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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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**Scott Grosz**  
Clearinghouse Director

**Anne Sappenfield**  
Legislative Council Director

**Margit Kelley**  
Clearinghouse Assistant Director

### CLEARINGHOUSE RULE 22-053

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 2. Form, Style and Placement in Administrative Code

a. The agency should revise the organization of the proposed rule’s introductory clause for consistency with s. 1.01 of the Manual. In particular, the order of treatments should be revised, and rule treatments such as “...to repeal DHS 75.02 (12), DHS 75.02 (29m),...DHS 75.02 (87m)...” may be written as “...to repeal DHS 75.02 (12), (29m),...(87m)...”.

b. As used throughout the proposed rule, is it necessary to define the term “clinically appropriate” in various definitions of the term “functionally equivalent”? [See, e.g., s. DHS 34.02 (8m), in SECTION 1 of the proposed rule.] Additionally, SECTION 32 uses the phrase “clinical justification” rather than “clinically appropriate” as applied through the definition of “functionally equivalent.” Is there a particular reason for this distinction?

c. The treatment of SECTIONS 8 and 39 should be reviewed to ensure the existing text is properly represented, and that underscored text follows stricken text. [s. 1.04 (4), Manual.]

d. In SECTION 11, the comma after “unscheduled” should be stricken if “face to face” is stricken.

e. SECTION 63 appears to refer to s. DHS 75.03 (89), which should be reflected in the treatment clause. To renumber and amendment is a separate treatment that should be reflected in the introductory clause of the proposed rule. [See comment a., above.]

#### 3. Conflict With or Duplication of Existing Rules

a. Generally, the proposed rule eliminates the phrase “face to face” in many chapters of code treated by the proposed rule, with the apparent goal of authorizing delivery of services via telehealth. However, in ch. DHS 36, the agency instead defines “face to face” as used in the chapter, but does so in a way that includes telehealth, and in ch. DHS 34, some but not all references to the phrase are eliminated (see SECTION 5, for example). Slight variations also arise in the descriptions of a telehealth policy and right to decline in each chapter. In integrating use of telehealth into multiple chapters, are there specific concerns that prevent the agency from using

consistent language from chapter to chapter? If not, the proposed rule should be revised. Relatedly, the agency should clarify the meaning of “direct crisis mental health services”, used in SECTION 6 as a replacement for “face to face”.

b. The entirety of the proposed rule’s treatment of ch. DHS 75 should be reviewed to account for the timing of publication of CHR 20-047, relative to the progress of this proposed rule through the promulgation process. As noted, that rule takes effect October 1, 2022, which will likely precede the legislative review of this proposed rule. As such, generally, it appears certain provisions related to “double drafting” may be eliminated. If retained, the treatment described in SECTION 61 should be moved up as it treats a provision of code that precedes SECTIONS 57 to 60. Also relative to the effective date of CHR 20-047, care should be taken to distinguish between treatments of provisions as they appear in ch. DHS 75, as affected by CHR 20-047, and any treatments to the code as it existed prior to promulgation of that rule.

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

a. Generally, throughout its treatments of ch. DHS 34, the agency should review whether the proposed rule accomplishes the anticipated outcome relative to telehealth. In particular, the definition created in SECTION 3 of the proposed rule appears to conflict with the policy goal of the provisions treated in SECTIONS 9 and 10 due to the retained reference to “on-site” in the definition of “mobile crisis service.”

b. In SECTION 17, retention of the word “only” is inconsistent with the new, underscored text. Could the agency provide more clarity as to when delivery of services via telehealth is appropriate?

c. In SECTION 46, should the semicolon in s. DHS 63.06 (6) (a) 1. be replaced with a period?