Clearinghouse Rule 06-080

ADMINISTRATIVE RULES
PROPOSED ORDER OF
DEPARTMENT OF HEALTH AND FAMILY SERVICES
TO ADOPT RULES

The Wisconsin Department of Health and Family Services proposes **to repeal** HFS 105.22 (1) (d) ; **to amend** HFS 105.22 (1) (c), 105.22 (2) (title), (a) and (b), and (3), 107.13 (2) (a) (intro.) and 1. (intro.), 107.13 (2) (a) 3. a. and b, 4. a. to f., 6., 7. , (b) 1., 4. a. to d., (c) 4. and 6., and (d) 2.; and **to create** ch. HFS 35, 105.22 (1) (bm), 107.13 (2) (a) 1. a. to g. and (2m)

SUMMARY OF PROPOSED RULE

Statute interpreted: 49.45 (10), 51.04, 51.03 (4) (f), (g), and (h) and (5), 51.42 (7) (a) and (b), and 632.89, (2) Stats.

Statutory authority: Sections 49.45 (10), 51.03 (4) (f), (g), and (h) and (5), 51.04, 51.42 (7) (a) and (b), and 227.11 (2) (a), Stats.

Explanation of agency authority:

- Section 49.45 (10), Stats., requires the Department to promulgate rules that are consistent with its duties in administering medical assistance.

- Section 51.03 (4) (f), (g) and (h) and (5) gives the Department authority to promote access to appropriate mental health and alcohol and other drug abuse services; consumer decision making to enable persons with mental illness and substance use dependency to be more self sufficient; use of individualized treatment plans, developed with consumers and families of consumers who are children, and advocates chosen by consumers, that promote treatment and recovery, establish meaningful and measurable goals for the consumer, that are based on assessment of the consumer's strength and abilities, needs and preferences, and that are modified as necessary.

- Section 51.04, Stats., gives authority to the Department to certify treatment facilities for the receipt of funds for services provided as a benefit to a medical assistance recipient under s. 49.46 (2) (b) 6. f., Stats., a community aids funding recipient under s. 51.423 (2), Stats., or as mandated coverage under s. 632.89 (2), Stats.

- Section 51.42 (7) (a), Stats., requires the Department to review and certify county departments of community programs and community mental health programs to assure that the county department and programs are in compliance with the purpose and intent of s. 51.42 Stats., to enable and encourage counties to develop a comprehensive range of services offering continuity of care; to utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including mental illness, developmental disabilities, and alcoholism and drug abuse; to provide for the integration of administration of those services and facilities organized under s. 51.42, Stats., through a county department of community programs; and to authorize state consultative services, review and establishment of standards and grants-in aids for such program of services and facilities.

- Section 51.42 (7) (b), Stats., requires the Department to promulgate rules which govern the administrative structure deemed necessary to administer community mental health services; prescribe standards for qualifications of personnel; prescribe standards for quality of professional services; govern eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay; to establish medication procedures to be used in the delivery of mental health services; establish criteria for the level of scrutiny of evaluation of community mental health programs, and prescribe requirements for certification of community mental health programs.

Related statute or rule: Sections HFS 105.22 and 107.13 and ss. 51.04 and 51.42 (7) (a) and (b), 632.89 (2), Stats.

Plain language analysis:

The current rules for outpatient mental health clinics are under ss. HFS 61.91 to 61.98. These regulations address procedures for certification; required personnel; service requirements; and denial, involuntary termination or suspension of certification for outpatient mental health clinics; clinical supervision, clinical collaboration, and clinical consultation; written authorization of psychotherapy by a physician; initial assessments of clients and development of treatment plans; progress notes; discharge summaries; and record keeping. In addition to these requirements, these rules require clinics to ensure continuity of care for persons with mental disorders or alcohol and drug abuse problems by rendering or arranging for the provision of specified services, including but not limited to, residential facility placement; aftercare for continuing treatment in the community to help the patient maintain and improve adjustment following a period of treatment in a facility; and emergency care. Sections HFS 61.91 to 61.98 have not been comprehensively reviewed and rewritten since May 1981.

Section HFS 105.22 provides the requirements for medical assistance certification of psychotherapy providers, staffing of outpatient facilities, and medical assistance reimbursement for outpatient psychotherapy services. Section HFS 107.13 (2) details the medical assistance requirements for covered services for outpatient psychotherapy services, prior authorization and other limits and procedures, and non-covered services under the medical assistance program. Section HFS 105.22, was last revised in 1991 and s. HFS 107.13 (2) has not been comprehensively reviewed and rewritten since March 1986. For outpatient mental health services, Medicaid reimburses psychiatrists, Ph.D. psychologists, advanced practice nurse prescribers with a psychiatric specialty, and outpatient mental health clinics that meet the requirements under proposed s. HFS 35.04 (2) (c). Proposed s. HFS 35.04 (2) (c) requires at least one mental health professional to be available to provide outpatient mental health services at least 37.5 hours per week and at least one mental health professional who is a psychiatrist, psychologist or advanced practice nurse prescriber who provides outpatient mental health services to consumers of the clinic at least 4 hours per month. This is not a change from current rules.

The Department proposes to repeal ss. HFS 61.91 to 61.98 and create ch. HFS 35 to do all the following:

- Eliminate burdensome provisions that do not help to lead to the desired outcomes for persons who receive outpatient mental health services treatment.

- Codify, in rule, the statewide variances that have been issued by the Department to outpatient mental health providers.

- Increase flexibility for clinic operations including allowing certified clinics to alternatively meet the standards of one of several national accrediting bodies when applying for renewal certification; permitting clinics to provide either clinical supervision, clinical collaboration or clinical consultation as part of the clinic's quality improvement process; allowing mental health professionals to provide the recommendation for psychotherapy for consumers who are not medical assistance recipients; allow persons other than a physician or psychiatrist to provide mental health services; and allow clinics to provide psychotherapy services in the clinic, a branch office, or alternate location.

- Establish certification and enforcement processes that are similar in both organization and content to the certification and enforcement processes set out in rules for other certified community mental health programs.

- Clarify the minimum staff requirements for a clinic; and the role of professional staff of a clinic, including for persons who prescribe medication within a clinic.

- Clarify record keeping requirements for psychotherapy notes.

- Establish training requirements for clinic staff.

- Add or expand language on admission, assessment, consent for treatment, treatment planning and medication administration; standards for electronic records, and consumer rights.

- Incorporate the provisions under s. 50.065, Stats., and chs. HFS 12 and 13 that require caregiver background checks on clinic staff and reporting of clinic staff misconduct.

- Increase consumers' participation in treatment planning resulting in treatment that is recovery-based and consumer-directed.

The Department proposes to revise ss. HFS 105.22 and 107.13 (2), to ensure that the language in these rules are consistent with the language in the proposed ch. HFS 35 and that these rules current practices and needs, such as, indexing the number of visits and dollar amounts before a prior authorization is required. Covered services are not proposed to change.

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

42 CFR 440.130 permits use of Medicaid funds to provide diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level. There are no other known proposed or existing federal regulations pertinent to outpatient mental health clinics.

Comparison with rules in adjacent states:

Illinois

Sources:

1. Mental Health Program Book, Division of Mental Health Services, Department of Human Services: Chapter 200: Mental Health Treatment Program
2. 59 Illinois Administrative Code, Part 132 - Medicaid Community Mental Health Services Program
3. A conversation with Dennis Smith, Public Service Administrator, Division of Mental Health Services, Department of Human Services

The administrative code for outpatient mental health services for the State of Illinois is not comparable to Wisconsin's because the code only applies to Community Mental Health Centers (CMHCs), comparable to our county 51.42 Boards, and are written generally to address mental health issues of clients. Medicaid payments for mental health services are only permissible through the CMHCs under a grant contract. Illinois has no separate regulations at this time for a provider type of outpatient mental health clinics.

Iowa

Sources:

1. Iowa Administrative Code – Chapter 24: Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities
2. A conversation with James Overland, Chief of the Bureau of Community Services, Division of Behavioral, Developmental and Protective Services, Department of Human Services

The State of Iowa has a managed care system that addresses mental health, as well as physical health, needs. As a result, the administrative code addressing mental health issues is extremely brief. Their rules consist of performance benchmarks (e.g., individualized and appropriate intervention services and treatments are provided in ways that support the needs, desires, and goals identified in the service plan, and that respect the rights and choices of the individual using the service) and performance indicators (e.g., staff document in the narrative the individual's participation in the treatment program).

These performance benchmarks and indicators are globally stated and are meant to evaluate a managed care delivery system. Funding may be withheld for failure to meet the performance benchmarks or indicators. In a fee-for-service system, such as Wisconsin's, the administrative code must indicate failure to meet the requirements based on the scope and severity of deficiencies noted by a licensor, which then results in the possibility of termination or non-renewal of the provider's license. Therefore, a comparison between Iowa and Wisconsin's psychosocial rehabilitation services has marginal utility.

Michigan

Source:

1. State of Michigan Administrative Code, R 330.2005 – 330.2814, which address community mental health programs of emergency intervention services, prevention services, outpatient services, aftercare services, day program and activity services, public information services, inpatient services, and community/caregiver services.

The State of Michigan has a managed care system that addresses mental health, as well as physical health, needs. As a result, the administrative code addressing mental health issues is extremely brief. For example, the requirements for day program and activity services is only five lines long and states that these services shall include providing habilitative and rehabilitative treatment and training activity. The administrative code does not reference recovery, involvement of consumers on a governing/advisory board, etc.

Minnesota

Sources:

1. Minnesota Statutes, s. 256B.0623, Covered service: adult rehabilitative mental health services.
2. A conversation with Richard Seurer, Planning Analyst in the Mental Health Division, Department of Human Services

Similarities between Minnesota's and Wisconsin's requirements:

1. Wisconsin provided a statewide variance to the supervision requirements in HFS 61.97 that is comparable to Minnesota's requirement for clinical consultation and case review.
2. Both states require a provider to facilitate appropriate referrals if the necessary treatment or the treatment desired by the client is not available and to ensure continuity of care.
3. Both states require the provision of emergency therapy, when necessary.
4. Both states have similar confidentiality and record storage requirements.

Differences between Minnesota's and Wisconsin's requirements:

1. Minnesota's regulations are written primarily for Community Mental Health Centers (CMHCs), comparable to our county 51.42 Boards, but also apply to private mental health clinics. There are significantly fewer private mental health clinics in Minnesota compared to Wisconsin (approximately 100 to 700).
2. Minnesota's regulations clearly state the relationship between a main office and satellite offices.
3. Minnesota requires a multidisciplinary approach, which requires that staff interact in providing clinical services, that the services provided to a client involve all needed disciplines represented on the center staff, and that staff participate in case review and clinical consultation procedures.
4. Minnesota is more explicit regarding assessment and diagnostic processes (i.e., "The assessment of each client shall include clinical consideration of the client's general physical, medical, developmental, family, social, psychiatric, and psychological history and current condition," and, "The diagnosis shall be by or under the supervision of and signed by a psychiatrist or licensed psychologist.").
5. Minnesota is more explicit regarding treatment planning (i.e., "…the client has been informed in the following areas: assessment of the client condition; treatment alternatives; possible outcomes and side effects of treatment; treatment recommendations; approximate length, cost, and hoped-for outcome of treatment; the client's rights and responsibilities in implementation of the individual treatment plan…," and "Clinical services shall be appropriate to the condition, age, sex, socioeconomic, and ethnic background of the client, and provided in the least restrictive manner.").
6. Minnesota has specific requirements for quality assurance, including peer review, internal utilization review, staff supervision, and continuing education.
7. Minnesota has more stringent requirements regarding staffing:
    a. The multidisciplinary staff of a center shall consist of at least four mental health professionals. At least two of the mental health professionals shall each be

employed or under contract for a minimum of 35 hours a week by the center. Those two mental health professionals shall be of different disciplines.

b. The mental health professional staff shall include a psychiatrist and a licensed psychologist.
c. The mental health professional employed or under contract to the center shall be at the main office of the center and providing clinical services in the treatment of mental illness at least eight hours every two weeks.
d. Additional mental health professional staff may be employed by or under contract to the center provided that no single mental health discipline or combination of allied fields shall comprise more than 60 percent of the full-time equivalent mental health professional staff. This provision does not apply to a center with fewer than six full-time equivalent mental health professional staff.

8. Minnesota has a definition for "mental health practitioner", persons who are not licensed or certified with individual provider status, and provisions for these persons to work for a mental health provider. There are limitations on the percentage of total staff that can be a mental health practitioner.
9. Wisconsin's regulations include a section addressing the special needs of children and adolescents.

Summary of factual data and analytical methodologies:

The Department referred to all of the following to draft the proposed rules and the small business fiscal impact analysis:

- In 2000, the Department worked with representatives from outpatient mental health clinics, professional organizations, and mental health advocates to develop proposed rules (ch. HFS 35) which proceeded to public hearing, but were not submitted to the legislature. During the ensuing years, the Department worked with these stakeholders to provide several statewide variances to the current rules in order to increase clinics' flexibility in complying with the rules. In 2005, the Department prepared an updated draft of the previously proposed ch. HFS 35 and incorporated the concepts from the statewide variances, changes in applicable statutes and regulations, and concepts, such as recovery-based, consumer-directed treatment from the ch. HFS 36, Comprehensive Community Services regulations, which were promulgated in 2004, and from statutory and regulatory language from other states. The Department held a public listening session in Wausau, Madison and Milwaukee to obtain reactions to the updated draft from stakeholders. In response to comments received at these listening sessions, the Department revised the draft and held another round of public listening sessions in Wausau, Madison and Waukesha to present the refined draft to stakeholders and obtain further comments. The listening sessions were announced through mail and the Wisconsin Administrative Rules Website, where the iterative drafts were also posted. The Department also accepted comments via the Website, mail or phone from October 6, 2005 through June 1, 2006. In addition, Department staff met, upon request, with various stakeholders including the Wisconsin Nurses Association; Wisconsin Association of Marriage and Family Therapists; Clinical Social Work Federation – Wisconsin; National Association of Social Workers – Wisconsin Chapter; Wisconsin Association of Behavioral Health Services, Wisconsin Coalition of Marriage and Family Therapists, Professional Counselors, and Social Workers, Inc.; Wisconsin Counseling Association; Wisconsin Mental Health Counseling Association; Wisconsin Association of Family and Children's Agencies; the combined Marriage and Family Therapist, Professional

Counselor and Social Worker Boards of the Department of Regulation and Licensing, to discuss the intent of the rule and to clarify draft proposed rule language.

- The Department, in January 2006, solicited data with the help of the Coalition of Marriage and Family Therapists, Professional Counselors, and Social Workers, Inc., and the Wisconsin Association of Behavioral Health Services (WABHS), from 831 certified outpatient mental health clinics (WABHS survey). The WABHS survey data solicited related to the number of staff and the hours worked by staff; number of psychotherapy hours provided to consumers; the ownership status; branch offices; type of consumers served; the professional supervision model used, including the hours of supervision provided and the cost of providing supervision; and the length of time staff take to prepare for bi-annual certification. As reported by the WABHS survey, the total number of clinics that responded to the survey was 205 (for a 24.8% response rate). The Department interpreted the WABHS survey results from non-profit and for-profit clinics as representative of an "average" clinic.

- The Department used its criteria that are approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department's proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index (CPI) or revenues are reduced by more than the prior year's CPI. For the purposes of this rulemaking, we used 2005 as the index year; the 2005 CPI is 3.4%. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and measures, among other things, the rate of inflation.

- Section 227.114 (1) (a), Stats., which defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than $5,000,000.

Analysis and supporting documents used to determine effect on small business:

The Department is required under s. 51.42 (7) (b), Stats., to promulgate rules which govern the administrative structure deemed necessary to administer community mental health services; prescribe standards for qualifications personnel; prescribe standards for quality of professional services; govern eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay; and to establish medication procedures to be used in the delivery of mental health services. Section 51.04, Stats., allows treatment facilities to apply to the Department for certification of the facility for the receipt of funds for services provided as a benefit to medical assistance recipients under s. 49.46 (2) (b) 6. f., Stats., or to a community aids funding recipient under s. 51.423 (2), Stats., or provided as mandated private insurance coverage under s. 632.89 (2), Stats. Section 51.42 (7) (a), Stats., requires the Department to review and certify county departments of community programs and community mental health programs to assure that the county department and programs are in compliance with the purpose and intent of s. 51.42 Stats., to enable and encourage counties to develop a comprehensive range of services offering continuity of care; to utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including mental illness, developmental disabilities, and

alcoholism and drug abuse; to provide for the integration of administration of those services and facilities organized under s. 51.42, Stats., through a county department of community programs; and to authorize state consultative services, review and establishment of standards and grants-in aids for such program of services and facilities.

The rules promulgated under s. 51.42 (7) (b), Stats., are currently codified under ss. HFS 61.91 through 61.98. These rules initially were effective on January 1, 1980 with the most recent revisions effective on May 1, 1981. The rules were written primarily for public mental health clinics, which were assumed to have access to an interdisciplinary team (e.g., psychiatrist, nurse, psychotherapists, etc.). During the past 25 years, many private providers have sought to become a certified outpatient mental health clinic in order to bill insurance companies for services provided under s. 632.89 (2), Stats.

Under the current regulations, a certified clinic must include a psychiatrist or a licensed psychologist, as well as a master's level social worker or a registered nurse with a master's degree with a psychiatric specialty. Other mental health professionals with training and experience in mental health may be employed as necessary, including persons with master's degrees and course work in clinical psychology, psychology, school psychology, counseling and guidance, or counseling psychology. The clinic is required to ensure continuity of care for persons with mental disorders or alcohol and drug abuse problems by rendering or arranging for the provision of and documentation of services such as evaluation to determine the extent to which the patient's problem interferes with normal functioning; residential facility placement for patients in need of a supervised living environment; partial hospitalization to provide a therapeutic milieu or other care for non–residential patients for only part of a 24–hour day; pre–care prior to hospitalization to prepare the patient for admission; aftercare for continuing treatment in the community to help the patient maintain and improve adjustment following a period of treatment in a facility; emergency care for assisting patients believed to be in danger of injuring themselves or others; rehabilitation services to achieve maximal functioning, optimal adjustment, and prevention of the patient's condition from relapsing; habilitation services to achieve adjustment and functioning of a patient in spite of continuing existence of problems; supportive transitional services to provide a residential treatment milieu for adjustment to community living; professional consultation to render written advice and services to a program or another professional on request. The current rule also requires the clinic to provide a minimum of 2 hours each of clinical treatment by a psychiatrist or psychologist and a social worker for each 40 hours of psychotherapy provided by the clinic. Specified personnel employed by a clinic are required to be under the supervision of a physician or licensed psychologist who meets the requirements of s. HFS 61.96 (1) (a) for a specified time relating to the number of hours of psychotherapy provided and frequency of a consumer's treatment sessions. The current rule further requires that each consumer receive an initial assessment and have a treatment record that contains a treatment plan, progress notes and discharge summary.

Through this order, the Department proposes to repeal ss. HFS 61.91 through 61.98 and create ch. HFS 35. Private and public clinics have reported difficulty in meeting the requirement of having a psychiatrist or psychologist to work in the clinic or to accept referrals from the clinic. To address this issue, the Department is adding 2 options for minimum staffing requirements that do not require a psychiatrist or psychologist to be a staff member of the clinic. The proposed rule also will respond to the issue of clinical supervision by a psychiatrist or psychologist. Many clinics report that this oversight model is costly, and that the process does not yield meaningful feedback to staff. To address this issue, the proposed rules will permit clinical collaboration, which is a process by which staff within the clinic review the treatment

effectiveness and together identify possible changes in treatment approaches, staff training, policy changes, etc., as an alternative to clinical supervision.

The private sector outpatient mental health clinics that will be affected by the proposed rules are those that contract with county departments under s. 46.23, s. 51.42 or 51.437, Stats., to implement its community mental health services programs or to receive reimbursement for outpatient mental health services from the Wisconsin medical assistance program or private insurance under s. 632.89, (2) Stats. As of June 2006, there are 837 certified outpatient mental clinics located throughout Wisconsin with the largest concentrations in the metropolitan areas of the central and southeastern parts of the state. The majority, 92 percent (772 clinics) are privately owned non-profit or for-profit entities. The remaining 8 percent are government owned. The privately owned clinics (as represented in the WABHS survey and assumed by the Department to be representative of the "average" clinic) are staffed primarily by licensed clinical social workers, licensed marriage and family therapists, or licensed professional counselors and support staff who provide approximately 788 hours of mental health services (and 237 hours of psychotherapy services) per week to children, adolescent, adults, and senior adults of various degrees of mental health issues and diagnoses, such as disorders relating to legal and illicit drug use; eating and sleeping disorders; depressive, bipolar, anxiety disorders; and personality disorders. Staff of these clinics also may include medical doctors, psychiatrists, psychologists, advanced practice nurse prescribers, persons with a master's in social work, persons with a master's of science, and substance abuse counselors. The current and proposed rules do not apply to or individual practitioners licensed by the Department of Regulation and Licensing to provide psychotherapy; these individuals can apply their trade as permitted by their license without being certified as an outpatient mental health clinic.

More than 10% of the certified outpatient clinics that will be affected by the proposed rules may be small businesses as defined under s. 227.11 (2) (a), Stats., as the average private clinic may be independently owned and operated and employs less than 25 employees or has gross annual revenues under $5,000,000. As discussed below, the Department believes that the proposed rules will decrease costs to the average outpatient mental health clinic. The cost elements discussed in this analysis are staffing; documentation and reporting; recordkeeping; and the certification process. Any costs other than those specified in this analysis appear to be negligible and are inherent in the conduct of clinic business or are the result of required compliance with ch. 51, Stats, as a mental health provider.

The requirements in the proposed rule relating to reporting, record keeping, and the certification process and the associated costs are unchanged compared to the current rule, except that under the renewal certification process clinics that are accredited by nationally recognized bodies may request a waiver of part of the bi-annual process. In addition clinics, under specified conditions, may also be certified as exceptional clinics. Certification for exceptional clinics renews every three years. A grant of a waiver of certification requirements or receipt of exceptional certification may reduce a clinic's costs. Although the rules require additional specificity in regard to documentation in the content of assessment and treatment plan records, the costs of documentation are not expected to increase. There is no data or basis that indicates that the time involved completing the documentation of the assessment and treatment plan will increase. There are no capital costs imposed by the proposed rules.

The proposed rules are minimum requirements that give maximum flexibility under regulations that are required by statute and the intent and purpose of s. 51.42, Stats. The Department believes that the benefits of the proposed rules will outweigh any costs that they may impose because the proposed rules will benefit both consumers and clinics by improving access,

protection, and quality of care and quality of life to consumers receiving or seeking mental health services and will reduce costs and the burden of regulation on outpatient mental health clinics that choose to be certified. For example, under the existing rule, services must be provided at the clinic office or a branch office identified in the certificate issued by the Department unless it is demonstrated to the Department that there are specific barriers to care if services are not delivered outside the clinic. In addition, there currently are limitations in the use of a branch office, such as branch offices must be located within 30 miles of the main office and all treatment records must be stored in the main office. In the proposed rule, service delivery will be more flexible as clinics will be allowed to offer services where needed without having to seek additional certification and other limitations on the use of branch offices are also removed. This should increase the profitability of the clinic or reduce the costs of clinics by increasing the numbers of consumers that may be served and eliminating any costs that may be incurred in certifying and maintaining a branch office. The existing rules were written for comprehensive, publicly operated clinics. The proposed rules have eliminated the requirements that clinics provide, or provide access to residential facilities, partial hospitalization, pre-care for hospitalization, rehabilitation services, habilitation services, and supportive transitional services. The services under the proposed rule allow for services to be provided, contracted or provided by agreement. It is assumed that the therapist would expedite services as required for individual clients. The time and cost of procuring these services or agreements has been eliminated. The existing rule requires that every consumer have a referral from a physician for psychotherapy services. The proposed rule allows a licensed therapist to make the recommendation for therapy if the consumer is a non-Medicaid recipient, which reduces cost to the consumer and increases accessibility to services. This would be an estimated cost savings to the consumers (who are not Medicaid recipients) of $100. However, recommendations for psychotherapy for Medicaid recipients must be by a physician as required under s. 49.46 (2) (b) 6. f., Stats.

Personnel requirements have been changed to allow alternatives to the existing rule and to recognize and reduce a clinic's staffing costs and the difficulty clinics reportedly have in obtaining staff. Existing rules require a minimum of two hours of clinical treatment by a psychiatrist or psychologist for each 40 hours of psychotherapy provided in a clinic. The proposed rule eliminates this requirement with an estimated minimum savings of $19,000 per year for the small clinic. Larger clinics likely will save proportionally increased amounts. As reported in the WABHS survey, the average clinic already meets the minimum staffing requirements under the proposed rules. These clinics have sufficient numbers of staff working sufficient number of hours to meet the current and proposed minimum staff requirements. Although the Department estimates that approximately 150 currently certified clinics may not currently meet the minimum staff requirements or the proposed regulations, the Department believes that these and all other clinics will be able meet one of the options for minimum staffing without difficulty and without increased costs. The proposed rules provide two options for minimum staffing that do not require a psychiatrist or psychologist to be a staff member of the clinic, which acknowledges the shortage of psychiatrists and psychologists. A third option for minimum staffing is similar to the current regulations, but is more stringent in that it requires staff to be available to provide psychotherapy at least 37.5 hours per week, but is less stringent in that it requires only four hours of direct services from a psychiatrist, psychologist or advanced practice nurse prescriber. The proposed rule permits existing clinics to be "grandfathered" for a two-year period of time, to comply with the minimum staffing requirements in the proposed rules. If a clinic submits data regarding its reasonable, bona fide efforts to comply with the minimum staffing requirements, then the Department may grant a waiver request regarding the minimum staffing requirements for the clinic. The proposed staffing requirements may be met either through contract or employment. Also, under the existing rule clinics are required to

provide supervision by a psychiatrist or psychologist at the rate of 30 minutes for every 40 hours of therapy provided. The current rules require clinics to have clinical supervision from a psychiatrist or psychologist. As reported in the WABHS survey the oversight model type most used by clinics is clinical supervision from a psychiatrist or psychologist which costs the average clinic approximately $701 per month and $593 per month, respectively. The proposed rules will allow clinical collaboration, which is a process by which staff within the clinic review the treatment effectiveness and together identify possible changes in treatment approaches, staff training, policy changes, etc., as an alternative to clinical supervision. Clinics that already use clinical collaboration (which is currently allowed under a statewide waiver) have an average reported cost of $551 per month. Based on the average costs for clinical supervision versus clinical collaboration, the cost-savings for using clinical collaboration is estimated to be approximately $500 to $1800 per year. The average clinic has annual gross revenues of $593,000 per year (based on the revenue information reported in the WABHS survey). For the average clinic, the estimated cost savings of $19,000 plus $1,800 per year represent a 3.5 percent potential decrease in costs for a clinic if the clinic chooses clinical collaboration as an oversight model.

The proposed rules include waiver and variance provisions to allow clinics to use alternatives to rules when compliance is difficult because of availability of staff or remote geographic locations or strict enforcement of the requirement would result in unreasonable hardship on the outpatient clinic or consumer. A waiver or variance can also be used if there are more creative ways to meet a requirement or if "deemed status" from a national accrediting organization is recognized, which would eliminate duplicate costs to the agency for staff time to prepare for survey by both the national accrediting organization and Department staff. A waiver or variance would not be allowed if quality of care is adversely affected. The proposed rules allow for a provisional certification for a clinic that has no major deficiencies but has one or more minor deficiencies for up to one year, a regular certification for a clinic that has no major or minor deficiencies for up to two years, and an exceptional certification for a clinic that has no major or minor deficiencies and meets additional standards for up to three years.

Effect on small business:

Pursuant to the foregoing analysis, the proposed rules may decrease costs to the small businesses affected by the proposed rules. The proposed rules will affect a substantial number of small businesses, but will not have a significant economic impact on those businesses. Further, any increase in operating costs or decreases in revenues that may be caused by the proposed rules are expected to be less than the 2005 Consumer Price Index of 3.4%.

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Place where comments are to be submitted and deadline for submission:

Comments may be made via the Wisconsin Administrative Rules Website at http://adminrules.wisconsin.gov or to Dan Zimmerman at the address, telephone number or email address listed above until August 10, 2006.

TEXT OF PROPOSED RULE

SECTION 1. Chapter HFS 35 is created to read:

CHAPTER HFS 35
OUTPATIENT MENTAL HEALTH CLINICS

SUBCHAPTER I General Provisions

SUBCHAPTER II Certification

SUBCHAPTER III Personnel

SUBCHAPTER IV Outpatient mental health services

SUBCHAPTER I GENERAL PROVISIONS

HFS 35.01 Authority and purpose. This chapter is promulgated under the authority of ss. 49.45 (10), 51.04, 51.42 (7) (a) and (b), and 227.11 (2) (a), Stats., to establish minimum standards for outpatient mental health services provided by outpatient mental health clinics that receive reimbursement for those services from the Wisconsin medical assistance program or private insurance under s. 632.89 (2), Stats., or who utilize federal community mental health block grant funds.

HFS 35.02 Applicability. (1) This chapter applies to public and private entities who request reimbursement for services from the Wisconsin medical assistance program and from private insurance required under s. 632.89 (2), Stats., or who utilize federal community mental health block grant funds.

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

HFS 35.03 Definitions. (1) "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 inquires 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.

(2) "Available to provide outpatient mental health services" means physical presence in the clinic or a branch office of the clinic.

(3) "Branch office" means an alternative location that is regularly utilized by staff to provide outpatient mental health services to a consumer.

(4) "Clinical collaboration" means mental health professionals and mental health practitioners working together in a joint intellectual and clinical approach for the therapeutic benefit and favorable outcome of consumers using consultation, supervision, mentoring or peer review between mental health professionals and mental health practitioners.

(5) "Clinical consultation" means conferring with other mental health professionals or mental health practitioners and other professionals that hold expertise and experience, to strengthen the clinical approach in pursuing a favorable outcome to a consumer.

(6) "Clinical supervision" means a mental health professional overseeing the provision of outpatient mental health services provided by a person who is a graduate student in one of the behavioral sciences or a related field or who holds a graduate degree in one of the behavioral sciences or a related field who has not completed the equivalent of at least 3,000 hours of post-graduate degree supervised clinical experience including at least 1,000 hours of face-to-face contact with consumers.

(7) "Consumer" means an individual who receives or requests outpatient mental health services from a clinic.

(8) "Department" means the Wisconsin department of health and family services.

(9) “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.

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

(a) A guardian as defined under s. 880.01 (3), 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.

(c) 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.

(11) “Mental health practitioner” means a person who holds a graduate degree from an accredited college or university in one of the behavioral sciences or related fields and who has 3,000 hours of supervised clinical post-graduate degree experience including at least 1,000 hours of face-to-face contact with consumers. “Mental health practitioner” does not include an individual whose professional license is suspended or revoked.

(12) “Mental health professional” means an individual who is licensed by the Wisconsin department of regulation and licensing as a physician under ch. 448, Stats.; a psychologist or school psychologist who is licensed under ch. 455, Stats.; a marriage and family therapist, professional counselor, or social worker who is licensed under ch. 457, Stats.; or an advanced practice nurse who is licensed under ch. 441, Stats and who holds a certificate as an adult psychiatric and mental health nurse practitioner or as a family psychiatric and mental health nurse practitioner from the American Nurses Credentialing Center and has completed 3,000 hours of supervised clinical experience including at least 1,000 hours of face-to-face contact with consumers. “Mental health professional” does not include an individual whose professional license is suspended or revoked.

(13) “Minor” means an individual who is 17 years old or younger.

(14) "Outpatient mental health clinic" or “clinic” means a facility that is certified or that applies for certification under this chapter to provide outpatient mental health services to consumers.

(15) "Outpatient mental health services" means the services offered or provided to a consumer by a clinic, including intake; assessment; treatment planning; psychotherapy; medication management; psychoanalysis; life coaching and skills training, such as couples communications workshops or other techniques designed to contribute to personal growth.

(16) "Parent" means a biological parent; an adoptive parent; a husband who has consented to the artificial insemination of his wife under s. 891.40, Stats.; a male who is presumed to be the father under s. 891.41, Stats.; or a male who has been adjudicated the child's father either under s. 767.51, Stats., or by final order or judgment of a court of competent jurisdiction in another state. "Parent" does not include individuals whose parental rights have been terminated.

(17) "Prescriber" means an individual licensed by the Wisconsin department of regulation and licensing under ch. 448, Stats., as a physician, or a physician assistant or as an advanced practice nurse under ch. 441, Stats.

(18) "Psychotherapy" has the meaning given in s. HFS 101.03 (145).

Note: Section HFS 101.03 (145) defines "psychotherapy" to mean the treatment of an individual who is mentally ill or has medically significant emotional or social dysfunctions by a psychotherapy provider. The treatment is a planned and structured program based on information from a differential diagnostic examination and directed at the accomplishment of specified goals. The treatment goals may include removing, modifying, or retarding existing symptoms, mediating disturbed patterns of behavior, and promoting positive personal growth and development by enhancing the ability to adapt and cope with internal and external stresses.

(19) "Recovery" means the process of a consumer's growth and improvement, despite a history of 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.

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

(21) "Substance abuse counselor" means an individual who meets the requirements of s. HFS 75.02 (84) or certified under s. 440.88, Stats., a physician knowledgeable in addiction treatment, or a psychologist knowledgeable in psychopharmacology and addiction treatment.

(22) "Substance use disorder" means use of alcohol or another substance individually or in combination in a manner that interferes with functioning in any of the following areas of an individual's life: educational, vocational, health, financial, legal, personal relationships or role as a caregiver or homemaker.

(23) "Supervised clinical experience" means a practical learning experience that an individual with a post-graduate degree obtains through performing therapeutic services to persons with mental health problems of at least one hour of face-to-face supervision from a licensed mental health professional for every 30 hours of therapeutic services delivered to consumers.

(24) "Trauma" means interpersonal violence including sexual abuse, physical abuse, neglect, loss, or the witnessing of violence.

(25) "Variance" means an alternate requirement in place of a non-statutory requirement of this chapter.

(26) "Waiver" means an exemption from a non-statutory requirement of this chapter by the department.

SUBCHAPTER II CERTIFICATION

HFS 35.04 Staffing requirements for certified clinics. (1) A clinic shall have a clinic administrator who is 18 years old or older to be responsible for clinic operations including ensuring that the clinic is in compliance with this chapter and other applicable state and federal law. This may be a function of a mental health professional.

(2) In addition to the clinic administrator, the clinic shall have a sufficient number of qualified staff available to provide outpatient mental health services to consumers. Staff shall include any one of the following minimum staff combinations available as specified in pars. (a), (b), or (c) to provide psychotherapy:

(a) At least 2 mental health professionals who are each available to provide outpatient mental health services at least 37.5 hours per week.

(b) At least one mental health professional and one mental health practitioner who are each available to provide outpatient mental health services at least 37.5 hours per week.

(c) At least one mental health professional who is available to provide outpatient mental health services at least 37.5 hours per week and at least one mental health professional who is a psychiatrist, psychologist or advanced practice nurse prescriber who provides outpatient mental health services to consumers of the clinic at least 4 hours per month.

(d) 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.

(e) If clinic staff does not include a prescriber, then the clinic shall have a written referral agreement with an individual or entity to collaborate on consumer treatment needs to ensure continuity of clinical care, including prescribing medication. If the clinic staff does not include an individual who has knowledge and skills to provide substance abuse assessments and services, then the clinic shall have a written referral agreement with an individual or entity to collaborate on consumer treatment needs to ensure continuity of clinical care, including prescribing medication.

(3) A clinic that is certified before [Revisor to insert effective date] will have until January 1, 2009 to meet the requirements of sub. (1) (a), (b), or (c).

(4) (a) A person whose professional license is revoked or is suspended may not be employed or contracted with as a mental health professional or as a mental health practitioner.

(b) Staff who hold licensure or certification may not be employed with the clinic if the staff fails to participate in and complete the training and educational requirements to maintain that licensure or certification, if the licensure or certification is necessary to provide the services to consumers.

35.05 Persons who may provide psychotherapy services. (1) The following personnel may provide psychotherapy to consumers:

(a) A mental health professional.

(b) A mental health practitioner.

(c) A graduate student enrolled in an accredited institution in one of the behavioral sciences or a related field.

(d) A person with a graduate degree from an accredited institution and course work in one of the behavioral sciences or related field who has not yet completed the equivalent of at least 3,000 hours of post-graduate degree supervised clinical experience including at least 1,000 hours of face-to-face contact with consumers.

(2) A person who has a suspended or revoked professional license may not provide psychotherapy to consumers.

HFS 35.06 Death reporting. The clinic shall report the death of a consumer as required by s. 51.64, Stats.

HFS 35.07 Location of service delivery. Outpatient mental health services shall be provided at the clinic or branch office, except in instances where therapeutic reasons are documented in the consumer's treatment record 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.

HFS 35.08 Certification process. (1) DEFINITION. (a) In this section "Major deficiency" means the clinic substantially fails to meet the requirements of this chapter or a determination by the department that an aspect of the clinic or the conduct of its staff does any of the following:

1. 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:

a. A staff has had sexual contact or intercourse, as defined in s. 940.225 (5) (b) or (c), Stats, with a consumer.

b. A staff has been convicted of consumer abuse under s. 940.285, 940.29 or 940.295, Stats.

c. The health or safety of a consumer is in imminent danger because of any act or omission by the clinic or its staff.

2. Submits or causes to be submitted one or more statements for purposes of obtaining certification under this chapter which the clinic knew or should have known to be false.

3. 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 certification for any basis under s. HFS 106.06 or federal law.

4. Submits a billing statement or other document that represents a staff as the provider of service when the staff did not provide the service, except as permitted by Medicaid or Medicare rules or ch. HFS 75.

5. A clinic staff has an offense substantially related to consumer care or a substantiated finding of caregiver misconduct as identified in chs. HFS 12 and 13.

(2) APPLICATION. Application for outpatient mental health certification shall be made to the department on a form provided by the department and shall include proof of malpractice and liability insurance for the clinic and each staff person of the clinic, fees, and all of the information requested in the application.

Note: Application materials may be obtained from and submitted to the Program Certification Unit, Division of Disability and Elder Services, PO Box 7851, Madison, WI 53707-7851

(3) COMPLIANCE REVIEW. (a) Upon receipt of a complete application, department staff may conduct an on-site inspection and may review any or all of the following information to determine if the applicant is in compliance with this chapter:

1. Statements made by the applicant or the applicant's staff.

2. Documentary evidence.

3. On-site observations by a representative of the department.

4. Reports by consumers regarding the clinic's operations.

(b) The applicant shall make available for review by the department's designated representative all documentation necessary to establish whether the applicant and each applicant location, including branch offices, is in compliance with the standards in this chapter, including written policies and procedures of the clinic, work schedules of staff, credentials of staff, consumer treatment records, information from grievances filed concerning the clinic, closed consumer records, 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, in compliance with ch. HFS 92 and 45 CFR Parts 160 and 164.

(4) ISSUANCE OF CERTIFICATION. (a) *Action on application*. Within 60 days after receiving a completed application for initial certification or for renewal of certification, the department shall do one of the following:

1. Certify the applicant as an outpatient mental health clinic if no deficiencies are found and all of the requirements for certification are met.

2. Certify the applicant as an exceptional clinic if the applicant meets all of the requirements of certification and the following additional requirements:

a. The applicant employs or contracts with one or more psychiatrists, psychologists, substance abuse counselors, psychiatric nurse, or other ancillary professional disciplines necessary to meet the needs of the consumer.

b. The applicant is certified under ch. HFS 75 and provides integrated treatment for consumers.

c. The applicant develops a quality improvement plan that is acceptable to the department.

d. The applicant provides aggregate outcome data to the department as requested.

3. Issue provisional certification under sub. (5), if the applicant has one or more deficiencies that do not meet the definition of a major deficiency.

4. Deny certification under sub. (7), if the department finds one or more major deficiencies.

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

2. Certification may be renewed for up to 2 years provided the clinic applies for annual renewal and continues to meet the requirements for certification. Certification may be renewed for up to 3 years for an exceptional clinic, provided the clinic applies for annual renewal and continues to meet the requirements for certification.

3. Certification is subject to suspension, revocation, or refusal to renew as specified in s. HFS 35.07.

(5) PROVISIONAL CERTIFICATION. (a) If the department determines that an applicant for certification as an outpatient mental health clinic has one or more deficiencies that are not major deficiencies, the department shall issue a notice of deficiency to the applicant and offer the applicant provisional certification. The department may place restrictions on the activities of an outpatient mental health clinic under provisional certification.

(b) 1. If an applicant wishes to operate under a provisional certification, the applicant shall submit a plan of correction to the department within 30 days of the date of the notice of deficiency issued under par. (a). The plan of correction shall identify the specific steps the applicant will take to correct the deficiency; the timeline within which the corrections will be made; and the staff who will implement the plan and monitor for future compliance. If the department approves the plan of correction, the department shall provisionally certify the applicant and establish an expiration date for the provisional certification.

2. If an applicant does not wish to operate under a provisional certification or does not submit a plan of correction that is acceptable to the department, the department shall issue a denial of certification under sub. (7).

(c) 1. Before a provisional certification expires, the department may conduct an on site inspection of the applicant location to determine whether the proposed corrections have been made. If the applicant has made the required corrections, and there are no major deficiencies found, the applicant may be certified as an outpatient mental health clinic. If a deficiency cited in the notice of deficiency issued under par. (a) has not been corrected or a major deficiency is found, the application for certification shall be denied in the manner required under sub. (7).

2. Provisional certification may be extended for up to 2 years from the date of the deficiency cited under par. (a) if substantial progress is made towards correcting the deficiency.

(6) RENEWAL. (a) The department shall send written notice of expiration and an application for renewal of certification to a clinic at least 60 days before expiration of the clinic's certification. If the department does not receive an application for renewal of certification before the expiration date, the clinic's certification shall expire. A clinic may not bill Medicaid or private insurance, or utilize federal Community Mental Health Block Grant 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. (2).

(b) Upon receipt of an application for renewal of certification, the department shall conduct an on-site inspection in accordance with sub. (3) (b) before expiration of the clinic's certification and renew, deny, or offer provisional certification as specified under sub. (4).

(c) If an applicant 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 applicant may request the department to waive the on-site inspection required under par. (b). A request for a waiver shall be in accordance with the requirements specified s. HFS 35.12 and shall include materials prepared for 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. A request to waive the on-site inspection required under par. (b) may be granted if the standards for accreditation are at least as stringent as the requirements of this chapter, and if any one of the circumstances specified under s. HFS 35.12 (2) applies.

(7) DENIAL OF 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. HFS 35.11.

HFS 35.09 Notification of clinic changes. The outpatient clinic shall notify the department of changes in administration, ownership, location, clinic name, or program changes that may affect clinic compliance by no later than the effective date of the change.

HFS 35.10 Scope and transferability of certification. Certification is issued only for the premises identified in the certification application and only for the persons named in the certification application and may not be transferred or assigned. A branch office does not require separate certification but shall be identified to the department by the clinic.

HFS 35.11 Enforcement actions. (1) UNANNOUNCED VISITS. The department may make unannounced on-site inspections of the clinic at any time to verify the clinic's compliance with this chapter. The department may also conduct complaint or death investigations involving the clinic, its staff, or outpatient mental health services provided by the clinic.

(2) TERMINATION AND SUMMARY SUSPENSION. (a) The department may terminate certification at any time upon written notice to the clinic, if the department finds a major deficiency.

(b) 1. The department may close a clinic by summarily suspending a clinic's certification, including provisional certification, if the department believes the 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 permit the reopening of the clinic or proceed to terminate the clinic's certification.

2. The division of hearings and appeals shall hold a preliminary 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, terminates or refuses to renew certification, the clinic may request an administrative hearing under ch. 227, Stats. If a timely request for hearing is made on a decision to restrict, terminate, or not renew certification, that action is stayed pending the decision on the appeal except when the department summarily suspends certification under sub. (2) (b) 1.

(b) A request for hearing shall be submitted in writing to the department of administration's division of administrative hearings within 30 days after the date of the notice of the department's action.

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.

HFS 35.12 Waivers and variances. (1) An application for a waiver or a variance may be made 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 Program Certification Unit, Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53701-7851.

(2) The department may grant a waiver or variance if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any consumer and any one of the following applies:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the clinic or on a consumer.

(b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects is in the interest of better care or management.

(3) A determination on a request for a waiver or variance shall be made to the clinic in writing. The department may impose restrictions including limiting the duration of any waiver or variance on any waiver or variance it grants, and may withdraw the waiver or variance if a clinic or applicant 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 outpatient 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, the reason for the denial shall be included in the notice. There are no appeal rights for a denial or revocation of a waiver or variance.

(b) The department may revoke a waiver or variance if any one 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 necessary to protect the health, safety, and welfare of a consumer.

SUBCHAPTER III PERSONNEL

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

(1) That each staff who provides psychotherapy or who prescribes medications is evaluated to determine if the staff 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. HFS 12, and the caregiver misconduct reporting and investigation requirements in ch. HFS 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://dhfs.wisconsin.gov/caregiver/BkgdFormsINDEX.HTM or by writing the Department at Caregiver Regulation and Investigation Section, Bureau of Quality Assurance, P.O. Box 2969, Madison, WI 53701-2969. Phone: (608) 266-8481, Fax: (608) 267-0352.

(3) A staff record shall be maintained for each staff and include all of the following:

(a) Confirmation of an applicant's current professional license or certification, if that license or certification is necessary for the staff member's prescribed duties or position. All licensing restrictions 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) The vita of training, work experience and qualifications for each prescriber and each person who provides psychotherapy.

(d) Documentation of orientation and in-service training received.

HFS 35.14 Clinical supervision, clinical collaboration, and clinical consultation. Each clinic shall implement a written policy for clinical supervision, clinical collaboration and clinical consultation and require all personnel to adhere to all laws and regulations governing the care and treatment of consumers and the standards of practice for their individual professions. The 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) Criteria that identify clinical issues that warrant clinical supervision, clinical collaboration, or clinical consultation including critical incidents that involve one or more consumers of the outpatient mental health clinic. Clinical supervision, clinical collaboration and clinical consultation may include any of the following:

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

(b) Individual side–by–side session in which the supervisor is present while staff provides assessments, service planning meetings or psychosocial rehabilitation services and in which the supervisor assesses, teaches and gives advice regarding the staff member's performance.

(c) Group meetings to review and assess staff performance and provide the staff member advice or direction regarding specific situations or strategies.

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

(2) The clinic administrator shall oversee the job performance and actions of each staff.

(3) A staff who is a graduate student or a staff with a graduate degree from an accredited institution and course work in one of the behavioral sciences or related field who has not yet completed the equivalent of at least 3,000 hours of post-graduate degree supervised clinical experience who provides psychotherapy shall receive at least one hour of clinical supervision from a mental health professional for every 30-clock hours of face-to-face therapy.

(4) A staff who is a substance abuse counselor and provides services to persons who have a primary diagnosis of a substance use disorder shall receive clinical supervision or clinical collaboration from another substance abuse counselor.

(5) Clinical supervision, clinical collaboration, and clinical consultation records shall be dated and documented with the signature of the person providing these functions in a supervisory record or in the staff record of each staff who attends the session or review.

HFS 35.15 Orientation and training. (1) ORIENTATION. Each clinic shall develop and implement orientation training that all staff new to the clinic shall complete. Except for mental health professionals and mental health practitioners, a staff's job functions shall be the determining factor in deciding which of the following training requirements the staff shall complete. Mental health professionals and mental health practitioners shall complete all of the following training requirements:

(a) Pertinent parts of this chapter.

(b) The clinic's policies and procedures.

(c) Applicable parts of chs. 48, 51, 54, 55, 155 and 880, Stats., given the nature of the consumers served by the clinic, and any related administrative rules.

(d) The mental health services offered by the clinic and any services offered in collaboration with other agencies or programs.

(e) Cultural factors that need to be taken into consideration in providing outpatient mental health services for consumers.

(f) The provisions of s. 51.61, Stats., and ch. HFS 94 regarding consumer rights, including the procedures established by the clinic under ch. HFS 94 for investigating and resolving consumer grievances.

(g) The provisions of s. 51.30, Stats., ch. HFS 92 and 45 CFR Parts 160 and 164 regarding confidentiality and security of treatment records and mental health information.

(h) The basic provisions of the civil rights laws, including the Americans with Disabilities Act (ADA) of 1990, 42 USC 12101, and the Civil Rights Act of 1964, 42 USC 1981 to 2000, as they apply to the delivery of mental health services.

(i) A familiarity with the signs and symptoms of reactions to psychotropic drugs most relevant to the treatment of mental illness and mental disorders served by the clinic.

(j) 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.

(k) 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.

(L) Recovery concepts and principles that ensure services and supports promote connection to others and to the community.

(2) IN-SERVICE TRAINING. (a) Each mental health professional shall participate in the training necessary to retain professional licensure or certification. Documentation of training shall be maintained in the staff's records as required under s. HFS 35.13 (3).

(b) Mental health practitioners shall participate in the number of hours of in-service training comparable to mental health professionals.

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

CHAPTER IV OUTPATIENT MENTAL HEALTH SERVICES

HFS 35.16 Admission. (1) (a) A mental health professional shall document 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.

(b) In order to be reimbursed under the medical assistance program for psychotherapy services provided to a medical assistance recipient, the recommendation for psychotherapy under par. (a) shall be a physician prescription as required under s. 49.46 (2) (b) 6. f., Stats.

(2) (a) If a consumer is determined to have one or more co-occurring disorders, the clinic shall document the treatments and services concurrently received by the consumer through other providers, document recommendations for additional services whether the clinic can serve the consumer's multiple needs using qualified staff or in collaboration with other providers.

(b) A consumer who has a co-occurring substance use disorder shall be determined by application of an approved placement criteria to be appropriate for outpatient substance use services. If the approved placement criteria indicate that a person needs an alternate level of care, then the consumer shall be referred for appropriate services.

(3) A clinic shall ensure that no consumer is denied benefits or services or is subjected to discrimination on the basis of age, race or ethnicity, religion, color, sexual orientation, marital status, arrest or conviction record, ancestry, national origin, disability, gender, or physical condition. 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.

(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 within the clinic setting, and the expected length of time that services may be necessary.

(4) A consumer not meeting a clinic's selection criteria for admission shall be referred to appropriate services.

(5) If a clinic establishes priorities for consumers to be served 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.

(6) (a) 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 the clinic or staff is not available.

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

HFS 35.17 Assessment. (1) (a) An initial assessment of a consumer shall be completed before a second meeting with staff to identify the need for services. The data collected from the assessment shall be valid, correspond to the consumer's actual status, and include all of the following:

1. The consumer's presenting problems with the onset and course of symptoms, past treatment response, and current manifestation of the presenting problems.

2. A preliminary diagnosis which shall be established from the DSM-IV-TR using all 5 axes or for children up to age 4 the Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood: 0-3R and be the basis of a preliminary treatment plan and shall identify the need for services without regard to the availability of services or funding. A consumer who is identified with a significant functional limitation due to a substance use disorder shall be referred to a program that is certified under ch. HFS 75 unless the outpatient mental health clinic has a substance abuse counselor who provides the consumer services.

Note: DSM-IV-TR is published by the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2000. DSM-IV-TR may be ordered through http://www.appi.org/book.cfm?id=2024 or other sources. DC: 0-3R 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. DC: 0-3R may be ordered through http://www.zerotothree.org/bookstore/index.cfm?pubID=2597 or other sources.

(b) Information on the consumer's strengths including current and past psychological, social and physiological data; information related to school or vocational, medical, and cognitive functioning; past and present trauma; and substance use and dependence.

(c) Information from the consumer regarding the consumer's goals for growth or recovery, strengths, functional impairments, and personal and support resources.

(d) Areas of functional impairment that may be due to a co-occurring developmental disability, substance use disorder, or medical condition that may require concurrent treatment.

HFS 35.18 Consent for treatment. (1) If a consumer is appropriate for receiving outpatient mental health services through the clinic, the consumer or the consumer's parent or legal representative shall be informed in writing of all of the following:

(a) The results of the assessment.

(b) Treatment alternatives.

(c) Possible outcomes and side effects of treatment.

(d) Treatment recommendations.

(e) Approximate duration and desired outcome of treatment.

(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.

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

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

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

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

(3) (a) If a consumer is to receive services as part of an involuntary order of commitment under s. 51.20, Stats., or pursuant to the consent of a parent or legal representative, staff who conduct the admission, assessment, and treatment planning processes shall explain the nature of the order for treatment to the consumer or the parent or legal representative consenting to treatment, and shall provide the consumer with the opportunity to be actively involved in the development of a plan of care that addresses the consumer's concerns as well as those expressed by the parent or legal representative or the order of commitment.

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

HFS 35.19 Treatment plan. (1) DEVELOPMENT OF THE TREATMENT PLAN. (a) A treatment plan shall be developed upon completion of the assessment required under s. HFS 35.17. The treatment plan shall 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 reduction or elimination of the symptoms causing the consumer's problems or inability to function in day to day living and an increase in 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.

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

(2) APPROVAL OF THE TREATMENT PLAN. Before outpatient mental health services are rendered, the consumer or the consumer's parent or legal representative must approve and sign the treatment plan and agree with the staff on a course of treatment. If the consumer does not consent to the schedules, frequency, and nature of the services recommended, then appropriate notations regarding the consumer's refusal shall be made.

(3) CLINICAL REVIEW OF THE TREATMENT PLAN. (a) Staff shall establish a process for the review of the consumer's treatment plan and progress toward measurable outcomes. This review shall include the participation of the consumer and be an ongoing process. The results of each review shall be clearly documented in the consumer's record. Documentation shall include 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) Clinical review of the treatment plan and a recommendation for psychotherapy shall occur at least every 90 days or 6 treatment sessions, whichever covers a longer period of time. For each clinical review, the consumer and staff shall agree to the updated treatment plan and sign the document as required under sub. (2).

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 staff prescriber shall refer the consumer for psychotherapy when necessary and for periodic review.

(3) The clinic shall document all medications used by the consumer for mental health issues provided by the clinic.

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, clinical collaboration and clinical consultation in the selection of treatment approaches that are based on guidelines published by a governmental entity, professional organization or peer-reviewed journal. The final decision on the selection of treatment approaches for a specific consumer will be made by the consumer's therapist in accordance with this policy.

(2) Each consumer shall receive the needed interventions and services identified in the treatment plan or revision of the treatment plan created under s. HFS 35.19 (1).

(3) The maximum number of consumers receiving services in a single group therapy session shall be limited to 16 consumers. The staff to consumer ratio in group therapy shall be one staff to every 8 consumers.

35.22 Discharge summary. (1) Within 30 days after a consumer's date of discharge, the mental health professional or mental health 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's record. 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 plan for meeting those needs.

(e) 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 mental health professional or mental health practitioner who was primarily responsible for providing services to the consumer.

HFS 35.23 Consumer records. (1) DEFINITIONS. In this section "Progress note" means documentation of therapeutic progress, functional status, treatment plan progress, symptom status, change in diagnosis, and general management of treatment.

(2) CONSUMER RECORDS REQUIRED. (a) A consumer record shall be maintained for each consumer who receives outpatient mental health services. Each record shall be arranged in a format that provides for consistent recordkeeping and that facilitates accurate and efficient retrieval of record information. All entries in the consumer record shall be factual, accurate,

legible, permanently recorded, dated, and authenticated with the signature and license or title of the person making the entry. An electronic representation of a person's signature may be used only by the person who makes the entry and the clinic possesses a statement signed by the person, which certifies that only that person shall use the electronic representation via use of a personal password. Each consumer record shall include accurate documentation of all outpatient mental health services received including all of the following:

1. Results of the assessment.

2. Initial and updated treatment plans.

3. The recommendation or prescription for psychotherapy.

4. For consumers who have a substance use disorder, a completed copy of the most current approved placement criteria summary.

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. Evidence of the consumer's progress, including response to services, changes in condition and changes in services provided.

8. Any recommended changes or improvement of the treatment plan resulting from peer review or clinical consultation, clinical supervision or clinical collaboration.

9. Signed consent forms and court orders for disclosure of information and for medication administration and treatment.

10. A listing of medications prescribed by staff and a medication administration record, if the staff dispense or administer medications to a 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's record.

(b) Clinics may keep a composite consumer record of a family in treatment as a unit, however, when information is released provisions shall be made for individual confidentiality.

(3) CONFIDENTIALITY. (a) Consumer records shall be maintained in accordance with standard professional practices for the maintenance of consumer records in a safe and secure manner in a designated place on the premises of the clinic that is not accessible to consumers or the public but is accessible to staff at all times

(b) Consumer treatment records shall be kept confidential and safeguarded as required under s. 51.30, Stats., ch. HFS 92, and when applicable 45 CFR Parts 160 and 164, and 42 CFR Part 2 .

(c) Psychotherapy notes recorded in any medium shall be kept confidential and safeguarded from access to anyone other than the staff who created the notes. If psychotherapy notes are accessed by anyone other than the originator of the notes, then the notes become part of the consumer's record in accordance with s. HFS 92.03 (1) (b).

(4) TRANSFERRING CONSUMER RECORDS. Upon written request of a consumer or former consumer or, if required, that person's parent or legal representative, the clinic shall transfer to another program or facility the clinical information necessary for the other program or facility to provide further treatment to the consumer or former consumer.

(5) RETENTION AND DISPOSAL. (a) The clinic shall implement a written policy governing the retention of consumer records that is in accordance with s. HFS 92.12.

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

(6) ELECTRONIC RECORD-KEEPING SYSTEMS. (a) Clinics may maintain electronic records if the provider has a written policy describing the record and the authentication and security policy.

(b) Transmission of information from a consumer's record 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 by s. 51.30, Stats., or other applicable law.

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

(c) If psychotherapy notes are kept on a computer, they must be in a separate and secure file that is inaccessible to other users or other computers.

(d) A clinic shall maintain a paper or electronic back-up system for any electronic documentation.

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

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

(3) (a) 1. A consumer may not be involuntarily discharged from treatment because of the inability to pay for services unless notice is given to the consumer under par. (b).

2. A consumer may not be involuntarily discharged from treatment for behavior resulting from mental health problems until another provider accepts a referral to serve the consumer unless the discharge is necessary for the consumer's welfare and needs cannot be met by the clinic or the safety of individuals in the clinic may be endangered.

(b) Before a clinic may involuntarily discharge a consumer under par. (a) 1. or 2., the clinic shall notify the consumer in writing of the reasons for the discharge; the effective date of the

discharge; sources for further treatment; a statement that the consumer has the right to request a review of the action to the department with the address of the department.

SECTION 2. HFS 105.22 (1) (bm) is created to read:

HFS 105.22 (1) (bm) An advanced practice nurse prescriber licensed under ch. 441.01 (3), Stats, certified under ch. 441.16, Stats., and is currently certified as having a psychiatric specialty by the American Nurses Credentialing Center.

SECTION 3. HFS 105.22 (1) (c) is amended to read:

HFS 105.22 (1) (c) ~~A board-operated~~ An outpatient ~~facility or hospital outpatient~~ mental health ~~facility certified~~ clinic that meets the requirements under ~~ss. HFS 61.91 to 61.98;or~~s. HFS 35.04 (2) (c).

SECTION 4. HFS 105.22 (1) (d) is repealed.

SECTION 5. HFS 105.22 (2) (title), (a) and (b), and (3) are amended to read:

HFS 105.22 (2) STAFFING OF OUTPATIENT ~~FACILITIES~~MENTAL HEALTH CLINICS. (a) To provide psychotherapy reimbursable by MA, personnel employed by an outpatient ~~facility~~mental health clinic deemed a provider under sub. (1) (d) shall be individually certified ~~and shall work under the supervision of a physician or psychologist who meets the requirements of sub. (1) (a) or (b)~~. Persons employed by a ~~board-operated or~~ hospital outpatient mental health ~~facility~~clinic on the hospital's physical premises need not be individually certified as providers but may provide psychotherapy services upon the department's issuance of certification to the ~~facility~~mental health clinic by which they are employed. ~~In this case, the facility~~A hospital outpatient mental health clinic on the hospital's physical premises shall maintain a list of the names of persons employed by the ~~facility~~clinic who are performing psychotherapy services for which reimbursement may be claimed under MA. This listing shall document the credentials possessed by the named persons which would qualify them for certification under the standards specified in this subsection and shall include the dates that the named persons began employment.

(b) A person eligible to provide psychotherapy under this subsection in an outpatient ~~facility~~ mental health clinic shall meet the requirements under ~~s. 61.98~~s. HFS 35.05.

(3) REIMBURSEMENT FOR OUTPATIENT PSYCHOTHERAPY SERVICES. Reimbursement shall be made to any certified outpatient ~~facility~~mental health clinic meeting the requirement under sub. (1) (c) for services rendered by any provider under sub. (2) and working for that ~~facility~~clinic, except that a provider certified under sub. (1) (a) ~~or~~, (b), or (bm) may be reimbursed directly.

SECTION 6. HFS 107.13 (2) (a) (intro.) and 1. (intro.) are amended to read:

HFS 107.13 (2) (a) *Covered services.* ~~Outpatient~~ Except as provided in par. (b), outpatient psychotherapy services shall be covered services when prescribed by a physician, when provided by a provider ~~who meets the requirements of~~ certified under s. HFS 105.22, and when the following conditions are met:

1. A strength-based assessment, including differential diagnostic examination, is performed by a certified psychotherapy provider. A physician's prescription is not necessary to perform the ~~examination;~~assessment. The assessment shall include:

SECTION 7. HFS 107.13 (2) (a) 1. a. to g. and (2m) are created to read:

HFS 107.13 (2) (a) 1. a. The recipient's presenting problem.

b. Diagnosis established from the current Diagnostic and Statistical Manual of Mental Disorders including all 5 axes or, for children up to age four, the current Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood.

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

d. The recipient's strengths including current and past biopsychosocial data.

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

f. Barriers and strengths to the recipient's progress and independent functioning.

g. Necessary consultation to clarify the diagnosis and treatment.

(2m) The goals of psychotherapy and specific objectives to meet those goals shall be documented in the recipient's recovery/treatment plan that is based on the strength-based assessment. In the recovery and treatment plan, the signs of improved functioning that will be used to measure progress towards specific objectives at identified intervals, agreed upon by the provider and recipient shall be documented. A mental health diagnosis and medications for mental health issues used by the recipient shall be documented in the recovery/treatment plan.

SECTION 8. HFS 107.13 (2) (a) 3. a. and b, 4. a. to f., 6., 7., (b) 1., 4. a. to d., (c) 4. and 6. and (d) 2. are amended to read:

HFS 107.13 (2) (a) 3. a. A provider who is a licensed physician ~~or a,~~ licensed psychologist or a licensed and certified advanced practice nurse prescriber, as provided under s. HFS 105.22 (1) (a) ~~or,~~(b), or (bm) and who is working in an outpatient ~~facility~~mental health clinic certified under s. HFS 105.22 ~~(1) (c) or (d);~~ or who is working in private practice~~; or~~.

b. A provider under s. HFS 105.22 (3) who is working in an outpatient ~~facility~~mental health clinic under s. HFS 105.22 (1) ~~(c) or (d)~~ which is certified to participate in MA~~;~~.

4. Psychotherapy is performed only in:

a. The office of a provider~~;~~for providers who may bill directly.

b. A hospital outpatient ~~clinic;~~mental health clinic on the hospital's physical premises.

c. An outpatient ~~facility;~~mental health clinic.

d. A nursing home~~;~~.

e. A school~~; or~~.

f. A hospital~~;~~.

6. Outpatient psychotherapy services of up to $500 per recipient, per provider in a calendar year for hospital outpatient ~~service~~mental health clinic providers billing on the hospital claim form, or 15 hours or $500 per recipient, per provider, in a calendar year for non−hospital outpatient mental health clinic providers, whichever limit is reached first, may be provided without prior authorization by the department~~; and~~

7. If reimbursement is also made to ~~any~~same provider for ~~AODA~~substance abuse treatment services under sub. (3) during the same year for the same recipient, the hours reimbursed for these services shall be considered part of the $500 or 15−hour psychotherapy treatment services limit before prior authorization is required. For hospital outpatient mental health clinc providers billing on the hospital claim form, these services shall be included in the $500 limit before prior authorization is required. ~~If several psychotherapy or AODA treatment service providers are treating the same recipient during the year, all the psychotherapy and AODA treatment services shall be considered in the $500 or 15−hour total limit before prior authorization is required~~. ~~However, if~~If a recipient is hospitalized as an inpatient in an acute care general hospital or IMD with a diagnosis of, or for a procedure associated with, a psychiatric or ~~alcohol or other drug~~ substance abuse condition, reimbursement for any inpatient psychotherapy or ~~AODA~~ substance abuse treatment services is not included in the $500, 15−hour limit before prior authorization is required for outpatient psychotherapy or ~~AODA~~ substance abuse treatment services. For hospital inpatients, the strength-based assessment, including differential diagnostic examination for psychotherapy and the medical evaluation for ~~AODA~~substance abuse treatment services also are not included in the limit before prior authorization is required.

(b) *Prior authorization.* 1. Reimbursement may be claimed for treatment services beyond 15 hours or $500, whichever limit is attained first, after receipt of prior authorization from the department. ~~Services reimbursed by any third−party payer shall be included when calculating the 15 hours or $500 of service.~~

4. a. The names, addresses and MA provider or identifier numbers of the providers conducting the strength-based assessment, including diagnostic examination or medical evaluation and performing psychotherapy services~~;~~.

b. A copy of the physician's prescription for treatment~~;~~.

c. A detailed summary of the strength-based assessment, including differential diagnostic examination, setting forth the ~~severity of the mental illness or medically significant emotional or social dysfunction, the medical necessity for psychotherapy and the expected outcome of treatment;~~ elements of an assessment in s. HFS 107.13 (2) (a) 1.

d. A copy of the treatment plan ~~which shall relate to the findings of the diagnostic examination or medical evaluation and specify behavior and personality changes being sought;~~ and setting forth the elements required in s. HFS 107.13 (2) (a) 3.

(c) 4. ~~Diagnostic testing and~~ Strength-based assessment, including a differential diagnostic evaluation for mental health, day treatment and ~~AODA~~ substance abuse services shall be limited to ~~6~~8 hours every ~~2 years~~ calendar year per recipient as a unique procedure before prior authorization is required. ~~Any diagnostic testing and evaluation in excess of 6 hours shall be counted toward the therapy prior authorization limits and may, therefore, be subject to prior authorization.~~

6. Professional psychotherapy services provided to hospital inpatients in general hospitals, other than group therapy and medication management, are not considered inpatient services. Reimbursement shall be made to the psychiatrist ~~or~~, psychologist, or advanced practice nurse prescriber billing providers certified under s. HFS 105.22 (1) (a) ~~or~~, (b), or (bm) who provide mental health professional services to hospital inpatients in accordance with requirements of this subsection.

(d) 2. Psychotherapy for persons with the primary diagnosis of developmental disabilities, including mental retardation, except when they experience psychological problems that necessitate psychotherapeutic intervention;

SECTION 9. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and Family Services

Dated: By: _____
Helene Nelson
Secretary

Seal: