

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 01/14/2019
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter DHS 40, relating to mental health day treatment services for children.	
4. Subject Mental health day treatment services for children.	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$33,364	

This estimate is based on comments that were submitted from four providers or associations during the 14 day economic impact commenting period. An outline of the comments, DHS's response, and any economic impact is outlined below.

1. COMMENT: The proposed rule only allows master level staff to run group sessions but currently bachelor level staff are also used. The change will cost the program more. DHS RESPONSE: The proposed rule is changed to allow both master level and bachelor level staff to implement group sessions. Only master level staff will be able to provide psychotherapy groups and bachelor level staff will be able to provide non-psychotherapy groups.
2. COMMENT: The proposed rule requires licensure for the Clinical Coordinator role. Currently, this is not a requirement and will cost the program more. DHS RESPONSE: The proposed rule will remain the same to ensure quality clinical oversight. The cost for programs is minimal and expected at a maximum to impact only half of all programs.

Bachelor level: low=\$49,333      high=\$55,209  
 Master level:    low=\$49,879      high=\$56,673  
 Total range difference: \$546.0    to    \$1,464  
 Average=\$918 X 39 total sites = 35,802 max per year/ However, only impacts half of programs  
 TOTAL IMPACT =\$18,360\*

\*Note: All figures are from salary.com

3. COMMENT: The proposed rule increases the experience requirements of the Clinical Coordinator to 3,000 hours. A change is requested to 1,500 hours due to shortages of professionals. DHS RESPONSE: The proposed rule is changed to reduce the hours of experience to 1,500.
4. COMMENT: The proposed rule requires at least one male staff when male youth are present and at least one female staff when female youth are present. Flexibility with requirement is requested because this creates a barrier in staffing programs and is not essential for therapeutic or protective reasons. DHS

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RESPONSE: The proposed rule text is changed to remove this requirement.

5. COMMENT: The proposed rule changes the definition of full-time youth to youth which results in an increase of staffing and program costs. DHS RESPONSE: The proposed rule text is changed to add the clarification of full-time youth and defines that two part-time youth shall be calculated as one full-time youth.
6. COMMENT: The proposed rule requires that all treatment documentation for the past 12 months be collected prior to admission, which is often not possible and delays treatment. DHS RESPONSE: The proposed rule text is changed to require providers only request records and document the request in the screening summary.
7. COMMENT: The proposed rule could be improved by reducing the regulatory burden and overall cost of DHS 40, not simply maintaining or limiting the economic impact of the update. DHS RESPONSE: It is necessary to maintain the level of clinical oversight and required staff and services to ensure adequate mental health treatment. Some proposed requirements are being removed or reduced based on specific comments submitted by others, as noted in this summary.
8. COMMENT: Rogers Behavioral Health specifically noted that the proposed rule text requires program consultation with a psychiatrist or advanced practice nurse prescriber and does not allow a psychologist to provide consultation. This will reduce access to care while not improving the quality of care. DHS RESPONSE: The proposed rule text will remain the same in requiring consultation by a psychiatrist or advanced practice nurse prescriber due to the high number of youth who are prescribed medication as part of treatment. Psychologists may serve as clinical coordinators, program directors, and mental health professionals within programming to ensure high quality care; however, psychologists are not prescribers. The proposed rule will change to reduce the consultation requirement to one hour per week so that the economic cost to programs is minimal.

Average APNP salary per hour	\$42.38	(\$88,140 annual)
Average Psychiatrist salary per hour	\$102.00	(\$212,152 annual)
Difference in pay scale is \$59.62 per hour X 52 hours per year (1 hour of consultation each week) =		
\$3,100.24 X 7 programs across Rogers Behavioral Health		
TOTAL IMPACT = \$21,701.68 per year*		

\*Note, staff logs show that a psychiatrist is already available in each Rogers program location so it is unclear if this impact actually exists. However, it is included in the overall economic impact.

\*Note, All figures are from indeed.com

9. COMMENT: The proposed rule eliminates the flexibility to provide evidence-based treatment to multiple diagnoses for all patients (we know the benefits of occupational therapy for some but not all diagnoses) and will force providers to eliminate (based on time) proven treatment interventions for specialized services. DHS RESPONSE: The proposed rule will change to eliminate occupational therapy as a separate required service and add this service into the four hours of support services that shall be provided more flexibly.

Note: Initially, Rogers Behavioral Health believed the economic impact of the proposed rule would be significant to their programs. After DHS staff talked with Roger's staff via telephone, a visit, and several emails, and responded to several of their concerns with changes in the proposed rule, this impact has been mitigated significantly.

An offset to the economic impact noted above is that training for all direct care staff is reduced in the proposed rule from 40 hours per staff per year to 30 hours per staff per year. This results in a savings of \$267.74 per individual staff and TOTAL SAVINGS = \$6698.00

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10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?

Yes  No

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11. Policy Problem Addressed by the Rule

Mental health day treatment services for youth are community mental health services provided by programs certified by the department to provide clinically-supervised, non-residential care to youth with mental illness, behavioral problems, or severe emotional disturbance. Chapter DHS 40 establishes requirements for program certification and operational requirements for admission, assessment, treatment planning, treatment, and discharge planning. Chapter DHS 40 has not been revised since 1996 and no longer reflects current terminology or best practices in mental health day treatment, treatment planning, and diagnostics.

There is a need to incorporate effective therapeutic practices into the rule, such as positive behavioral supports, trauma-informed care and evidence based practices to reduce the use of seclusion and restraint. Changes in children's mental health services also directly affect the rule in terms of admission requirements and assessment prior to admission, as well as defining the population to be served. Also, advances in medications and the need to closely monitor medications needs to be emphasized. Community alternatives have been developed such as Coordinated Services Teams (CST), Comprehensive Community Services (CCS), and crisis services that need to be emphasized as possible alternatives to day treatment. The references to the outdated DSM-IV manual will be revised with more generic language that will not only update DHS 40 but also prevent a need to revise the chapter each time the DSM is revised.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

Wisconsin has 41 certified child and adolescent mental health day treatment facilities that may be affected by this rule. All facilities are community-based, operating at non-profit organizations or affiliated with hospitals. The Department conducted a provider survey with all day treatment providers in April 2016 to assess components of programming, treatment, and staffing. The Department formed an Advisory Committee consisting of diverse stakeholders that met nine times. The Advisory Committee included members from five separate day treatment facilities, two parents of children who have utilized day treatment services, executive director of the Wisconsin Association of Family & Children's Agencies which includes members who provide day treatment services, and advocates from three agencies who represent children's mental health issues. The public was notified of all Advisory Committee meetings pursuant to Wisconsin's open meetings law. Committee members reviewed the initial draft and their comments guided the development of the proposed rule. In addition, the department requested comments on the economic impact of the proposed rule by publishing a solicitation in the Administrative Register and on the Department's administrative rules website: <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Economic impact comments were solicited between October 8, 2018 until October 22, 2018.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

None

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Benefits of this proposal include more effective therapeutic practices within day treatment programming to improve outcomes for children; a reduction in the use of seclusion and restraint as alternative options are required; improved oversight of medication usage and monitoring for children; and strengthening the overall system of care for children's mental health in the state through the promotion and coordination of other community-based services in conjunction with day treatment. The fiscal impact on public utility rate payers, local government units, and the state's economy as a whole will be minimal to none.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

There are no reasonable alternatives to the proposed rule changes. Mental health day treatment has developed significantly since the rule was created in 1996.

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16. Long Range Implications of Implementing the Rule

Children will be admitted to the appropriate type of service and provided the services they need. The rule will clarify standards for admission, assessment, treatment planning, treatment, discharge planning, diagnostics, clinical supervision, operational components, required personnel and training, use of seclusion and restraints, use of medications, and care coordination with other community-based services.

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17. Compare With Approaches Being Used by Federal Government

There appears to be no existing or proposed federal regulation that addresses the activities to be regulated by the proposed rule.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

Illinois' youth day treatment programs are regulated through the Illinois State Board of Education (ISBE) in 23 Ill. Adm. Code 401, Subpart A.1 The rule addresses approval of programs, placement and education of students, and operational requirements.

Iowa:

Iowa's youth day treatment is not currently regulated by rule. Iowa's Department of Human Services instead provides Psychiatric Medical Institutions for Children (PMIC) Provider Manual.2

Michigan:

Michigan's youth day treatment is regulated by the Michigan Department of Health and Human Services in Mich. Admin Code R 330.3 These rules establish requirements for various services, reporting requirements, program certification, review and evaluation, personnel, diagnosis and treatment.

Minnesota:

Minnesota's youth day treatment is regulated by the Minnesota Department of Human Services in Minn. R. 9505.0370, 9505.0371, 9505.3072. These rules establish requirements relating to eligibility, required services, qualification of providers, and operations.

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19. Contact Name

Teresa Steinmetz

20. Contact Phone Number

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

See #9 above.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Five comments were received from the public following the department's publication of a solicitation requesting comments on the economic impact of the proposed rule.

Chapter DHS 40 Advisory Committee included members from five separate day treatment facilities, two parents of children who have utilized day treatment services, executive director of the Wisconsin Association of Family & Children's Agencies which includes members who provide day treatment services, and advocates from three agencies who represent children's mental health issues. The committee met nine times.

Ongoing consultation with the Division of Quality Assurance staff at the Department of Health Services, which provides certification and compliance monitoring of day treatment facilities.

Ongoing consultation with the Division of Medicaid staff at the Department of Health Services, which provides reimbursement for the majority of children receiving day treatment services.

The Department conducted a provider survey with all day treatment providers in April 2016 to assess components of programming, treatment, and staffing.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The revised rule is consolidating and simplifying compliance. Certification is changed from every three years to a permanent certification that is valid unless suspended or revoked. The re-certification process no longer requires a full re-application packet but moves to a simplified biennial report form and payment of a continuation fee. Training requirements for direct services staff is reduced to 30 hours from 40 hours per year. Staffing requirements are expanded to allow Qualified Treatment Trainees, Advanced Practice Nurses, Physician Assistants, and Occupational Therapy Assistants. Clinical supervision is expanded to allow group supervision and case consultation. Limitations regarding male and female staffing requirements are removed.

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5. Describe the Rule's Enforcement Provisions

The Division of Quality Assurance oversees certification and compliance for the rule.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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