ordered [https://secure2.convio.net/zttcfm/site/Ecommerce?VIEW\\_PRODUCT=true&product\\_id=1681&store\\_id=1121](https://secure2.convio.net/zttcfm/site/Ecommerce?VIEW_PRODUCT=true&product_id=1681&store_id=1121) or other sources.

3. The recipient's symptoms which support the given diagnosis.

4. Information on the consumer's strengths, and current and past psychological, social, and physiological data; information related to school or vocational, medical, and cognitive functioning; past and present trauma; and substance abuse.

5. The consumer's unique perspective and own words about how the consumer views his or her recovery, experience, challenges, strengths, needs, recovery goals, priorities, preferences, values and lifestyle, areas of functional impairment, and family and community support.

**Note:** Nothing in this chapter is intended to interfere with the right of providers under s. 51.61 (6), Stats., to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system.

(2) If a consumer is determined to have one or more co-occurring disorders, a licensed treatment professional, mental health practitioner, or a recognized psychotherapy practitioner, shall document the treatments and services concurrently received by

the consumer through other providers; whether the clinic can serve the consumer's needs using qualified staff members or in collaboration with other providers; and any recommendations for additional services, if needed. If a clinic cannot serve a consumer's needs, independently, or in collaboration with other providers, the clinic shall refer the consumer, with the consumer's consent, to an appropriate provider.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.18 Consent for outpatient mental health services.** (1) If a clinic determines that a consumer is appropriate for receiving outpatient mental health services through the clinic, the clinic shall inform the consumer or the consumer's legal representative of the results of the assessment. In addition, the clinic shall inform the consumer or the consumer's legal representative, orally and in writing, of all of the following:

- (b) Treatment alternatives.
- (c) Possible outcomes and side effects of treatment recommended in the treatment plan.
- (d) Treatment recommendations and benefits of the treatment recommendations.
- (e) Approximate duration and desired outcome of treatment recommended in the treatment plan.
- (f) The rights of a consumer receiving outpatient mental health services, including the consumer's rights and responsibilities in the development and implementation of an individual treatment plan.

(g) The outpatient mental health services that will be offered under the treatment plan.

(h) The fees that the consumer or responsible party will be expected to pay for the proposed services.

**Note:** Consumers receiving Medicaid covered services may not be charged any amount in connection with services other than the applicable cost share, if any, specified by the Wisconsin Medicaid Program.

(i) How to use the clinic's grievance procedure under ch. DHS 94.

(j) The means by which a consumer may obtain emergency mental health services during periods outside the normal operating hours of the clinic.

(k) The clinic's discharge policy, including circumstances under which a patient may be involuntarily discharged for inability to pay or for behavior reasonably the result of mental health symptoms.

(2) If a consumer wishes to receive services through the clinic, the consumer or the consumer's legal representative, where the consent of the legal representative is required for treatment, shall sign a clinic form to indicate the consumer's informed consent to receive outpatient mental health services.

(3) If a consumer is prescribed medication as part of the consumer's treatment plan developed under s. DHS 35.19 (1), the clinic shall obtain a separate consent that indicates that the prescriber has explained to the consumer, or the consumer's legal representative, if the legal representative's consent is required, the nature, risks and benefits of the medication and that the consumer, or legal representative, understands the explanation and consents to the use of the medication.

(4) The consent to outpatient mental health services shall be renewed in accordance with s. DHS 94.03 (1) (f).

**Note:** The consent of the patient or legal representative is not required where treatment is ordered pursuant to a court order for involuntary commitment order.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.19 Treatment plan.** (1) DEVELOPMENT OF THE TREATMENT PLAN. (a) A licensed treatment professional, mental health practitioner, or recognized psychotherapy practitioner, shall develop an initial treatment plan upon completion of the comprehensive assessment required under s. DHS 35.17 (1) (b). The treatment plan shall be based upon the diagnosis and symptoms of the consumer and describe all of the following:

1. The consumer's strengths and how they will be used to develop the methods and expected measurable outcomes that will be accomplished.

2. The method to reduce or eliminate the symptoms causing the consumer's problems or inability to function in day to day living, and to increase the consumer's ability to function as independently as possible.

3. For a child or adolescent, a consideration of the child's or adolescent's development needs as well as the demands of the illness.

4. The schedules, frequency, and nature of services recommended to support the achievement of the consumer's recovery goals, irrespective of the availability of services and funding.

**Note:** Nothing in this chapter is intended to interfere with the right of providers under s. 51.61 (6), Stats., to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system.

(b) The treatment plan shall reflect the current needs and goals of the consumer as indicated by progress notes and by reviewing and updating the assessment as necessary.

**(2) APPROVAL OF THE TREATMENT PLAN.** As treatment services are rendered, the consumer or the consumer's legal representative must approve and sign the treatment plan and agree with staff on a course of treatment. If the consumer does not approve of the schedules, frequency, and nature of the services recommended, then appropriate notations regarding the consumer's refusal shall be made in the consumer file. The treatment plan under this subsection shall include a written statement immediately preceding the consumer's or legal representative's signature that the consumer or legal representative had an opportunity to be informed of the services in the treatment plan, and to participate in the planning of treatment or care, as required by s. 51.61 (1) (fm), Stats.

**(3) CLINICAL REVIEW OF THE TREATMENT PLAN.** (a) Staff shall establish a process for a clinical review of the consumer's treatment plan and progress toward measurable outcomes. The review shall include the participation of the consumer and be an ongoing process. The results of each clinical review shall be clearly documented in the consumer file. Documentation shall address all of the following:

1. The degree to which the goals of treatment have been met.
2. Any significant changes suggested or required in the treatment plan.
3. Whether any additional assessment or evaluation is recommended as a result of information received or observations made during the course of treatment.
4. The consumer's assessment of functional improvement toward meeting treatment goals and suggestions for modification.

(b) A mental health professional shall conduct a clinical review of the treatment plan with the consumer as described in par. (a) at least every 90 days or 6 treatment sessions, whichever covers a longer period of time.

**(4)** The clinic shall develop and implement written policies and procedures for referring consumers to other community service providers for services that the clinic does not or is unable to provide to meet the consumer's needs as identified in the comprehensive assessment required under s. DHS 35.17 (1) (b). The policies shall identify community services providers to which the clinic reasonably determines it will be able to refer consumers for services the clinic does not or cannot provide.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.20 Medication management. (1)** A clinic may choose whether to provide medication management as part of its services.

**(2)** Consumers receiving only medication management from a clinic shall be referred by the clinic's prescriber for psychotherapy when appropriate to the consumer's needs and recovery.

**(3)** All medications prescribed by the clinic shall be documented in the consumer file as required under s. DHS 35.23 (1) (a) 10.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

#### **DHS 35.21 Treatment approaches and services.**

**(1)** The clinic shall have and implement a written policy that identifies the selection of treatment approaches and the role of clinical supervision and clinical collaboration in treatment approaches. The treatment approaches shall be based on guidelines published by a professional organization or peer-reviewed journal. The final decision on the selection of treatment approaches for a specific consumer shall be made by the consumer's therapist in accordance with the clinic's written policy.

**(2)** The clinic shall make reasonable efforts to ensure that each consumer receives the recommended interventions and services identified in the consumer's treatment plan or revision of the treatment plan that is created under s. DHS 35.19 (1), that the consumer is willing to receive as communicated by an informed consent for treatment.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.215 Group therapy.** The maximum number of consumers receiving services in a single group therapy session is 16, and the minimum staff to consumer ratio in group therapy is one to 8. If different limits are justified based on guidelines published by a governmental entity, professional organization or peer-reviewed journal indicate, the clinic may request a variance of either the limit of group size or the minimum staff to consumer ratio.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.22 Discharge summary. (1)** Within 30 days after a consumer's date of discharge, the licensed treatment professional, mental health practitioner, or recognized psychotherapy practitioner who was primarily responsible for providing outpatient mental health services for the consumer shall prepare a discharge summary and enter it into the consumer file. The discharge summary shall include all of the following:

- (a) A description of the reasons for discharge.
- (b) A summary of the outpatient mental health services provided by the clinic, including any medications.
- (c) A final evaluation of the consumer's progress toward the goals of the treatment plan.

(d) Any remaining consumer needs at the time of discharge and the recommendations for meeting those needs, which may include the names and addresses of any facilities, persons or programs to which the consumer was referred for additional services following discharge.

**(2)** The discharge summary shall be signed and dated by the licensed treatment professional, mental health practitioner, or recognized psychotherapy practitioner who was primarily responsible for providing services to the consumer.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.23 Consumer file. (1) RECORDS REQUIRED.** (a) The clinic shall maintain a consumer file for each consumer who receives outpatient mental health services. Each consumer file shall be arranged in a format that provides for consistent record-keeping that facilitates accurate and efficient retrieval of record information. All entries in the consumer file shall be factual, accurate, legible, permanently recorded, dated, and authenticated with the signature and license or title of the person making the entry. Treatment records contained in a consumer file are confidential to the extent required under s. 51.30, Stats. An electronic representation of a person's signature may be used only by the person who makes the entry. The clinic shall possess a statement signed by the person, which certifies that only that person shall use the electronic representation via use of a personal password. Each con-



sumer file shall include accurate documentation of all outpatient mental health services received including all of the following:

1. Results of each assessment conducted.
2. Initial and updated treatment plans.
3. The recommendation or prescription for psychotherapy.
4. For consumers who are diagnosed with substance abuse disorder, a completed copy of the most current approved placement criteria summary if required by s. DHS 35.16 (5).
5. Documentation of referrals of the consumer to outside resources.
6. Descriptions of significant events that are related to the consumer's treatment plan and contribute to an overall understanding of the consumer's ongoing level and quality of functioning.
7. Progress notes, which shall include documentation of therapeutic progress, functional status, treatment plan progress, symptom status, change in diagnosis, and general management of treatment.
8. Any recommended changes or improvement of the treatment plan resulting from clinical collaboration or clinical supervision.
9. Signed consent forms for disclosure of information and for medication administration and treatment, and court orders, if any.
10. A listing of medications prescribed by staff prescribers, and a medication administration record if staff dispenses or administers medications to the consumer.
11. Discharge summary and any related information.
12. Notice of involuntary discharge, if applicable.
13. Any other information that is appropriate for the consumer file.

(b) Clinics may keep composite consumer files of a family in treatment as a unit. When information is released, provisions shall be made for individual confidentiality pursuant to s. 51.30, Stats., and ch. DHS 92.

**(2) CONFIDENTIALITY.** Treatment records shall be kept confidential as required under s. 51.30, Stats., ch. DHS 92, and 45 CFR Parts 160, 162 and 164, and 42 CFR Part 2 in a designated place in each clinic office at which records are stored that is not accessible to consumers or the public but is accessible to appropriate staff members at all times.

**Note:** If notes or records, recorded in any medium, maintained for personal use by an individual providing treatment services are available to others, the notes or records become part of the treatment records. See s. 51.30 (1) (b), Stats., and ss. DHS 92.02 (16) and 92.03 (1) (b).

**(3) TRANSFERRING TREATMENT RECORDS.** Upon written request of a consumer or former consumer or, if required, that person's legal representative, the clinic shall transfer to another licensed treatment professional, clinic or mental health program or facility the treatment records and all other information in the consumer file necessary for the other licensed treatment professional, clinic or mental health program or facility to provide further treatment to the consumer or former consumer.

**(4) RETENTION AND DISPOSAL.** (a) The clinic shall implement a written policy governing the retention of treatment records that is in accordance with s. DHS 92.12 and any other applicable laws.

(b) Upon termination of a staff member's association with the clinic, the treatment records for which the staff member was responsible shall remain in the custody of the clinic.

**(5) ELECTRONIC RECORD-KEEPING SYSTEMS.** (a) Clinics may maintain treatment records electronically if the clinic has a written policy describing the record and the authentication and security policy.

(b) Electronic transmission of information from treatment records to information systems outside the outpatient mental health clinic may not occur without voluntary written consent of the consumer unless the release of confidential treatment information is permitted under s. 51.30, Stats., or other applicable law.

**Note:** Transmission of information must comply with 45 CFR parts 160, 162, and 164, s. 51.30, Stats., and ch. DHS 92.

(c) If treatment records are kept electronically, the confidentiality of the treatment records shall be maintained as required under subs. (2) to (4). A clinic shall maintain a paper or electronic back-up system for any treatment records maintained electronically.

**Note:** If notes or records, recorded in any medium, maintained for personal use by an individual providing treatment services are available to others, the notes or records become part of the treatment records. See s. 51.30 (1) (b), Stats., and ss. DHS 92.02 (16) and 92.03 (1) (b).

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.24 Consumer rights.** **(1)** A clinic shall implement written policies and procedures that are consistent with s. 51.61, Stats., and ch. DHS 94 to protect the rights of consumers.

**(2)** If a staff member no longer is employed by or contracts with the outpatient mental health clinic, the clinic shall offer consumers who had been served by that staff member options for ongoing services.

**(3)** (a) A consumer may be involuntarily discharged from treatment because of the consumer's inability to pay for services or for behavior that is reasonably a result of mental health symptoms only as provided in par. (b).

(b) Before a clinic may involuntarily discharge a consumer under par. (a), the clinic shall notify the consumer in writing of the reasons for the discharge, the effective date of the discharge, sources for further treatment, and of the consumer's right to have the discharge reviewed, prior to the effective date of the discharge, by the subunit of the department that certifies clinics under this chapter, with the address of that subunit. A review under this paragraph is in addition to and is not a precondition for any other grievance or legal action the consumer may bring in connection with the discharge, including a grievance or action under s. 51.61, Stats. In deciding whether to uphold or overturn a discharge in a review under this paragraph, the department may consider:

1. Whether the discharge violates the consumer's rights under s. 51.61, Stats.

2. In cases of discharge for behavior that is reasonably a result of mental health symptoms, whether the consumer's needs can be met by the clinic, whether the safety of staff or other consumers of the clinic may be endangered by the consumer's behavior, and whether another provider has accepted a referral to serve the consumer.

**Note:** The address of the subunit of the department that certifies clinics under this chapter is Behavioral Health Certification Section, Division of Quality Assurance, PO Box 2969, Madison, WI 53701-2969.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.

**DHS 35.25 Death reporting.** The clinic shall report the death of a consumer to the department if required under s. 51.64 (2), Stats.

**History:** CR 06-080: cr. Register May 2009 No. 641, eff. 6-1-09.