

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 19-018

Ch. DHS 40

Basis and Purpose of Proposed Rule

This chapter is promulgated under the authority of s. 51.42(7)(b), Stats., and is intended to regulate programs providing mental health day treatment services for youth.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The department accepts the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rules where suggested except as follows.

2. Form, Style and Placement in Administrative Code Comment

n. The provisions in ss. DHS 40.07 (6) and 40.08, regarding voluntary time outs and emergency safety interventions, respectively, could be moved towards the end of the chapter. The subject matter of the sections in the beginning of the chapter relate to general certification and operational requirements, while the later sections relate to client interactions. Department Response: These are part of the program and operational requirements and not specific to the child's treatment plan but are general requirements and prohibitions for all children attending CADT therefore are necessary in the Voluntary Time Out and Emergency Safety Interventions sections

4. Adequacy of References to Related Statutes, Rules and Forms

n. In s. DHS 40.15 (5) (k), the purpose of the cross-reference is not clear. Section DHS 40.07 (4) requires general minimum required services, and does not require written documentation of services provided in an individual case. Also, shouldn't the written documentation already be included in the treatment plan? Consider either revising this cross-reference or eliminating the provision.

Department Response: This is referencing the need to document individual supports in writing into each child's record, whereas 40.07(4) is stating the minimum required services to be offered, not documented in individual plans. These are distinct items and requirements so need to be listed in this section as well.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The proposed rule contains 60 definitions. Are all of the definitions necessary? For example, rather than defining the term "deficiency", the department could modify the substantive provision in s. DHS 40.04 (10) (a) to state that the department will issue a notice of deficiency if it determines that a program fails to meet a requirement of the chapter. The department could review the rule to identify whether other similar changes could be made to use definitions only when useful for achieving consistency and clarity of terminology within the chapter. [s. 1.01 (7) (a), Manual.]

Department Response: DCTS feels all of the definitions are necessary based on the deliberations that took place during the development of the rule. The committee felt strongly that those definitions needed to be outlined in the rule.

Final Regulatory Flexibility Analysis

The issues raised by each small business during the public hearing(s).

N/A

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

N/A

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

N/A

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

N/A

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

N/A

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

N/A

Fiscal Estimate/Economic Impact Analysis

N/A

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on May 6, 2019. A public hearing was held on May 17, 2019, in Madison, WI at the Department of Health Services . Public comments on the proposed rule were accepted until COB on May 17, 2019

List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.

Registrant	Position Taken (Support or Opposed)
Cindy O'Connell	Support
Robert Kaminski	Observer Only
Jessica Pitre	Observer Only
Barry Kasten	Observer Only
Sarah Krahn	Observer Only
Brandt Dietry	Observer Only

Summary of Public Comments to the Proposed Rule and the Agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
General	Concern that scope of DHS 40 limits itself by the wording of "Day Treatment". Parents do not have any way of knowing when an agency is providing day treatment type services if they are certified or not and there are agencies out there doing day treatment type work without certification. Concern with how they are held accountable.	DHS has the authority to mandate certification for those under WI Stat. 51.42(7)(b) and DHS 40.01: 51.42(7)(b) If DHS receives complaints or concerns regarding a provider providing day treatment services as defined in DHS 40, a cease and desist order may be issued by the Division of Quality Assurance, with subsequent referral to the Dept of Justice if the provider does not seek certification and continues to offer services.
General	Written comment received in support of the update to the rule and in use of new strength based terms and language supporting the need for treatment reflecting the current standards.	No response necessary.
General	Wisconsin Occupational Therapy Association provided written comment that they support the proposed rule as it is written as they provide vital services for mental health treatment and fit well within the new rule.	No response necessary.
General	DHS 40 creates unnecessary additional regulatory complexity in an already complex and highly regulated service area, is an outlier compared to other states, expresses best practice standards rather than minimum, and DHS may lack statutory authority to regulate all youth mental health day treatment facilities.	DHS is directed to promulgate rules governing the provision of community mental health services by the Legislature under Section 51.42(7)(b), Stats. There is no other rule specific to Child and Adolescent Day Treatment in WI. DHS has made modifications to the rule allowing facilities to choose to be a hospital or community based setting.
General	Economic Impact Analysis does not fully capture the administrative or opportunity costs of the rule.	Many past recommendations after EIA and meetings with those concerned were integrated into the proposed rule to lessen the financial burden. DHS has revised the rule to allow for choice on community based or intensive hospital based setting and lessened other requirements related to years experience with youth.
40.03	Suggestion to include a definition for client rights in the definition section	This is referenced in 40.16 Client Rights
40.04(2)(c)	Suggestion to add a section 5 requiring the program's proposal for ensuring that clients are notified of their rights before or within a reasonable time of admission	This is referenced in 40.16 Client Rights
40.04(7)(a)	Making certification valid until suspended or revoked is a welcome change from a three year renewal	No response necessary
40.04(8)	Recommend that the report be a one-page submission confirming compliance with DHS 40 requirements and not a detailed report.	The Division of Quality Assurance, Behavioral Health Certification Section, has a project underway to update the annual/ biennial recertification procedure. The outcome of the project is to eliminate submission of annual

		<p>applications by the provider. A report of certification information residing in DQA databases for each renewing certificate will be printed and sent to the provider along with a blank staff roster form. The provider will review the information, make note of any changes, and return the report with the appropriate fees and completed staff roster. There will be a required signature on the report which indicates the provider is in compliance with all applicable Wisconsin statutes and regulations and that the information submitted on the report is accurate. The report form will vary in number of pages based on the number of services and branch locations certified. The project will be phased in by type of treatment service and DHS 40 providers are going to be the first treatment service to have this new recertification report and procedure implemented.</p>
40.04(13)	Change to 1 year from the current rule requirement of 2 years is appreciated	No response necessary
40.08(7)	Appreciate the importance of quality debriefing and modifications from last recommendations that debriefing too soon may be counter-productive. Also appreciate change from initial draft to allow for circumstances when a debrief in 24 hours may not be possible.	No response necessary
40.09(1)(a)	Support removal of language from previous draft rule requiring reference from previous employers within the last 5 years.	No response necessary
40.09(3)(b)	Recommendation to eliminate the requirements that they be certified in child psychiatry or, if that is not available, have a minimum of 2 years of clinical experience working with youth.	DHS changed to 1 year clinical experience working with youth which psychiatrist's receive during their education.
40.09(3)(c-d)	Request further modification and clarification for APNP's including clarification of being a clinical coordinator, and removal of the certification requirement for APNP's.	Qualifications of clinical coordinator are listed in 40.09(3)(a)(1-2) and would pertain to any professional degree. Certification definition was modified to certified in mental health treatment by an appropriate board to expand possible credentialing.
40.09(4)(a)2	Appreciate the modification to the number of hours but asked for clarification that practice not mean only in a mental health outpatient setting.	Practice is not specified in the rule so can be any setting as long as it is with youth who have mental illness or severe emotional disturbance.
40.10(2)(c)	Appreciate deletion of this requirement – no longer in the rule	No response necessary
40.10(3)	Recommend that Physician Assistant's be allowed to provide the same services as APNP's including the required one hour of consultation per week.	The clinical consultation is regarding mental health consultation while the PA is allowed to provide medical support and services. The requirements of the psychiatrist or APNP training to allow for the clinical consultation is different than a PA and a PA would not meet the intent for clinical expertise.
40.10(3)(b)1-7	Appreciate the return to one hour per week per full time youth and that a mental health support worker may lead non-psychotherapy groups from previous rule, but do recommend that two hours per week of individual or family	The current requirement of 1 hour per week is only for the lowest level of intensity children in the current rule, level 1. Level 2 and level 3 certified facilities require 2 and 3 hours prospectively. Most children attending and needing day treatment are at a higher, more

	psychotherapy be reduced to the current requirement of one hour per week.	intensive level of need that those in outpatient settings and therefore warrant more intensive treatment while participating in day treatment services. For an intensive hospital based setting two of the four hours can now be provided by a mental health support worker if they are under the supervision of a mental health professional and implementing their individualized treatment plan.
40.10(4)(b)	Written concern that hospital based settings require a minimum of 6 hours/day of treatment and they would like to provide 2 day treatments in one facility. It also interferes with the ability to engage in classes in their school.	Rule requires 6 hours a day for hours of operation for a hospital setting. This is not a change from the current rule where a level 2 setting requires 6 hours a day and a level 3 requires 8 hours a day.
40.10(6)(c)2	Agree reducing staff training to 30 hours is adequate to provide a quality program.	No response necessary
40.11(3)	Recommendation to eliminate the screening summary as insurance won't authorize day treatment until an assessment is completed prior to admission.	A rule is not written based on billing processes or standards and screening is required to determine medical necessity and appropriateness of attendance. This is not a new requirement and was a part of the last rule as well.
40.12(1)(a)	Proposed rule is unnecessarily limiting access to care by requiring a psychiatric diagnosis of mental illness by a physician as admission criteria.	Removed language requiring licensed physician to diagnose prior to admission
40.13	Recommendation to align the assessment requirements with that of DHS 35 as it is a burden to the clinician and organization.	This was clarified and explained further due to the requirements of a prior authorization for Medicaid service and the level of intensity to show day treatment is the necessary intervention for the child. An outpatient assessment can be used to inform the day treatment assessment so would not have to be done in duplication.
40.13(2)(a)3.k	Recommend that only a look back in past treatment of one year be required as it is burdensome to get past documentation.	The rule does not specify how long back documentation is needed for to show a youth needs day treatment as a service. This is left vague to meet the individual needs of the youth to justify this intense service is required.
40.13(3)(b)7	Concern with requirement of 4 hours per week of individual or family psychotherapy in a hospital based setting and recommend there be more flexibility.	Rule is being modified to allow for choice of certification as a community based, or hospital based setting. Hospital based is meant to meet the needs of youth with severe symptomology and closer need for supervision. Four hours of individual and family psychotherapy for this intense need was recommended by the advisory committee as necessary.
40.13 and 40.15	Concern that the name of the physician who prescribed medications for the youth is required and it may not be a physician. Recommend changing to prescriber.	Name is not required in 40.13 and changed in 40.15 to prescriber.
40.17(1)	Recommend elimination of a public report as it is burdensome and does not add value to the program.	This is a requirement to allow parents, families and the public access to program outcomes and effectiveness of services to youth. Advocacy and parental groups support the belief that parents should know program outcomes.

40.17(2)	Recommend elimination of program review of operations and analysis as they are burdensome and unwarranted.	The public should have an ability to determine if a child and adolescent day treatment facility is operating in an appropriate and effective manner.
----------	--	--

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		X	
Department response to Rules Clearinghouse recommendations	X		
Final Regulatory Flexibility Analysis			X
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			X
Public Hearing Summary	X		
List of Public Hearing Attendees and Commenters	X		
Summary of Public Comments and Department Responses	X		
Fiscal Estimate/Economic Impact Analysis		X	
Revised Fiscal Estimate/Economic Impact Analysis			X
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			X
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			X
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			X
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			X