

## Report From Agency

### RULEMAKING REPORT TO LEGISLATURE

#### CLEARINGHOUSE RULE 22-078

Ch. DHS 34, 35, 36, 61, and 63, relating to allowing non-expiring certificates and biennial reporting and submission of fees.

#### Basis and Purpose of Proposed Rule

Chapters DHS 34, 35, 36, 61, and 63 pertain to behavioral health services provided on emergency, outpatient, and community bases. Chapters 34, 35, 36, and 63 currently require a program to recertify every one, two, or three years, depending on the governing rule. Such recertification processes are burdensome to the department and service providers due to their lack of uniformity and costs to implement. Chapter DHS 61 does not have certification language although it does have policies for decertification and certificate termination. The goal in modifying these rules is to create a more uniform, easy-to-apply standard, reduce administrative burdens on the department, and reduce regulatory burdens on certified facilities.

#### Department Response to Legislative Council Rules Clearinghouse Recommendations

The department accepted the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rules where suggested.

#### Final Regulatory Flexibility Analysis

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

No issues were raised by any small businesses during the public hearing and comment period.

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:

Not applicable – no issues were raised by small businesses during the public hearing and comment period.

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

None were received because no issues were raised by small businesses during the public hearing.

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

The proposed rule changes pose minimal impact to behavioral health providers. Providers will have a reduced burden in recertification processes due to the implementation of non-expiring certificates and biennial reporting and submission of fees.

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

The department did not identify any impact on small businesses.

#### Changes to the Rule Analysis or Fiscal Estimate/Economic Impact Analysis

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Rule Analysis:

No changes were made to the rule's analysis.

Fiscal Estimate/Economic Impact Analysis:

No changes were made to the rule's analysis.

#### Public Hearing Summary

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The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and the Department's Administrative Rules Website on December 12, 2022. A public hearing was held on January 5, 2023, via zoom. Public comments on the proposed rule were accepted until end of business on January 5, 2023.

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

<b>Registrant</b>	<b>Position Taken</b> (Support or Opposed)
Tim Saubers	Opposed
Lisa Marie Auter	Opposed
Mitchell Sherman	Opposed
Nze Okoronto	Opposed
Julie Shew- DHS- AA	Observer only
Adam Gould- Wood County	Observer only
Alex Nobis- DCTS	Observer only
Amy Cottington	Observer only
Amy Lorenz	Observer only
Andrea Peterson	Observer only
Ann	Observer only
Anneliese Skoda, LaCrosse	Observer only
Danielle Graham Heine- DCTS	Observer only
Diane K	Observer only
V	Observer only
Rebekah Shearier, Dunn	Observer only
Stephanie Schuaker-Karstetter- DCTS	Observer only
Claire M- Rock	Observer only
Tom Croteau- Bayfield	Observer only
Denise Eder	Observer only
Julie Lentz- Racine	Observer only
Shauna Grossman-DHS AA	Observer only
Starr Burke- Kenosha	Observer only
Byron Hopke- Burnette	Observer only
Robert Greene	Observer only
Janet Fleege- DCTS	Observer only
John Sheehan- Winnebago	Observer only
Kathleen Lyons- DQA	Observer only
Hannah Flanagan	Observer only
Katie Hanks- Racine	Observer only
Mickey	Observer only
Sharon Woodruff	Observer only

Jessica Gilbert	Observer only
Jennifer Patridge	Observer only
Angela Tourdot	Observer only
Dan Perron- DQA	Observer only
Matt Fure- Manitowoc	Observer only
Kristin Reque	Observer only
Debra Hultquist	Observer only
Erica Mueller	Observer only
Getchen Hintz	Observer only
Erin Kollenbroich	Observer only
Bette Trimble	Observer only
Emily Engling	Observer only
Naomi Sadowski- Manitowoc	Observer only
Heather Olson	Observer only
Ashley Williams	Observer only
Saima Chauhan- DCTS	Observer only
Kim Stein	Observer only
Hannah Schmidt	Observer only
Heather Foust- Winnebago	Observer only
Kim Kraeger- Waupaca	Observer only
Kayzia Teal- UCS	Observer only
Julie Meister	Observer only
Tana Koss	Observer only
Mary-Jo Olsen	Observer only
Marie Schrankel	Observer only
Wendy Winger-Dunn	Observer only
Lisa Lizak	Observer only
Emily Bryant	Observer only
Stacy Parke	Observer only
Samantha Tetzlaff	Observer only
Katie Onofreuchuk	Observer only
Kenya Bright - DHS	Observer only
Rachel Kouba	Observer only
Chana Rymarkiewicz	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	Creating non-expiring certificates goes too far. If this happens there will not be enough oversight and program quality will suffer.	<p>Having non-expiring certificates does not change the amount of DHS oversight a program receives. The proposed rule would allow the department to issue certificates with no expiration date and only require the issuance of new certificates when the provider makes changes to the services or branch offices. Providers will no longer be required to complete and submit full renewal applications every year. Instead, every two years, providers would be asked to review the biennial program report the department has on file and make any changes. The provider would attest to the accuracy of the information, compliance with regulations, provide staffing information, and submit biennial fees.</p> <p>It is important to note that the biennial onsite survey of the provider, which is an audit of adherence to the rule requirements, will still be conducted but will no longer be tied to the submission of the summary report and certificate end-date. Continued certification will be based on compliance with the administrative code.</p> <p>DCTS’s other program rules, including DHS 40, 50, and 75, are already operating under these proposed requirements. The proposed rule changes would be consistent with those.</p>
DHS 35.08 (2)	This provision (relating to compliance reviews) should not be modified out of concern that there will not be enough oversight if the changes are made.	The biennial onsite survey of the provider will still be conducted but will no longer be tied to the submission of the summary report and certificate end-date. Therefore quality of services should not be impacted. There will be no reduction in oversight.
General	If these changes go through, peer specialists will no longer need to be trained or certified.	This proposed rule change does not impact peer specialist training or certification. Such activities are outside the scope of this project.
General	I would like to see clear use of audits outside of response to initial application and report of violations and such. I would like to see audits performed at random, unexpectedly and regularly to assure the highest care and conformance with policy.	The rule change would not impact the program audits that review quality. These surveys will continue as before.
General	I would love for the department to request exit interviews of staff whom quit or are terminated	Patient surveys are required for various types of funding and are found in several administrative

	<p>as well as patient surveys of former and active people's or their families to better assure the information being provided by the agency is accurate and true.</p>	<p>rules for programs. Addressing patient and staff surveys are outside the scope of this project.</p>
<p>General</p>	<p>WCHSA supports the rule amendments that will standardize program certification periods and renewal procedures under the DHS Administrative Codes 34, 35, 36, 61, and 63. Those administrative codes directly impact county human service departments and community service providers that counties contract with. The proposed amendments to make certification requirements uniform; allow non-expiring certificates; and allow for biennial reporting and submission of fees should ease the administrative burden on county departments and contracted service providers to maintain their certifications. It will be easier for county departments and service providers to submit applications and fees for certification renewals. The current different certification periods can create challenges for organizations that are certified to provide multiple types of services. The amendment to create non-expiring certificates will also allow for continued operation should certification renewal be delayed for any reason, avoiding disruptions in services to consumers and the ability of county departments and service providers to bill for services.</p>	<p>Not applicable</p>



## 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