



State of Wisconsin  
**Department of Health Services**

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Jim Doyle, Governor  
Karen E. Timberlake, Secretary

August 6, 2008

TO: Legislators and stakeholders  
FROM: Department of Health Services  
RE: HFS 35 related to mental health outpatient clinics

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The Department of Health Services (DHS) sent HFS 35 to the Legislature on July 29, 2008. The Senate referred it to the Senate Committee on Health, Human Services, Insurance and Job Creation. The Assembly has not yet referred the bill to standing committee.

Current law requires DHS to review and certify community mental health programs to make sure they are in compliance with state law. The statutes also require the Department to promulgate rules to govern the structure that community mental health programs need to have in place regarding staff, quality care, patient rights, medication procedures and other practices. Additionally, the statutes give DHS authority to promote access to appropriate mental health and alcohol and other drug abuse services and to certify clinics to receive Medicaid.

The Department began working to revise these rules more than four years ago. The current regulations have not been comprehensively revised since 1981. At that time, the vast majority of clinics were county owned and operated, so there was little need to specify a minimum number of staff for the clinic; there was no licensure for mental health professionals other than psychiatrists and psychologists; and there have been many changes in the treatment of mental illnesses. For example, diagnoses have been added and deleted from the American Psychiatric Association's Diagnostic and Statistical Manual and the concepts and principles of "recovery" related to mental illness were not prevalent in the field. Changes in these and other areas necessitated a major revision of the rule.

To solicit input, the Department held six public listening sessions in 2005 and three public hearings in 2006. DHS staff also met individually with stakeholders to discuss their specific questions, concerns or recommendations. Since that time, the Department has been working through all of the public comments and revising the proposed rule to accommodate each concern to the extent possible within the Department's statutory authority. The rule before the Legislature incorporates many changes as a result of stakeholder feedback.

This memo highlights the main components of the proposed rule.

**Improvements to current regulations:**

1. **Many provisions in the proposed rule are less prescriptive than the current rule.** The language in HFS 35 is more outcome-based than current rule language. For example, the training and orientation section require the clinic administrator to ensure each staff member receives initial and continuing training that enables the staff member to perform duties effectively, efficiently, and competently. While there are specific training content areas staff members should receive (e.g., recovery concepts and

principles), there are no specific hours for staff persons to participate in staff training. This will allow clinics to design their own training program to meet the needs of their staff members and consumers.

2. **Recognizes Graduate Students and Persons Who Have a Training License or Certificate.** The current rule is silent as it pertains to these individuals. In HFS 35, they are “qualified treatment trainees” and are referenced in the definition of “mental health professional.” All “mental health professionals” are permitted to practice psychotherapy in an outpatient mental health clinic. The recognition of qualified treatment trainees is an important issue related to workforce development; it will encourage clinics to work with graduate students and hire persons who have their graduate degree and are working towards licensure as a mental health professional.
3. **Increased Flexibility for Minimum Staffing Requirements.** It will be easier for both clinic staff and surveyors to determine if the criteria for minimum staffing of the clinic compared to the current rule. Many clinics have indicated over the past several years that they cannot find a willing, competent, available psychiatrist or psychologist to work with the clinic. The proposed rule provides an option for minimum staffing that does not require a psychiatrist or psychologist as a staff member of the clinic, whereas, the current rule requires a psychiatrist or psychologist as a staff member of the clinic. The proposed rule more clearly regulates the provision of psychotherapy with additional requirements if the clinic provides medication management as part of its services. Clinics that do not provide such service are to collaborate with the consumer’s prescriber.
4. **Includes Acknowledgement of Professional Licensure Status.** Various professional organizations have requested that the proposed rule acknowledge their licensure status. The rule accomplishes this via definitions (e.g., “licensed treatment professional”) and various requirements. For example, the current rule requires a physician to make written referrals of patients for psychotherapy when therapy is not provided by or under the clinical supervision of a physician. HFS 35 permits a licensed treatment professional to make the written referral for psychotherapy. Note: State statutes require a physician to make the referral for Medicaid recipients.
5. **Greater Flexibility for Branch Offices.** Current Department policies require staff providing services in a branch office to be present in the main office 60 percent of the time for supervision or collaboration efforts. Also, current department policies require the records to be stored in the main clinic. The proposed rule does not continue these requirements, which allows for much greater flexibility for the clinic, as long as the appropriate supervision and management of patient records is in place.
6. **Recognizes National Accreditation.** The proposed rule permits the Department to waive the recertification survey if the clinic holds current accreditation for its outpatient mental health clinic from a national accrediting body and if the accrediting body’s standards substantially address the requirements of HFS 35. This process will save both the clinic and the department the time and expense of a duplicative survey process.
7. **Incorporates Existing Variances.** The proposed rule incorporates the variances DHFS has granted during the past few years into the rule language. The variances addressed issues regarding clinical collaboration in lieu of clinical supervision, the practice of advance practice nurse practitioners (APNPs) in a clinic, the permitted size (number of consumers and therapists) of a group therapy session, etc.

8. **Incorporates Recovery, Trauma & Cultural Competency.** Recovery principles, trauma-informed assessments and services, and cultural competency requirements are incorporated within the rule.
9. **Integrated Treatment.** The proposed rule permits the clinic to serve persons identified with a primary diagnosis of substance abuse if the clinic has at least one staff who is a substance abuse counselor. Current regulations allow only certified outpatient substance abuse treatment clinics to serve such persons. This should foster improved integrated treatment, which is an evidence-based treatment approach.
10. **More Flexibility on Clinical Review Timelines.** HFS 35 distinguishes between the clinical review between the therapist and the consumer from the reviews done as part of clinical collaboration or clinical supervision. The clinical review time period will be much more flexible (every 90 days or six treatment sessions, whichever covers a longer period of time). In many clinics, the current requirement for clinical supervision of every record is implemented in a cursory manner resulting in a sign-off in the record by a psychiatrist or psychologist, which adds cost but little value. The proposed changes to require clinical supervision or clinical collaboration will permit the clinic to focus its oversight and quality improvement process in a more meaningful manner by reviewing cases for which there are increased risk of adverse outcomes as well as a sample of cases from each mental health professional. HFS 35 also increases the timeframe for clinical review to determine if progress is being made. These changes should result in less paperwork for clinics and fewer clinic costs.
11. **Clarifies When Discharge Summary Is Needed.** The current rule requires treatment providers to write a discharge summary when they terminate services. Treatment providers often misinterpreted this requirement to mean they had to write a discharge summary whenever there is a break in the treatment schedule. The proposed rule clarifies when they must write a discharge summary. This should reduce a clinic's workload.

### **Areas of disagreement over HFS 35:**

1. **Individual Provider versus Clinic Certification**

Some individuals are opposed to any DHS rule that requires oversight of them practicing psychotherapy. They maintain that because they are licensed by the Department of Regulation and Licensing (DRL), any regulation by DHS is duplicate regulation. However, because state statutes only require insurance companies and Medicaid to provide reimbursement for psychotherapy services to psychiatrists, licensed psychologists, and DHS-certified outpatient mental health clinics, these professionals need DHS to have a set of regulations for outpatient mental health clinics. The Department believes legislation is required to make the changes these individuals want. The National Association of Social Workers (NASW)-Wisconsin and individuals did work with legislators to introduce SB 246/AB 463 (the "vendorship" bill) this session. The Senate passed the bill, but the Assembly did not.
2. **Minimum Clinic Staffing**

This issue is directly related to the above issue. Some stakeholders believe that previously issued statewide variances permit a clinic to be comprised of one licensed professional and that the Department guaranteed that the exact language of the variances would be incorporated into the rule. The variance language does not permit a clinic to be comprised of a sole practitioner. In addition, DHS assured that the variances would be incorporated into the rule, but no assurance was given that the verbatim language

would be used in the rule. The proposed rule clarifies the language of one of the statewide variances. The proposed rule provides options for minimum staff requirements, which all existing clinics should be able to meet:

### **3. Mental Health Professional**

Before DRL licensure started in 2002, the only process that existed for individuals, other than psychiatrists and psychologists, to receive approval to practice psychotherapy in Wisconsin was through the outpatient mental health clinic rule and DHS approval. Currently, some individuals object to anybody who does not have DRL licensure being able to practice psychotherapy.

DHS continues to have statutory authority to allow non-licensed persons who DHS believes have comparable education and clinical experience to practice psychotherapy in a DHS-certified clinic. DHS believes this approval process is essential to increase the workforce and ensure adequate access for consumers to get mental health services. Some of the individuals who ask for this approval today are coming from another state and are unable to get a DRL license because the education and practice experience they have does not match up exactly with Wisconsin license requirements. Others are obtaining degrees from Wisconsin colleges and universities in related fields, such as public mental health, that provide coursework that is not identical, but is comparable, to the licensure requirements for psychologists, marriage and family therapists, professional counselors, and social workers.

Still, the Department agrees with the DRL Joint Board (Marriage and Family Therapy, Professional Counseling, and Social Work) that having all people who practice psychotherapy be licensed is the ideal outcome. For that reason, HFS 35 sunsets the Department's process of approving persons to practice psychotherapy in an outpatient mental health clinic on January 1, 2014. This gives DRL and others sufficient time to address barriers to professional licensure that necessitate the Department's process. The proposed rule would grandfather in all individuals who the Department has permitted to practice psychotherapy in a certified clinic, thus maintaining current access levels.

### **4. Psychotherapy by an Advance Practice Nurse**

There have been ongoing discussions between staff members at DHS, DRL Nursing Board, DRL Joint Board, and the Wisconsin Nurses Association regarding whether advanced practice nurses (APNs) may practice psychotherapy. HFS 35 allows APNs to practice psychotherapy if the DRL Nursing Board determines that it is within their scope of practice to do so. This removes the Department from the process, thus addressing stakeholders' concerns.

## Attachment

### § HFS 35.03

(9g) “Licensed treatment professional” means an individual licensed as a physician under s. 448.03, Stats., who has completed a residency in psychiatry; a psychologist or a private practice school psychologist licensed under ch. 455, Stats., a marriage and family therapist licensed under s. 457.10 or 457.11, Stats., a professional counselor licensed under s. 457.12 or 457.13, Stats., an advanced practice social worker granted a certificate under s. 457.08 (2), Stats., an independent social worker licensed under s. 457.08 (3), Stats., or a clinical social worker licensed under s. 457.08 (4), Stats.; and includes any of these individuals practicing under a currently valid training or temporary license or certificate granted under applicable provisions of ch. 457, Stats. “Licensed treatment professional” does not include an individual whose license or certificate is suspended, revoked, or voluntarily surrendered, or whose license or certificate is limited or restricted, when practicing in areas prohibited by the limitation or restriction.

(10) “Mental health practitioner” means a person who before January 1, 2014, holds a graduate degree from an accredited college or university in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field, and who either has completed the applicable supervised practice requirements under ch. MPSW 4, 12, or 16, or Psy 2 or 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, revoked, or voluntarily surrendered, or whose professional license or certificate is limited or restricted, when practicing in areas prohibited by the limitation or restriction, irrespective of whether that individual otherwise meets the terms of this definition. Whether a person’s graduate degree is in a “closely related” field will be determined by the Department on a case-by-case basis upon application by a clinic.

(11) “Mental health professional” means a licensed treatment professional, a mental health practitioner, a qualified treatment trainee, or a recognized psychotherapy practitioner.

(17m) “Qualified treatment trainee” means either of the following:

(a) A graduate student who is enrolled in an accredited institution in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field.

(b) A person with a graduate degree from an accredited institution and course work in psychology, counseling, marriage and family therapy, social work, nursing or a closely related field who has not yet completed the applicable supervised practice requirements described under chs. MPSW 4, 12, or 16, or Psy 2 as applicable.

(17r) “Recognized psychotherapy practitioner” means an individual who may lawfully practice psychotherapy within the scope of a license, permit, registration or certificate granted by this state other than under ch. 455 or 457, Stats.