

RULEMAKING REPORT TO LEGISLATURE

CLEARINGHOUSE RULE 19-077

Ch. DHS 50

Basis and Purpose of Proposed Rule

Create administrative rule for the certification of Youth Crisis Stabilization Facilities per 2017 Wisconsin Act 59 and Section 51.042 (4), Stats.

Department Response to Legislative Council Rules Clearinghouse Recommendations

See attached.

Final Regulatory Flexibility Analysis

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

N/A

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

N/A

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

N/A

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

N/A

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

N/A

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

N/A

Fiscal Estimate/Economic Impact Analysis

N/A

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on November 11, 2019. A public hearing was held on November 22, 2019, in Madison, WI at the Department of Health Services. Public comments on the proposed rule were accepted until COB on November 22, 2019.

Summary of Public Comments to the Proposed Rule and the Agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.

Rule Provision	Public Comment	Department Response
50.02 (2)	WAFCA: Add LCSW to list of clinical staff	Change made.
50.05 (17)	WAFCA doesn't believe a foster parent can be a legally recognized parent.	Noted.
50.02 (18)	WAFCA: Remove reference to prone/supine hold since these are prohibited in rule.	Change made.
50.03 (6)	WAFCA unclear on how to re-apply for certification.	DQA is implementing non-expiring certifications, therefore this comment is not applicable.
50.03 (7)	WAFCA suggests language is outdated	DQA provided language for this section.
50.04 (2)	WAFCA suggests removing reference to timeframe for waiver.	DHS reserves the right to specify a timeframe for a waiver.
50.05 (3)	WAFCA not clear about what are non-traditional services.	Reference changed to "other".
50.05 (11)	WAFCA suggests requiring parent/youth/agency feedback for evaluation.	DHS wants provider to describe evaluation methods to provide flexibility.
50.06 (2)	WAFCA suggests a review at 15 days rather than 30 days.	WAFCA believes there is a DMS payment cap which is not accurate. Change not made.
50.06 (3)	WAFCA suggests minor language change.	Suggestion does not alter meaning of sentence and is not in alignment with standard rule language.
50.06 (5)	WAFCA suggests adding detail to medical policy.	DHS 50 gives provider flexibility to set policy.
50.06 (7)and (8)	WAFCA recommends specifying how policies will be shared with youth and parents/guardians.	Covered under client rights.
50.05 (11)	WAFCA- Language suggestion for seclusion and restraint section.	Suggestion adopted.
50.08 (2)	WAFCA suggests training cover all agency policies.	Training is meant to be limited to YCSF policies.
50.08 (8)	WAFCA not clear on difference between DQA certification and Medicaid enrollment.	Minor wording change adopted.
50.09 (2)	Suggestion to clarify supervision policy.	Suggestion adopted.
50.10 (3)	WAFCA would like a group home or RCC to be able to place someone in a YCSF.	Admission policy from budget bill / statute.
50.11 (3)	WAFCA suggests: "and" legal representative	Change made.
50.11 (4)	WAFCA suggests additional language re: discharge summary.	DHS thinks the current language has the appropriate level of detail.
50.12 (5)	WAFCA says section is not clear.	Section edited to reflect DHS 40 language.
50.12 (5)	WAFCA not sure this is possible if only two staff are present.	DHS believes rule language is necessary to protect safety of youth.
50.12 (5) (d)	WAFCA suggests immediate notification of parent if medical care is needed. Also, staff should be debriefed if there was an incident.	Suggestion adopted.
50.13 (3)	WAFCA suggests notification follow intervention from a professional.	Suggestion adopted.

50.16 (6)	WAFCA suggests requirements for breakaway materials. Also that a microwave is insufficient for heating food.	Language considered sufficient.
50.17 (2)	WAFCA suggests each resident and staff be given evacuation routes upon admission / hire.	This section is consistent with other rules.
50.20 (13)(a)3	<p>Submitted by Carol Lund, Director, Northland counseling Services: regarding 50.10 Admissions 50.20 (13)(a)3 stats,</p> <p>NO YCSF may accept a minor for detention under s 51.15 stats. As a Chapter 34 Crisis Provider Agency for almost 15 years, we believe that under certain circumstances and with a comprehensive Crisis assessment that an YCSF should be allowed to accept a minor for detention. Additionally regarding DHS 50.12 Emergency Safety intervention Northland Counseling does not believe that use of seclusion in a YCSF is not appropriate. At this time with a rule that prohibits admitting any youth under an Emergency Detention, allowing use of seclusion is not compatible with this level of care. Regardless of how specific that rules – use of seclusion should not be used at this level of care and could potentially lead to a bad outcome for children. Also, more specifics with regard to protocols for use of physical restraints is needed.</p>	<p>DHS has no control over the fact that a YCSF may not be used for emergency detention, per statute.</p> <p>While DHS hopes that seclusion and restraint are used as infrequently as possible, the Dept. recognizes that such use may occur and as such, DHS 50 provides appropriate policy.</p>
50.04 (14)	<p>Submitted by Jamie Surfus-Lewiston:</p> <p>There is no definition in 50.04 14 for an advanced practice nurse prescriber yet the role is referred to in Restraints 11.d. Same for physician's assistant.</p>	<p>The providers in 50.02 (14) are a list of licensed treatment professionals. APNPs and PAs are not considered licensed treatment professionals and therefore were not included in this section.</p>

Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		x	
Department response to Rules Clearinghouse recommendations		x	
Final Regulatory Flexibility Analysis			x
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			x
Public Hearing Summary	x		
List of Public Hearing Attendees and Commenters	x		
Summary of Public Comments and Department Responses	x		
Fiscal Estimate/Economic Impact Analysis		x	
Revised Fiscal Estimate/Economic Impact Analysis			x
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			x
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			x
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			x
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			x