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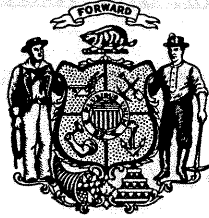

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **99–141**

AN ORDER to repeal HFS 61.75; and to create chapter HFS 33, relating to mental health day treatment programs for adults.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

10–06–99 RECEIVED BY LEGISLATIVE COUNCIL.

11–03–99 REPORT SENT TO AGENCY.

RS:AS:jal;ksm

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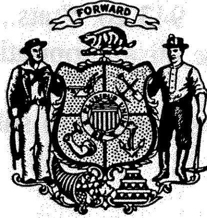

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CLEARINGHOUSE RULE 99–141

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. It appears that s. HFS 33.05 should be renumbered to s. HFS 33.04 and that the first occurrence of s. HFS 33.06, relating to waivers, should be renumbered to s. HFS 33.05. Internal cross-references in ch. HFS 33 should be renumbered accordingly.

b. Section HFS 33.07 actually provides a definition of the term "adult mental health day treatment services." Consequently, the subsection should read:

> HFS 33.07 (1) MENTAL HEALTH DAY TREATMENT SERVICES. In this section, "adult mental health day treatment services" means services provided . . . .

c. In s. HFS 33.11 (3), the phrase "have the option of using" should be replaced by the phrase "may use." Section HFS 33.03 (6) and (13) refer to materials prepared by the American Psychiatric Association and the Commission on Professional and Hospital Activities. In incorporating these materials, has the department complied with s. 227.21, Stats.?

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

a. In s. HFS 33.05 (3) (b) 2., the reference to sub. (11) should be replaced with a reference to sub. (12). This comment also applies to sub. (8) (b) (intro.).

(b)" could be deleted because it is repetitive. Finally, the reference to the specification on a shorter time period under sub. (3) (d) (sub. (3) (c) is incorrectly referenced in the text) is confusing because sub. (3) (d) only applies to initial certification.

k. Section HFS 33.05 (8) (a) defines "suspension" for purposes of the subsection. However, "suspension" is used in sub. (9). If the term only is used in sub. (9), then the definition should be placed in that subsection. However, if it is used elsewhere, then the definition could be placed in s. HFS 33.03 or at the beginning of s. HFS 33.05.

l. In s. HFS 33.05 (8) (b) 2., "claimed to be licensed or certified when he or she was not" could be replaced with "made misrepresentations regarding his or her professional licensure or certification."

m. In s. HFS 33.05 (8) (b) 6., "convicted" should be defined at the beginning of the subsection.

n. In s. HFS 33.05 (8) (b) 2. to 6., perhaps "current" should be inserted before "staff member."

o. In s. HFS 33.05 (9) (a), "noted" should be deleted.

p. In s. HFS 33.05 (9) (b), "Where" should be replaced with "If." This comment also applies to s. HFS 33.09 (1) (a). Also, it may be clearer to replace "under par. (a) which is the focus of concern" with "resulting in suspension" under par. (a). Also, it would be clearer to insert ", that factor" after "conduct became known." Finally, would this provision be better placed in sub. (12)?

q. In s. HFS 33.05 (9) (c), what is meant by "any additional remedies"? In addition, "under the suspension" could be deleted.

r. In s. HFS 33.05 (10) (d), it appears the offer of provisional certification should be limited to programs with fewer than six minor violations to be consistent with sub. (3) (a) 2. This comment also applies to sub. (11) (a).

s. It appears that s. HFS 33.05 (10) (e) could be deleted because it is repetitive.

t. In s. HFS 33.05 (11) (a), "shall issue a notice of deficiency to the program and" could be deleted because it is repetitive.

u. The note to s. HFS 33.05 (12) should be amended to read: "An appeal may be mailed to the Division of Hearings and Appeals at . . . or hand-delivered to the division . . . ." Also, a comma should be inserted after "Madison."

v. In s. HFS 33.06 (Waivers) (2) (e), "would meet" should be replaced with "meets."

w. In s. HFS 33.06 (Waivers) (2) (c) and (3) (b), the terms "professional positions" and "professional staff" are used. Do these terms need to be defined?

person is 18 years of age or older. Are these references to a client's parent appropriate? Also, in sub. (5) (b) 2., it appears that the phrase "or guardian" should be inserted before the phrase "is comfortable."

an. In s. HFS 33.09 (5) (e), it appears that the reference to a dispensing pharmacy is not appropriate because pharmacies are not regulated under this chapter of the rules.

ao. In s. HFS 33.09 (5) (f) 3., the word "is" following "Written so that" should be replaced with "it." Also, the hyphen in "side-effects" should be deleted.

ap. In s. HFS 33.09 (7) (c) 1. c., the phrase "finding out what they know and their views about" is somewhat awkward and could be replaced with a phrase such as "discussing their views on why."

aq. In s. HFS 33.09 (7) (c) 2. f., perhaps the sentence could be rephrased to express the intent to involve all programs in a review, without requiring them to, because some of these programs are likely not regulated under this chapter.

ar. Section HFS 33.12 (4) (intro.), discusses a report that must be prepared prior to recertification. This should be referenced in the provisions relating to recertification.

SECTION 1. Chapter HFS 33 is created to read:

CHAPTER HFS 33
MENTAL HEALTH DAY TREATMENT SERVICES FOR ADULTS

HFS 33.01 Authority and purpose
HFS 33.02 Applicability
HFS 33.03 Definitions
HFS 33.04 Certification
HFS 33.05 Waivers
HFS 33.06 Personnel
HFS 33.07 Services
HFS 33.08 Admission
HFS 33.09 Ongoing treatment
HFS 33.10 Client records
HFS 33.11 Client rights
HFS 33.12 Client satisfaction

HFS 33.01 Authority and purpose. (1) This chapter is promulgated under the authority of s. 51.42 (7) (b), Stats., to establish standards for the operation of mental health day treatment service programs for adults, to support appropriate use of those services and to help ensure that services are readily available and are effective and that clients are protected from harm, and to establish a process for certification of those programs.

(2) This chapter is not intended to regulate other forms of day treatment services for adults such as those operated by alcohol and other drug abuse treatment programs under s. HFS 61.61.

(3) An agency providing mental health day treatment services to adults may operate compatible treatment programs designed to serve clients with a variety of treatment needs. If this is the case, this chapter applies only to the adult mental health day treatment services part of that agency's total program.

(4) Mental health services certified under this chapter shall be coordinated with other mental health services or programs in which a client participates.

HFS 33.02 Applicability. (1) Except as provided in sub. (2), this chapter applies to all programs applying to the department for certification or certified by the department to provide mental health day treatment services to adults.

(2) (a) An agency that holds current accreditation for its adult mental health day treatment program from the joint commission on accreditation of health care organizations (JCAHO) or the commission on the accreditation of rehabilitation facilities (CARF) may ask the department to waive the requirement that the agency meet the standards contained in this chapter. To request a waiver, the agency shall submit to the department the materials prepared for the survey of the adult day treatment program by JCAHO or CARF, and the department shall

(10) "Major deficiency" means that, as determined by a representative of the department, an aspect of the operation of a program or the conduct of the program's personnel deviates from the requirements of this chapter in a way that substantially interferes with the delivery of effective treatment to clients, creates a risk of harm to clients, violates the rights of clients referenced in this chapter or included in other state or federal laws, misrepresents the nature, amount or expense of services delivered or offered or the qualifications of the personnel offering those services, or impedes effective monitoring of the program by the department.

(11) "Medication error" means any error in prescribing or administering a specific medication, including an error in writing or transcribing the prescription or in obtaining and administering the correct medication in the correct form and dosage and at the correct time.

(12) "Medication monitoring," means observation to determine and identify any beneficial or undesirable effects, which could be related to taking a psychotropic medication.

(13) "Mental disorder" means a condition listed in DSM-IV or in Chapter 5, "Mental Disorders," in the International Classification of Diseases, 9th edition, Clinical Modification, ICD-9-CM, published by the commission on professional and hospital activities.

(14) "Mental health day treatment program" or "program" means a non-residential program for adults in a medically supervised setting that provides an integrated, comprehensive and complementary schedule of active treatment services provided in a stable therapeutic milieu and designed to avert or shorten the need for inpatient mental health services and to improve or maintain the ability of an individual with a mental disorder or severe emotional or behavioral impairment to function as independently as possible.

(15) "Minor deficiency" means that, as determined by a representative of the department, while an aspect of the operation of a program or the conduct of the program's personnel deviates from the requirements of this chapter, the deviation does not substantially interfere with the delivery of effective treatment to clients, create a risk of harm to clients, violate the client rights referenced in this chapter or included in other state or federal laws, misrepresent the nature, amount or expense of services delivered or offered or the qualifications of the personnel offering those services, or impede effective monitoring of the program by the department.

(16) "Psychotropic medications" means an antipsychotic, an antidepressant, lithium carbonate or a tranquilizer or any other drug used to treat, manage or control psychiatric symptoms or disordered behavior.

Note: Examples of drugs other than an antipsychotic or antidepressant, lithium carbonate or tranquilizer used to treat, manage or control psychiatric symptoms or disordered behavior include, but are not limited to, Carbamazepine (Tegretol), which is typically used for control of seizures but may be used to treat a bi-polar disorder, and propranolol (Inderal), which is typically used to control high blood pressure but may be used to treat explosive behavior or anxiety states.

(18) "Psychotherapy" has the meaning given in s. HFS 101.03 (145).

4. Review program policies and records, and interview enough program staff to determine if staff generally have knowledge of the statutes, rules and standards of practice that apply to the program and its clients.

(c) The certification inspection under par. (b) shall be used to determine if the program is in compliance with the standards specified in this chapter. Certification decisions shall be based on an inspection of the program. The indicators by which compliance with the standards is determined shall include the following:

1. Statements made by the applicant or the applicant's designated agent authorized administrative personnel or staff members.

2. Documentary evidence.

3. Answers to questions concerning the implementation of program policies and procedures, as well as examples of implementation provided to assist the department in making a judgment regarding the applicant's compliance with the standards in this chapter.

4. On-site observations by a representative of the department.

5. Reports by clients regarding the program's operations.

6. Information from grievances filed concerning the program.

(d) The applicant shall make available for review by the designated representative of the department all documentation necessary to establish whether the program is in compliance with the standards in this chapter, including but not limited to the written policies and procedures of the program, work schedules of staff, program service logs, credentials of staff and client treatment records.

(e) The designated representative of the department who reviews the documents under pars. (a) to (d) and interviews clients under par. (b) 1. shall preserve the confidentiality of all client information obtained during the certification process, in compliance with ch. HFS 92.

(3) ISSUANCE OF CERTIFICATION. (a) *Action on application.* Within 60 days after receiving an application for initial certification or renewal of certification, the department shall do one of the following:

1. Certify the program if all requirements for certification are met.

2. Provisionally certify the program under sub. (11) if no major deficiencies and no more than 6 minor deficiencies are found.

3. Deny certification if one or more major deficiencies are found or more than 6 minor deficiencies are found.

(c) Upon receipt of an application for renewal of certification, the department shall, prior to the expiration of certification, conduct an inspection as provided in sub. (2) to determine the extent to which the program continues to comply with the requirements of this chapter.

(7) FEE FOR CERTIFICATION. The department shall establish fees for certification.

(8) ACTIONS AGAINST A CERTIFIED PROGRAM. (a) In this subsection, "suspension" means a temporary withdrawal of certification.

(b) The department may terminate, suspend or refuse to renew a program's certification after providing the program with prior written notice of the proposed action, which shall include the reason for the proposed action and notice of opportunity for a hearing under sub. (11), whenever the department finds that any of the following has occurred:

1. A license, certificate or required local, state or federal approval of the program has been revoked or suspended or has expired.

2. A staff member of the program requiring a professional license or certificate ~~claimed to be licensed or certified when he or she was not~~, has had his or her license or certificate suspended, revoked or otherwise limited or has allowed his or her license or certificate to expire.

3. A staff member of the program has had sexual contact as defined in s. 940.225 (5) (b), Stats., or sexual intercourse, as defined in s. 940.225 (5) (c), Stats., with a client.

4. A staff member of the program has been convicted of client abuse, neglect or misappropriation under s. 940.285 or 940.29, Stats., or has been listed in the caregiver registry under ch. HFS 13.

5. A staff member of the program has been convicted of a criminal offense related to the provision of care, treatment or services to a person who is mentally ill, developmentally disabled, alcoholic or drug dependent, or has been convicted of a crime against a child under ch. 948, Stats.

6. A staff member of the program has been convicted of a criminal offense related to the provision of or claiming reimbursement for services under the medicare program under 42 CFR 430 to 456, or under this state's or any other state's medicaid program under 42 CFR 430 to 456, or any other third party payer. In this paragraph, "convicted" means that a federal, state or local court has entered a judgment of conviction, regardless of whether an appeal from that judgment is pending.

7. The program has submitted or caused to be submitted statements, for the purpose of obtaining certification under this chapter, which it knew or should have known to be false.

8. The program failed to maintain compliance with one or more of the requirements set forth in this chapter.

deficiencies exist, the department shall issue a notice of deficiency to the program and offer the program a provisional certificate pending correction of the deficiencies.

(b) If a program wishes to continue operation after the issuance of a notice of deficiency under an offer for provisional certification, the program shall, within 30 days of the receipt of the notice of deficiency, submit a plan of correction to the department that identifies the specific steps which the program will take to remedy the deficiencies and the timeline in which these steps will be taken.

(c) If the department approves the plan of correction, the department shall issue a provisional certificate for up to 60 days of operation.

(d) 1. Prior to expiration of the provisional certification, the department shall conduct an on-site inspection of the program to determine whether the proposed corrections have been made.

2. If the department determines that the proposed corrections have been made, the department shall restore the program to full certification and withdraw the notice of deficiency.

3. If the department determines that the proposed corrections have not been made, the department may deny the application for renewal, suspend or terminate the program's certification or allow the program one extension of no more than 30 additional days to complete the plan of correction which may require another on site inspection. If after an extension the program has still not remedied the identified deficiencies, the department shall deny the application for renewal or suspend or terminate the certification.

(e) If the department denies the application for renewal or suspends or terminates the certification, it shall provide the program with a written notice of the reasons for the action and inform the program of its right to a hearing under sub. (12).

(12) RIGHT TO A HEARING. (a) In the event that the department denies, terminates, suspends or refuses to renew certification, or gives prior notice of its intent to do so, the applicant or program affected may request a hearing under ch. 227, Stats.

(b) The request for a hearing shall be submitted in writing to and received by the department of administration's division of hearings and appeals within 30 working days after the date of the notice required under sub. (3), (8), (10) or (11) or the date the program's certification was immediately suspended under sub. (9) (b) 11. Review is not available if the request is received by the division of hearings and appeals more than 30 days after the date of the notice or suspension of the certification.

Note: The mailing address of the Division of Hearings and Appeals is P.O. Box 7875, Madison, WI 53707 or an appeal may be delivered to the Division at 5005 University Ave., Room 201, Madison WI.

(13) REAPPLICATION. If an application for certification is denied, the program may not reapply for certification for 2 years following the date on which certification was denied.

(d) The department may limit the duration of a waiver.

(e) The department's decision to grant or deny a waiver shall be final.

HFS 33.06 Personnel. (1) POLICIES. (a) A program shall have written policies and procedures to ensure that staff have adequate training, experience and abilities to carry out their duties.

(b) A program shall maintain written documentation of employe qualifications and shall make that information available for review by clients and their guardians, where guardian consent to treatment is required, and by the department.

(2) GENERAL QUALIFICATIONS. A program shall ensure that all staff who have client contact have the professional and interpersonal skills necessary to carry out their assigned duties and have never been convicted of an action that may place clients of the program at risk of being harmed. The program shall:

(a) Comply with ch. HFS 12, which directs a program to perform background information checks on applicants for employment and, periodically, on current employes, and not hire or retain persons who because of specified past actions are prohibited from working with clients.

(b) Comply with ch. HFS 13, which directs a program to report to the department all allegations that come to the attention of the program that a staff member or a contracted employe has misappropriated property of a client or has abused or neglected a client.

(c) For applicants for professional positions, obtain professional references from at least 2 people and references from previous employers or educators, where available. References shall be documented either by letter or by a record of verbal contact giving dates, person making the contact, persons contacted and contact content.

(3) QUALIFICATIONS OF CLINICAL STAFF. (a) In this subsection, "supervised clinical experience," means a minimum of one hour per week of face-to-face supervision by a mental health professional qualified under par. (b) 1. to 8., gained after the person receiving the supervision has received a master's degree, and this supervision involves services for clients with mental disorders or severe emotional or behavioral problems.

(b) Professional staff retained to provide mental health services shall meet the following minimum qualifications:

1. Psychiatrists shall be physicians licensed under ch. 448, Stats., to practice medicine and surgery and shall have completed 3 years of residency training in psychiatry or child psychiatry in a program approved by the accreditation council for graduate medical education and be either certified or eligible for certification by the American board of psychiatry and neurology.

11. Occupational therapists shall have a bachelor's degree and a minimum of one year of experience working in a mental health clinical setting and shall meet the requirements of s. HFS 105.28 (1).

12. Certified social workers, certified advance practice social workers and certified independent social workers shall meet the qualifications established in ch. 457, Stats., and related administrative rules, and have received certification by the examining board of social workers, marriage and family therapists and professional counselors.

13. Rehabilitation counselors shall be certified or eligible for certification by the commission on rehabilitation counselor certification.

14. Vocational counselors shall possess or be eligible for a provisional school counselor certificate and shall have a master's degree in counseling and guidance.

15. Other qualified mental health professionals shall have at least a bachelor's degree in a relevant area of education or human services and a minimum of one year of work experience providing mental health services, or work experience and training equivalent to a bachelor's degree including a minimum of 4 years of work experience providing mental health services.

16. Specialists in specific areas of therapeutic assistance, such as recreational and music therapists, shall have complied with the appropriate certification or registration procedures for their profession as required by state statute or administrative rule or the governing body regulating their profession, and shall have at least one year of experience working in a mental health clinical setting.

17. Certified occupational therapy assistants shall have at least one year of experience working in a mental health clinical setting and shall meet the requirements in s. HFS 105.28 (2).

18. Licensed practical nurses shall be licensed under ch. 441, Stats., and have had either training in psychiatric nursing or one year of experience working in a clinical mental health setting.

19. Alcohol and drug abuse counselors shall meet the requirements established in s. HFS 61.06 (14).

20. Mental health technicians shall be paraprofessionals who are employed on the basis of personal aptitude and a life experience which demonstrates their ability to provide effective services for clients with mental health disorders. A mental health technician shall have a suitable period of orientation and in-service training and shall work under the supervision of a program staff person qualified under subds. 1. to 11.

21. Clinical students shall be students currently enrolled in an academic institution and working toward a degree in a professional area identified in this paragraph who are providing services to the program under the supervision of a staff member meeting the qualifications under this paragraph for that professional area.

1. The mental health services being provided by the program are appropriate and are being delivered in a manner most likely to result in positive outcomes for clients.

2. The professionals delivering mental health services have the training and experience needed to carry out the roles for which they have been hired, and receive the ongoing support, supervision and consultation needed to provide effective services to clients.

3. Any supervision necessary to enable professional staff to meet requirements for credentialing or ongoing certification under ch. 455, Stats., and related administrative rules or other requirements promulgated by the state or federal government or relevant professional associations is provided in accordance with those requirements.

(b) *Responsibility of clinical director.* The clinical director shall be responsible for the quality of the mental health services provided to clients, maintaining appropriate supervision of staff and making available appropriate consultation for staff.

(c) *Content.* Clinical supervision of individual program staff shall include direct review, assessment and discussion with the staff person about the staff person's delivery of mental health services.

(d) *Means.* Clinical supervision shall be accomplished by one or more of the following means:

1. Regular, individual sessions with staff to review cases, assess performance and give advice.

2. Regular, individual side-by-side sessions in which the supervisor is present while the staff person provides treatment or counseling for a client in the program after which the supervisor assesses, teaches and lets the staff member ~~know how he or she is doing~~ with the particular client.

3. Regular meetings to review and assess staff performance and provide direction to staff regarding specific situations or strategies.

4. Any other professionally recognized method of supervision, such as review using videotaped sessions or peer review, designed to provide sufficient guidance to ensure the delivery of effective services to the program's clients by that staff person, if the method for staff supervision is approved by the department, specifically described in the written policies of the program and the names of the persons who do the supervision and the time they spend on supervision are documented in the personnel records of staff members who attend the session or review and in the general records of the program.

(e) *Minimum hours of supervision.* 1. A staff member providing day treatment services who has not had 3,000 hours of supervised clinical experience or who is not qualified under sub. (3) (b) 1. to 8. shall receive a minimum of one hour of direct, individual clinical supervision for every 30 clock hours of face-to-face mental health services provided.

5. Basic mental health treatment concepts applicable to providing mental health day treatment services to adults.

6. The provisions of s. 51.30, Stats., and ch. HFS 92, regarding confidentiality of treatment records.

7. The provisions of s. 51.61, Stats., and ch. HFS 94 regarding client rights, including the procedures established by the program under ch. HFS 94 for investigating and resolving client grievances.

8. Techniques and procedures for providing non-violent crisis management for clients, including verbal de-escalation, methods for obtaining backup and acceptable methods for self-protection and protection of the client and others in emergency situations.

9. Cultural factors that need to be taken into consideration in providing mental health treatment.

10. The basic provisions of the civil rights laws, including the Americans with Disabilities Act (ADA) of 1990, 42USC12l01 to 12213, and the Civil Rights Act of 1964, 42USC 1981, as they apply to the delivery of mental health services.

11. Basic principles of pharmacology as they relate to persons with mental disorders.

12 Techniques for assessing and responding to the needs of clients who appear to have problems related to abuse of alcohol or other drugs.

(b) *Inservice training.* 1. Each program shall develop and implement an inservice training program for all staff who do not participate in regular, annual continuing education training in order to maintain their professional certification, which may include but is not limited to:

a. Use of staff meeting time, which is set aside for inservice training.

b. Presentations by community resource staff from other agencies.

c. Attendance at conferences and workshops.

d. Discussion and presentation of current principles and methods of training persons with mental disorders.

2. A program shall have specific policies and procedures relating to inservice instruction which ensure that all staff who have regular client contact will remain current in their knowledge of requirements for operation of the adult mental health day treatment services program, including required compliance with this chapter and other pertinent state and federal regulations, and their knowledge of developing issues in client care and treatment, rights and protections.

in the community and to ensure that the day treatment component of the client's services is coordinated with other programs in which the client is participating.

3. Individual psychotherapy, group counseling to include symptom and medication groups, and other forms of treatment specifically related to the goals in a client's treatment plan which are directed at reducing symptoms of psychiatric problems the client may be expressing.

4. Therapeutic and skill-building services to assist clients in restoring or increasing individual, interpersonal and community-based skills needed in order to live more independently.

5. Establishment and maintenance of a therapeutic setting in which program participants can provide one another with mutual supports with the assistance of program staff.

6. A system of ongoing, objective evaluation of program operations and client outcomes designed to ensure that clients receive effective care appropriate to their needs.

7. Follow-up assistance to enable clients to complete a successful transition out of formal services or to less restrictive formal services, by helping the clients and their families or other supporters identify, access and make effective use of other available community resources.

(b) Services to support clients experiencing a mental health crisis shall be available 24 hours per day, 7 days per week either through the program or through an arrangement with a cooperating agency or service provider, or as specified in the coordinated emergency mental health services plan developed under s. 51.42 (7) (b) 1., Stats., and s. HFS 34.22 (1) for the county in which the program operates.

(c) If any services are provided under contract, the program shall maintain written documentation that identifies the specific persons or organizations that have agreed to provide the services and that includes the formal agreements for service delivery.

(3) INTENSITY AND DURATION OF SERVICES. (a) *Identified in plan of treatment.* The plan of treatment developed under s. HFS 33.09 for each person admitted for services shall identify the required level of intensity and duration of treatment. If the needs of an individual change, the treatment team may recommend that the plan be changed to adjust the level and duration of services being provided.

(b) *Purposes of admission.* Based upon a client's identified strengths and needs, mental health day treatment services may be offered in one of the following formats:

1. 'Stabilization services.' If the clinical director or his or her designee finds that the strengths and needs of an individual are such that by providing a course of intensive adult mental health day treatment services over a period of 6 months or less, there is a reasonable likelihood that the individual will be able to avoid hospitalization during an acute psychiatric crisis or will be able to make a more rapid and successful transition back into community life following an episode of acute inpatient care, the individual may be admitted for stabilization services.

(f) Individual and group counseling conducted by a person qualified under s. HFS 33.06 (3) (b) 1. to 13. or 17.

(5) HOURS OF PROGRAM OPERATION. A program may offer services in the day, evening or night and on weekends, but shall offer a minimum of 20 hours of scheduled programming over a minimum of 5 days per week, not including holidays.

(6) LOCATION OF SERVICE DELIVERY. Services shall be provided in the therapeutic setting maintained at the site of the program, but may also be provided in other settings appropriate to the skills being taught or restored as part of the plan of care or to meet specific treatment goals identified in a client's treatment plan.

(7) BASIC STAFFING LEVELS. A program's overall professional staff-to-client ratio shall be based on the number of persons admitted by purpose of admission, as follows:

(a) *Stabilization.* For every 4 persons, or fraction thereof, admitted for stabilization, one full-time equivalent staff person.

(b) *Restorative services.* For every 8 persons, or fraction thereof, admitted for restorative services, one full-time equivalent staff person.

(c) *Maintenance services.* For every 12 persons, or fraction thereof, admitted for maintenance services, one full-time equivalent staff person.

HFS 33.08 Admission. (1) EFFECTIVE COMMUNICATION. A program shall have written policies and procedures to ensure that intake, the explanation of rights and program procedures, billing, the obtaining of consent for services, assessment, treatment planning and the delivery of services to a client take place in the client's primary language or means of communication or in another language with which the person is fluent and comfortable, and that where the consent of a guardian is needed to provide treatment, consent is obtained using the guardian primary language or means of communication or in another language with which the person is fluent and comfortable.

(2) SELECTION CRITERIA. (a) A program may not discriminate against a person seeking or referred for treatment based solely on the person's age, race, creed, color, gender or handicap.

(b) A program may establish other selection criteria to be used when screening persons seeking treatment, which may include any of the following limitations as they may apply:

1. Sources from which referrals will be accepted.

2. Specific conditions or mental disorders for which the program will provide services.

3. Funding restrictions such as availability of insurance and other third party reimbursement, financial or programmatic support for the placement from other agencies or the client's or client's family's ability to pay.

3. The procedures to be used to ensure that persons with special conditions will receive appropriate screening, assessment and services, to include older clients and clients with sensory, physical, developmental or other impairments.

(b) *Explanation of procedures.* The procedures for intake, including assessment and obtaining consent for treatment, shall be clearly explained to the person or, if the person has a guardian, to the person's guardian, in the person's or guardian's primary language or form of communication or a language with which the person or guardian is fluent and comfortable.

(c) *Tentative admission.* If the clinical director or his or her designee determines that referral materials and initial interviews indicate that a person is likely to meet the criteria for admission, and the person or his or her guardian consents to admission, the person may be tentatively admitted to the program for a period of up to 7 days in order to complete intake, assessment and initial treatment planning.

(d) *Initial treatment plan.* An initial treatment plan shall be prepared at the time a person is admitted for intake, assessment and planning which shall identify the services to be offered pending a final determination on admission and the preparation of an ongoing treatment plan under s. HFS 33.09 (1).

(e) *Intake process.* The intake process shall include all of the following:

1. An initial assessment that describes the person's apparent presenting problems, legal status and social functioning and provides a review of personal history, including any history of being abused, including sexually abused, conducted by a staff person qualified under s. HFS 33.06 (3) (b) 1. to 8., to determine immediate treatment and evaluation needs pending completion of further planning.

2. A medical history and physical examination completed by a physician licensed under ch. 448 Stats., a., physician assistant certified under ch. 448, Stats., or a nurse practitioner meeting the requirements of s. HFS 105.20, if one has not been completed within the last year or if the person's condition has changed significantly since the last examination.

3. Designation of a case coordinator qualified under s. HFS 33.06(3) (b) 1. to 18. whose duties shall include all of the following:

a. Assisting the client during intake and assessment.

b. Facilitating planning meetings and distributing the resulting treatment plan, and facilitating plan review meetings.

c. Coordinating communication among staff, the client, family members and community agencies working with the client.

d. Assisting the client in accessing or advocating for additional services to complement or succeed those offered by the program.

3. The approximate cost of any services which may be billed to the client.

4. That the person or the person's guardian has been informed of and understands the nature and possible risks and benefits of the mental health services proposed in the treatment plan, as well as the possible results of not receiving those services, and consents to the receipt of the services.

(d) If the client has been prescribed medication by a psychiatrist or other physician as part of the treatment plan, unless the client has been found incompetent to refuse medication pursuant to the provisions of ch. 51, Stats., a specific consent document shall be prepared indicating both of the following:

1. That the psychiatrist or other physician has explained to the person or the person's guardian, in the person's or guardian's primary language or form of communication or a language with which the person or guardian is fluent or comfortable, the nature, risks and benefits of the medication.

2. That the person or the person's guardian understands the explanation and consents to administration of the medication.

(e) Signed consent documents shall be maintained in the client's treatment record.

(f) During the intake phase of services and upon admission for ongoing services, the person shall be provided with written schedules of the treatment, activities and services in which her or she will be participating and the case coordinator shall explain to the person the schedules and the client's responsibilities.

HFS 33.09 Ongoing treatment. (1) ONGOING TREATMENT PLAN. (a) *Treatment team.* When a person has been admitted for ongoing treatment and has consented to participate in the program, a treatment team shall be assembled by the case coordinator to develop an ongoing treatment plan. The treatment team shall include representatives from each of the disciplines that will be providing services to the client, as well as the client, his or her guardian where one has been appointed, and the client's family where appropriate and with the consent of the client.

(b) *Treatment plan.* The ongoing treatment plan shall include all of the following:

1. The reasons for referral, including presenting problems and strengths and assets the client and his or her family bring to the treatment plan.

2. The impression formed by program staff during the intake and assessment process about the client

3. Measurable goals for treatment.

4. The specific treatment and services which will be provided, and the staff who will provide them.

1. The date of the review and names of the persons participating in it.

2. The degree to which the goals of treatment are being met and whether identified outcomes were achieved by the time of the review.

3. Any treatment delays or complications, including side effects of medications, and the immediate actions taken or that will be taken in response.

4. Any changes to be made in the client's treatment plan and the reasons for the changes.

5. Any updating of the exit criteria and goals, including a discussion of available alternatives for services and supports following discharge and steps for obtaining needed services which are not presently available.

6. Whether any additional evaluation is needed given the available information or observations made during the course of treatment.

(c) Any proposed changes in the treatment plan shall be approved by the clinical director or his or her designee, but these may be implemented pending approval. The changes shall be immediately suspended if they are not approved.

(d) A treatment review by available staff shall be held as soon as possible but not later than 24 hours after a serious incident indicating that the client's clinical status or treatment needs have substantially changed, including expressed ideas of suicide or attempted suicide, violent behavior or major changes in the symptoms displayed by the client.

(5) ADMINISTRATION OF PSYCHOTROPIC MEDICATIONS. (a) *Policies*. Programs, which dispense psychotropic medications as part of their treatment, shall have policies that specify all of the following:

1. How psychotropic medications are prescribed, obtained, safely stored, administered, disposed of and their administration monitored.

2. Qualifications, including experience, training requirements and credentials, of staff who administer or monitor the administration of psychotropic medications.

3. Procedures for a staff member to monitor and report the effects and any side effects of psychotropic medications to the staff member's immediate supervisor and the health care professional who prescribed the medications.

4. Requirements for staff to record client refusal to take a prescribed psychotropic medication or when a client does not take a prescribed psychotropic medication due to absence or other reason and the procedure to be followed in that situation.

h. A psycho-social history consisting of a psychiatric history, history of substance abuse and use, family and social history, and functional assessment including employment or education, independent living skills or activities of daily living and social or interpersonal skills.

i. Recommendations for periodic review of the psychosocial history to coincide with review of the treatment plan.

2. Explain to the client or the client's parent or guardian, if any, using the person's primary language or mode of communication, or another language with which the person is comfortable, the nature of the proposed medication, its anticipated positive effects and its possible negative effects.

3. Review and document at least once every 10 days the client's symptoms of mental disorder, if any, and the client's behavior in response to the medication.

4. Monitor, treat and document any side effects of the medication.

(c) *Administration.* Staff qualified under s. HFS 33.06 (3) (b) 1., 2., 6., 10. or 11. may administer a medication orally from a multidose container or by injection at the direction of the health care provider legally authorized to prescribe medication.

(d) *Program staff observation.* Program staff shall observe and document a client's ongoing symptoms of mental disorder, if any, and behavior in response to receiving a medication and shall monitor the client for side effects induced by the medication.

(e) *Reporting by registered nurse.* A registered nurse from the program shall report to the prescribing health care provider and the supervising clinician and document in the client's chart any adverse drug reaction, and the registered nurse, dispensing pharmacy or attending physician shall report to the prescribing health care provider any potential medication conflicts when drugs are prescribed by more than one health care provider.

(f) *Component of treatment plan.* The treatment plan of a client who is prescribed a psychotropic medication shall include a specific component related to administration of the medication. That component shall be all of the following:

1. Based on the comprehensive assessment under par. (b) 1.

2. Formulated in cooperation with the health care provider who prescribes the medication, program staff, staff from other agencies providing services for the client, the client and the client's parent or guardian, where the parent's or guardian's consent is required for administration of the medication.

3. Written so that is clearly identifies the method of monitoring positive or negative changes in the symptoms or behaviors targeted for change through the use of the medication, as well as any side-effects related to the use of the medication.

b. Obtaining additional resources to improve the program's ability to respond to the client's level of need, such as increasing staff or staffing levels to permit better management and supervision.

c. Making arrangements for transferring the person to a program or facility better able to respond to the client's needs.

5. Procedures that describe the criteria under which it will be determined whether or not relevant people in the community will be informed that a person in treatment presents a significant risk of harm to self or others and how and when that notification will be made, including all of the following:

a. The way in which staff are to respond if an individual who is at risk of suicide leaves or attempts to leave the facility against staff advice.

b. How the applicable provisions of s. 51.61, Stats., will be applied in these circumstances.

c. How and when a director's hold under s. 51.15 (10), Stats., will be used.

d. When warnings will be issued to persons in the community who may be at risk.

(c) *Reporting and review.* 1. Each program shall establish policies and procedures for all of the following:

a. Reporting suicide attempts by clients and suicides by clients.

b. Reviewing the program's current practices for identifying and managing suicidal individuals in light of experience with clients who attempt suicide or succeed in committing suicide.

c. In the event that a client commits suicide, debriefing staff, including the treating psychiatrist, as well as providing support to family members and other concerned persons and finding out what they know and their views about why the person committed suicide and what more the program could have done to prevent it or could do differently to prevent other clients from taking that action.

2. a. Each program shall establish a process for the conduct of a quality assurance review if a death by suicide occurs.

b. A quality assurance review shall include a careful and thorough analysis of the circumstances surrounding the death, documentation of contributing factors and recommendations for any changes in practice based on the results of the review.

c. The review shall be carried out by a team, which includes at least 2 mental health professionals qualified under s. HFS 33.06 (3) (b) 1. to 8. and one qualified under s. HFS 33.06

1. The reason for discharge.

2. Positive outcomes achieved during the client's participation in the program.

3. The client's mental health and treatment status at the time of discharge.

4. A summary of the treatment and services, including medications, provided to the client.

5. Any remaining client needs upon discharge and a plan for meeting those needs.

6. Any follow-up services of the program which will be available for the client.

7. The names and addresses of any facilities, persons or programs to which the client was referred for additional services following discharge.

8. The information obtained as a result of the follow-up contact with the client.

(c) The discharge summary shall be dated and signed by the staff member who prepared it, the clinical director or designee and, if available, the client and his or her guardian if the guardian's consent for treatment was required.

HFS 33.10 Client records. (1) INDIVIDUAL TREATMENT RECORD. A program shall maintain a treatment record for each client. A client's treatment record shall include accurate documentation of all staff services provided to the client, all activities in which the client participated and all other interventions with or on behalf of the client and his or her family, and the improvement, regression or other changes exhibited by the client and his or her family while in the program. A client's treatment record shall include all of the following:

(a) Initial referral materials.

(b) Notes and reports made while screening the client for admission.

(c) Documentation of the decision to admit the client.

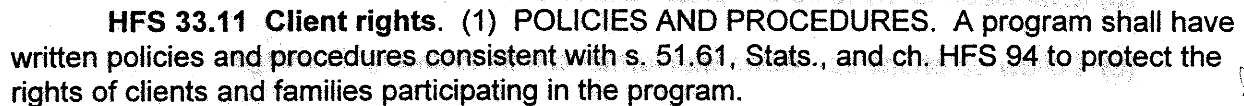
(d) Any referrals to other providers if a client was not admitted for ongoing treatment.

(e) Results of all examinations, tests and other assessment information, and any necessary releases or authorizations for acquiring and using reports and evaluations prepared outside the program.

(f) Results of additional evaluations and other assessments performed while the client is enrolled in the program.

(g) The individual treatment plan for the client and the signed approval of the treatment plan.

(5) DISPOSITION UPON PROGRAM CLOSING. An agency operating a program shall establish a plan for maintenance and disposition of client records in the event the program loses its certification or otherwise closes. The plan shall include a written agreement with a health care facility, which shall act as a repository, and custodian of client records for the required retention period or until a replacement program begins operating. The plan shall state that clients and former clients shall be notified in writing of the location of their records.

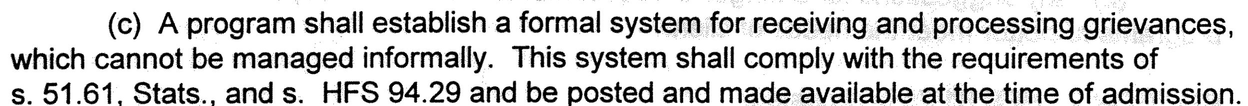


HFS 33.11 Client rights. (1) POLICIES AND PROCEDURES. A program shall have written policies and procedures consistent with s. 51.61, Stats., and ch. HFS 94 to protect the rights of clients and families participating in the program.

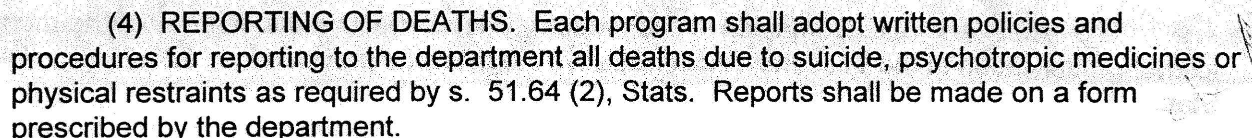
(2) CASE COORDINATOR'S DUTIES. A client's case coordinator shall inform the client and the client's guardian, if any, about the client's rights and shall help the client and the client's guardian, if any, understand what those rights mean and how to assert them.

(3) CONFLICT RESOLUTION. (a) Clients and their guardians, if any, shall be informed that they have the option of using either formal or informal procedures for resolving complaints and disagreements.

(b) A program shall establish a process for informal management of concerns raised by clients, family members and other agencies involved in the care and treatment of clients.



(c) A program shall establish a formal system for receiving and processing grievances, which cannot be managed informally. This system shall comply with the requirements of s. 51.61, Stats., and s. HFS 94.29 and be posted and made available at the time of admission.



(4) REPORTING OF DEATHS. Each program shall adopt written policies and procedures for reporting to the department all deaths due to suicide, psychotropic medicines or physical restraints as required by s. 51.64 (2), Stats. Reports shall be made on a form prescribed by the department.

Note: Copies of the Form for Reporting Deaths may be obtained from any of the Department's Division of Supportive Living regional offices. Division of Supportive Living regional offices are located in Eau Claire, Green Bay, Madison, Milwaukee, Rhinelander, and Waukesha.

HFS 33.12 Client satisfaction. (1) A program shall have written policies and procedures to ensure that clients and family members, and advocates with the consent of the clients, are included in the planning, development and evaluation of the program's services and activities. As part of its process for evaluating and improving the services it provides, the program may also include a procedure for soliciting the views of community representatives, other agencies providing mental health services, other consumers of mental health services in the community and the family members of persons who use or require mental health services, so long as confidentiality regarding services for individual clients is observed.

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE CHIROPRACTIC EXAMINING BOARD	PROPOSED ORDER OF THE CHIROPRACTIC EXAMINING BOARD ADOPTING RULES (CLEARINGHOUSE RULE 98-141)

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the CHIROPRACTIC EXAMINING BOARD is submitting in final draft form proposed rules relating to techniques, ancillary procedures or instruments prohibited in the practice of chiropractic.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE CHIROPRACTIC EXAMINING BOARD:	REPORT TO THE LEGISLATURE ON CLEARINGHOUSE RULE 98-141 (s. 227.19 (3), Stats.)

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

Changes are made to a rule of the Chiropractic Examining Board that currently prohibits "network chiropractic" in order to reflect a decision of the Dane County Circuit Court in the case of *Innate Intelligence, Inc. et. al. v Wisconsin Chiropractic Examining Board, et. al.* No. 5-CV-713. In that case the court declared that s. Chir 4.05 (2) (f), (g) and (h) are unenforceable because the rule prohibits "network chiropractic" without defining the term. In a decision from the bench, apart from its objection to prohibiting "network chiropractic," the court found no objection to the remainder of s. Chir 4.05 (2) (f), (g) and (h).

This proposed order deletes the term "network chiropractic" from the rule. The order also inserts the word "spiritual" before "comfort" and "well being" in s. Chir 4.05 (2) (h) to clarify that the rule would prohibit representing a chiropractic practice as a means of attaining spiritual growth, spiritual comfort or spiritual well-being.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on November 19, 1998. Linda Capra, D.C., Menomonie, Wisconsin and Lawrence E. Bechler, Attorney, Murphy & Desmond, S.C., Madison, Wisconsin, appeared and registered in favor of the proposed rules. Mr. Bechler also submitted written comments.

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE CHIROPRACTIC EXAMINING BOARD	: : : :	PROPOSED ORDER OF THE CHIROPRACTIC EXAMINING BOARD ADOPTING RULES (CLEARINGHOUSE RULE 98-141)

PROPOSED ORDER

An order of the Chiropractic Examining Board to ***amend*** Chir 4.05 (2) (f), (g) and (h), relating to techniques, ancillary procedures or instruments prohibited in the practice of chiropractic.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: s. 446.01 (2), Stats.

Changes are made to a rule of the Chiropractic Examining Board that currently prohibits "network chiropractic" in order to reflect a decision of the Dane County Circuit Court in the case of *Innate Intelligence, Inc. et. al v. Wisconsin Chiropractic Examining Board, et. al.* No. 95-CV-713. In that case the court declared that s. Chir 4.05 (2) (f), (g) and (h) are unenforceable because the rule prohibits "network chiropractic" without defining the term. In a decision from the bench, apart from its objection to prohibiting "network chiropractic," the court found no objection to the remainder of s. Chir 4.05 (2) (f), (g) and (h).

This proposed order deletes the term "network chiropractic" from the rule. The order also inserts the word "spiritual" before "comfort" and "well being" in s. Chir 4.05 (2) (h) to clarify that the rule would prohibit representing a chiropractic practice as a means of attaining spiritual growth, spiritual comfort or spiritual well-being.

TEXT OF RULE

SECTION 1. Chir 4.05 (2) (f), (g) and (h) are amended to read:

Chir 4.05 (2) (f) ~~Network chiropractic, or any~~ Any practice system, analysis, method or protocol which does not include the competent assessment, evaluation or diagnosis of the condition to be treated before beginning treatment of the patient.

(g) ~~Network chiropractic, or any~~ Any practice system, analysis, method or protocol which relies upon diagnostic methods that are not generally recognized or accepted within the profession or which do not have scientific validity.