

THIS SCOPE WAS APPROVED BY
GOVERNOR SCOTT WALKER ON JULY 27, 2018

Statement of Scope

DEPARTMENT OF HEALTH SERVICES

Rule No.: DHS 75

Relating to: Community Substance Abuse Service Standards

Rule Type: Permanent

Type of Statement of Scope:

Original

1. Finding/nature of emergency (Emergency Rule only):

Not applicable

2. Detailed description of the objective of the proposed rule:

The department proposes to revise ch. DHS 75, which establishes standards for community substance use disorder prevention and treatment services. The general objectives of the rulemaking are drawn from 2017 Executive Order #228, and are as follows:

Require certified clinics to embrace evidence-based practices in treatment.

Require state-certified AODA clinics to keep Naloxone on-site in the event of opioid overdoses.

Streamline rules to improve quality of care and ease access to treatment services by:

Providing greater flexibility to providers.

Adopting best-practices in community substance use disorder treatment.

Adopting federal opioid drug program terminology.

In addition, the department proposes to revise rules language where needed to meet and align with federal Medicaid requirements and guidelines pertaining to substance use disorder services.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The department proposes the following specific revisions to policies included in the rule:

Certified service providers are not currently required to embrace evidence-based practices in treatment. Revisions to the rule will include this requirement to ensure services are effective and supported by research.

Certified clinics are not currently required to keep Naloxone on-site to administer in the event of opioid overdoses. Revisions to the rule will include this requirement.

Chapter DHS 75 has not been substantially revised since 2010. Revisions to the rule will streamline various stages in the prevention, intervention and treatment process (including screening, intake, assessment, treatment planning, staffing and supervision), grant greater flexibility to counties, tribes and

certified providers, in meeting emerging needs within their communities, and improve access to services. Specific revisions are intended to:

- Reduce wait time for assessment by permitting treatment providers to accept a different assessment from an appropriately-credentialed provider that is less than 30 days old.
- Limit the requirement for preliminary service plans only to high-risk situations.
- Allow Advanced Practice Nurse Practitioners (APNPs) or Physician Assistants (PAs) with specialized addiction training to approve assessments (e.g., treatment plans, discharge summaries) under various circumstances.
- Modify required signatures (e.g., counselor-to-supervisor; client-to-physician) for better flow of information (e.g., from counselor and client to supervisor and/or physician).
- Increase group counseling staffing ratios to reflect standards adopted in evidence-based practice.
- Align DHS 75 rules addressing supervision requirements of Clinical Substance Abuse Counselors (CSACs) and Substance Abuse Counselors (SACs) that have over 3,000 hours of experience with Department of Safety and Professional Services (DSPS) licensure rules.
- Give providers more discretion in selecting performance criteria to include in outcome and performance reports.
- Update references to include evidence-based criteria and guidelines adopted by the American Society of Addiction Medicine (ASAM) for services across all substance use disorder recovery stages.
- Authorize the department to grant discretionary waivers and variances of regulatory requirements, under certain conditions, to all certified providers in the state. Permitting department authority to issue waivers and variances will create opportunities for counties, tribes and service providers to initiate new or alternative strategies for providing quality services and meeting consumer and community needs that change over time.
- Allow clinics -- certified by a national accrediting body that has developed behavioral health standards for substance use disorders -- to submit their inspection materials for review, in lieu of an on-site visit.
- Use ASAM or other nationally-recognized program standards for establishing minimum qualifications for residential treatment facilities to meet regarding specific types of services provided, hours of clinical care, and credentials for staff.
- Replace outdated terminology, references, and provisions to promote consistency with current law and standards of practice within substance use disorders treatment.
- Create a new, single certification category for integrated behavioral health outpatient services who seek to provide both substance use disorder and mental health counseling and services.
- Incorporate input provided by stakeholders throughout the rulemaking process that is consistent with the authority granted to the department and the aforementioned objectives.
- In place of the current 2 year certification period, certifications will be valid until suspended or revoked by the department for all programs except for opioid treatment systems, as defined and specified in 51.4224 (1) and (2), Stats. Every 24 months, on a date determined by the department, programs will be required to submit a biennial report on a form provided by the department and payment of certification continuation fees.

There are no reasonable alternatives to rulemaking. The objectives are drawn from the Governor's executive order and are based on recommendations from the Governor's Taskforce on Opioid Abuse. The proposed revisions are intended to improve quality and access to services, by offering greater flexibility to providers and updating rule provisions to reflect current best-practices in treatment.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department's statutory authority for the rule is given in the following sections:

Section 51.42 (7) (b), Stats., reads:

(b) The department shall promulgate rules which do all of the following:

1. Govern the administrative structure deemed necessary to administer community mental health, developmental disabilities, alcoholism and drug abuse services.
2. Establish uniform cost record-keeping requirements.
3. Prescribe standards for qualifications and salaries of personnel.
4. Prescribe standards for quality of professional services.
5. Prescribe requirements for in-service and educational leave programs for personnel.
6. Prescribe standards for establishing patient fee schedules.
7. 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.
- 7m. Define "first priority for services" under and otherwise implement sub. (3) (ar) 4m.
8. Prescribe such other standards and requirements as may be necessary to carry out the purposes of this section.
9. Promulgate rules establishing medication procedures to be used in the delivery of mental health services.
10. Establish criteria for the level of scrutiny for evaluation of community mental health programs.
11. Prescribe requirements for certification of community mental health programs, except as provided in s. 51.032, including all of the following:
 - a. A requirement that, as part of the certification process, community mental health programs must demonstrate that their staff have knowledge of laws, regulations and standards of practice which apply to the program and its clients.
 - b. A requirement that, when conducting certifications, certification staff must use a random selection process in reviewing client records.
 - c. A requirement that certification staff conduct client interviews as part of the certification process.
 - d. A requirement that certification staff provide certification results to the community mental health program reviewed, to subunits within the department responsible for community mental health program monitoring and to the county department under this section in which the community mental health program is located upon completion of certification.

Section 51.4224, Stats., reads:

(1) DEFINITIONS. In this section:

- (a) "Narcotic treatment service for opiate addiction" is an opioid treatment system that includes a physician who administers or dispenses a narcotic drug to a narcotic addict for treatment or detoxification treatment with a comprehensive range of medical and rehabilitation services; that is approved by the state methadone authority and the designated federal government's regulatory authority; and that is registered with the U.S. drug enforcement administration to use a narcotic drug for treatment of a narcotic addiction.
- (b) "Opioid treatment system" means a structured delivery system for providing substance abuse prevention, intervention, or treatment services and meets all of the following criteria:
 1. The system receives funds through the state under this chapter.
 2. The system is approved by the state methadone authority.

(c) "State methadone authority" means the subunit of the department designated by the governor to exercise the responsibility and authority in this state for governing the treatment of a narcotic addiction with a narcotic drug.

(2) DURATION OF CERTIFICATION. The department shall issue a certification for an eligible opioid treatment system, as determined by the department, that remains in effect for 3 years unless suspended or revoked and coincides with the federal government certification period.

(3) COUNSELING SERVICES. The department shall allow a narcotic treatment service for opiate addiction to contract for substance abuse counselors and clinical substance abuse counselors in lieu of employing substance abuse counselors or clinical substance abuse counselors. The narcotic treatment service for opiate addiction may enter into a contract agreement with an agency to provide counseling services. A narcotic treatment service for opiate addiction that enters into a contract agreement for counseling service shall submit to the department a copy of the agreement with each application and reapplication.

(4) LENGTH OF TREATMENT. The department may not limit the length of treatment an individual receives from a narcotic treatment service for opiate addiction. Nothing in this subsection affects whether treatment is reimbursable under the Medical Assistance program under subch. IV of ch. 49.

(5) GEOGRAPHIC PROXIMITY. The department may not require an individual who seeks admission to a narcotic treatment service for opiate addiction to reside within a certain radius of the narcotic treatment service for opiate addiction. The department may not require an individual who resides outside of a certain radius of a narcotic treatment service for opiate addiction to request an exception to receive treatment from the narcotic treatment service for opiate addiction. Nothing in this subsection affects whether treatment is reimbursable under the Medical Assistance program under subch. IV of ch. 49.

Section 51.45 (8) and (9), Stats., reads:

(8) STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES.

(a) The department shall establish minimum standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, except as provided in s. 51.032, and fix the fees to be charged by the department for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall distinguish between facilities rendering different modes of treatment. In setting standards, the department shall consider the residents' needs and abilities, the services to be provided by the facility, and the relationship between the physical structure and the objectives of the program. Nothing in this subsection shall prevent county departments from establishing reasonable higher standards.

(b) The department periodically shall make unannounced inspections of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(c) Approval of a facility must be secured under this section before application for a grant-in-aid for such facility under s. 51.423 or before treatment in any facility is rendered to patients.

(d) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules and information the department reasonably requires, including any data or information specified under s. 46.973 (2m). An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

- (e) The department, after notice and hearing, may under this subsection suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.
- (f) The circuit court may restrain any violation of this section, review any denial, restriction or revocation of approval under this subsection, and grant other relief required to enforce its provisions.

(9) ACCEPTANCE FOR TREATMENT; RULES. The secretary shall promulgate rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, persons who are drug dependent, and intoxicated persons. In promulgating the rules the secretary shall be guided by the following standards:

- (a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.
- (b) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless the patient is found to require inpatient treatment.
- (c) No person may be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.
- (d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.
- 51.45(9)(e) (e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

Section 46.973 (2) (c), Stats., reads:

(2) A drug dependence and drug abuse program is established in the department. The secretary may develop and carry out programs concerned with education about and prevention of drug dependence and drug abuse, and programs concerned with treatment and rehabilitation of drug dependent persons and persons who abuse drugs. The secretary shall appoint a drug dependence program coordinator to handle liaison with other departments and agencies, including the state council on alcohol and other drug abuse. These programs may include, but are not limited to:

...

- (c) Development of standards and provision of consultation for local drug dependence and drug abuse programs.

Section 49.45 (2) (a) (11), Stats., reads:

(2) DUTIES.

- (a) The department shall:

11.

- a. Establish criteria for certification of providers of medical assistance and, except as provided in par. (b) 6m. and s. 49.48, and subject to par. (b) 7. and 8., certify providers who meet the criteria.
- b. Promulgate rules to implement this subdivision.
- c. The department shall accept relevant education, training, instruction, or other experience that an applicant obtained in connection with military service, as defined in s. 111.32 (12g), to count toward the education, training, instruction, or other experience that is required to certify providers of medical assistance if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training, instruction, or other experience required for the certification.

Section 227.11 (2) (a), Stats., reads:

(2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department estimates that it will take approximately 1,000 hours to develop the proposed rule. This includes the time required for research and analysis, establishing and convening an advisory committee, drafting the rule, preparing any related documents, holding a public hearing and communicating with affected persons and groups.

6. List with description of all entities that may be affected by the proposed rule :

Entities that may be affected by the proposed rule include:

Consumers of substance use disorder services.

Organizations representing consumers of substance use disorder services.

Wisconsin counties and tribes providing substance use disorder services.

Treatment providers and prevention specialists that receive funds under ch. 51, Stats., and that are governed by ch. DHS 75.

Other professionals involved in treatment, or coordination of substance use treatment.

The department.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

Under 45 C.F.R. s. 96.123 (a) (7), each State will improve the process in the State for referrals of individuals to the treatment modality that is most appropriate for individuals, will ensure that continuing education is provided to employees of any funded entity providing prevention activities or treatment services, and will coordinate prevention activities and treatment services with the provision of other appropriate services as provided by 45 C.F.R. §96.132.

When agencies obtain federal certification for Opiate Treatment services, they are certified as an Opiate Treatment Program under federal 21 C.F.R. §291 and 42 C.F.R §8, which govern Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction.

8. Anticipated economic impact of implementing the rule:

The proposed rule revisions may have a moderate economic impact, stemming from costs that certified clinics may incur in keeping Naloxone on-site, and from the initial adoption of evidence-based practices and ASAM guidelines by certified service providers. These costs will be offset by greater flexibility for providers and improvements in treatment.

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