

**WISCONSIN DEPARTMENT OF HEALTH SERVICES  
PROPOSED ORDER TO ADOPT PERMANENT RULES**

The Wisconsin department of health services proposes an order to **amend** DHS 34.02 (16) and (23), 34.11 (3) (c), 34.21 (7) (d) (e), and (k), DHS 34.22 (1) (a) (8) (a), 34.22 (3) (b), 34.22 (3) (c) (3), 34.22 (5), DHS 34.23 (3) (a), DHS 34.26 (1) (a) and (c), DHS 35.03 (2), DHS 35.07 (2), DHS 36.11 (1) (b) (2), DHS 36.12 (1) (b) (2), DHS 36.17 (2m) (b), DHS 40.08 (7), DHS 40.10 (2), DHS 40.14 (1) (b) (6m), DHS 50.09 (4), DHS 50.09 (5), DHS 50.12 (5) (d), DHS 50.12 (6) (a), DHS 63.06 (5) (d) (1) and (2), DHS 63.06 (6) (a) (4) and (5), DHS 75.02 (12), DHS 75.13 (3) (c), DHS 75.16 (5) (a) (4), DHS 75.03 (89), DHS 75.12 (2), DHS 75.24 (12) (a); and **to create** DHS 34.02 (8m), (16m), (20m), and (21m), DHS 34.21 (8) (a) (10m), 34.22 (3) (a) (5), DHS 34.22 (3) (b) (4), DHS 34.22 (3) (c) (5), DHS 35.03 (8m), DHS 35.03 (18m), DHS 35.03 (22hm), DHS 35.15 (2) (b) (7m), DHS 36.03 (10mt), DHS 36.03 (11hm), DHS 36.03 (28m), DHS 36.03 (32m), DHS 36.07 (5) (t), DHS 36.19 (1) (bm), DHS 40.03 (18m), DHS 40.03 (49m), DHS 40.03 (51m), DHS 40.07 (1) (fm), DHS 50.02 (10m), DHS 50.02 (19hm), DHS 50.02 (19m), DHS 50.06 (11m), DHS 61.021 (4a), and (13m), DHS 61.07 (a), DHS 63.02 (13m), DHS 63.02 (18m), DHS 63.02 (19m), 63.06 (5) (d) (2m), DHS 63.06 (6) (a) (5m), DHS 63.09 (4m), DHS 75.02 (29m), DHS 75.02 (78hm), DHS 75.02 (87m), DHS 75.03 (38m), relating to telehealth.

**RULE SUMMARY**

**Statute interpreted**

Not applicable.

**Statutory authority**

The department is authorized to promulgate the proposed telehealth rules based upon the following:

Sections 227.11 (2) and 49.45 (61) (d), Stats.  
2019 Wis. Act 56.

The department is authorized to promulgate rules for each rule chapter specified in this order as follows:

Chapter DHS 34: Section 51.42 (7) (b), Stats.

Chapter DHS 35: Sections 49.45 (2) (a) 11., 51.04 and 51.42 (7) (b), Stats.

Chapter DHS 36: Sections 49.45 (30e) (b) and 51.42 (7) (b), Stats.

Chapter DHS 40: Section 51.42 (7) (b), Stats.

Chapter DHS 50: Sections 51.042 and 51.42 (7) (b), Stats.

Chapters DHS 61 and 63: Sections 51.42 (7) (b) and 51.421 (3) (a) and (c), Stats.

Chapter DHS 75: Sections 46.973 (2) (c), 49.45 (2) (a) 11., 51.42 (7) (b), 51.4224 (2) and (3), and 51.45 (3), (8) and (9), Stats.

**Explanation of agency authority**

The department's authority to promulgate the proposed rules is provided in ss. 227.11 (2) and 49.45 (61) (d), Stats., and 2019 Wis. Act 56 ("Act 56") s. 8 (3).

Section 49.45 (61), Stats., created by Act 56, directs the department to provide reimbursement under

Medical Assistance for telehealth services specified in par. (b) and subds. (c) 1. to 3. Subdivision (c) 4 provides that the department shall reimburse under Medical Assistance “any service that is not specified in subds. 1. to 3. or par. (b) that is provided through telehealth and that the department specifies by rule.” Paragraph (d) provides that the department “shall promulgate rules specifying any services under par. (c) 4. that are reimbursable under Medical Assistance. The department may promulgate rules excluding services under par. (c) 1. to 3. from reimbursement under Medical Assistance. The department may promulgate rules specifying any telehealth service under par. (b) or (c) 1. or 2. that is provided solely by audio-only telephone, facsimile machine, or electronic mail as reimbursable under Medical Assistance.”

### **Related statute or rule**

The following statutes or rules directly relate to reimbursement of many Medical Assistance services when delivered by means of telehealth and communications technology services:

Sections 1173(d) to (f), 1176, 1177, 1180, and 1905 of the Social Security Act.

45 CFR 164.105(1)(2)(ii) and 164.302, et seq.

Sections 49.45 (61) and 49.46 (2) (b) 21. through 23., Stats.

### **Plain language analysis**

In Act 56, the Wisconsin Legislature directed reimbursement of many Medical Assistance services when delivered by means of telehealth and communications technology services. It directs the department to reimburse Medical Assistance certified providers for services provided through asynchronous telehealth, interactive telehealth, and remote patient monitoring services, including for federally recognized Medicare telehealth services, remote physiological monitoring, remote evaluation of prerecorded patient information, brief communication technology-based, and care management services. It also directs the department to identify certain Medical Assistance reimbursable telehealth services and authorizes the department to identify certain Medical Assistance non-reimbursable telehealth services in administrative code. The department’s Division of Medicaid Services is proposing amendments to Chapters DHS 101, 105, 106 and 107 to comport with Act 56.<sup>1</sup>

The services covered in Chapters DHS 34, 35, 36, 40, 61, 63, and 75 are eligible for reimbursement for certain services provided from Medical Assistance. These rule chapters need to be amended to align with the proposed changes to Chapters DHS 101, 105, 106, and 107.

### **Summary of, and comparison with, existing or proposed federal regulations**

Federal law does not establish distinct requirements for Medical Assistance program reimbursement of services provided via telehealth. Instead, the Medical Assistance program may reimburse services provided via telehealth when the underlying service provided meets federal laws and policies. The Centers for Medicare and Medicaid Services (CMS) looks to and generally models its definition of telehealth on the Medicare definition of telehealth services.

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) also applies to services provided via telehealth. Applicable HIPAA requirements include the privacy and security rules to ensure the protection of protected health information transmitted and stored. In order to comply with these requirements, providers must ensure that the platforms used to provide services via telehealth contain adequate security measures.

During the emergency period, as defined in s. 1135 (g) (1) (b) of the Social Security Act, 42 U.S.C. § 1320-5 (g) (1) (b) and declared in response to the COVID-19 pandemic, the federal Department of Health and Human Services granted a number of flexibilities relating to services provided via telehealth. These flexibilities include not penalizing providers for using platforms that do not comply with HIPAA

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<sup>1</sup> Proposed amendments to Chapters DHS 101, 105, 106 and 107 were included in Statement of Scope SS 061-20, available at [https://docs.legis.wisconsin.gov/code/scope\\_statements/all/061\\_20](https://docs.legis.wisconsin.gov/code/scope_statements/all/061_20).

requirements, encouraging the reimbursement of services provided via telehealth under the Medical Assistance program, and expanding the scope of reimbursable telehealth services under the Medicare program.

### **Comparison with rules in adjacent states**

#### **Illinois:**

305 ILCS 5/5-5.25 (b)-(c) authorizes permanent reimbursement of behavioral health services provided via telehealth when provided by a certain state certified provider. Illinois regulations permanently authorize reimbursement of asynchronous and real-time video services provided via telehealth under certain conditions. These conditions include requiring a certified professional to be present at the originating site at all times, the distant site provider to be a certified professional, and the communication platform to be capable of allowing for proper diagnosis and transmission of clearly audible heart tones and lung sounds, clear video of the patient and diagnostic tools. It also excludes group psychotherapy via telehealth from reimbursement. 89 IL Adm. Code 140.403.

During the federal COVID-19 public health emergency, Illinois laws were temporarily expanded to authorize reimbursement of additional telehealth services authorized by the federal government. 305 ILCS 5/1.5 Illinois regulations were also temporarily expanded to authorize reimbursement of audio-only telephone communication and online portal communications initiated by an established patient. A certified professional is not required to be present at the originating site. Additionally, providers are not required to be certified by the Illinois Medical Assistance program. 89 IL Adm. Code 140.403.

#### **Iowa:**

Iowa Code 514C.34 authorizes permanent reimbursement of healthcare services provided via telehealth when provided via an interactive audio and video platform and the services meet legal and generally accepted healthcare practices and standards. Services provided via telehealth are to be reimbursed at the same rate as services provided in-person. Iowa regulations authorize reimbursement of services via telehealth that meet professional standards. IA Rule 441-78.55(294A). The Iowa board of medicine authorizes provision of services via telehealth with or without the presence of a health care provider with the member and holds providers to the same standards of care and professional ethics in-person services. IA Rule 653-13.11(147,148,272C).

#### **Michigan:**

Michigan Compiled Laws ss. 330.1100d, 333.16283, 333.16285, 400.1 to 400.119b, 550.3476, and 550.1401k authorize reimbursement of healthcare services provided via telehealth when provided through real-time, interactive audio or video or asynchronously with HIPAA privacy and security rule compliant platform. Services may be provided at a provider site, a school, or a member's home, with member consent, and accessible follow-up services.

#### **Minnesota:**

Minnesota Statutes ss. 256B.0625 subd. 3b. and 147.033 authorize permanent reimbursement of healthcare services provided via telehealth when provided through real-time, interactive audio and visual communications and asynchronous services if provided "in the same manner as if the service or consultation was delivered in person." Services provided via telehealth must be reimbursed at the same rate as service provided in person and are generally limited to three visits per calendar week. Provider-to-provider consultations via telephone, email or facsimile and member-to-provider communications via email or facsimile are not reimbursable. With limited exceptions, physicians that do not practice in but are registered in Minnesota may be reimbursed for services provided via telehealth if they are in good standing outside of Minnesota. Minn Stat. s. 147.032. Minnesota regulations authorize reimbursement of mental health services via telehealth when provided via two-way interactive video and the equipment and connection comply with Medicare standards. (Minn. Adm. Code s. 9505.0371).

### **Summary of factual data and analytical methodologies**

The department formed an advisory committee to advise on changes to DHS 101, 105, 106, and 107 related to 2019 Wis. Act 56. This committee included representatives of ABC for Health, Inc.; Bad River Health & Wellness Center; Disability Rights Wisconsin, Inc.; The Hamilton Consulting Group, LLC; LeadingAge Wisconsin, Inc.; Pharmacy Society of Wisconsin, Inc.; Wisconsin Assisted Living Association, Inc.; Wisconsin Association of Family & Children's Agencies, Inc.; Wisconsin Association of Health Plans, Inc.; Wisconsin County Human Service Association, Inc.; Wisconsin Hospital Association, Inc.; Wisconsin Medical Society, Inc.; and Wisconsin Primary Health Care Association, Inc. Advisory committee members were provided a copy of draft language of the proposed rules and asked to provide comments.

While this advisory committee did not specifically address DHS 34, 35, 36, 40, 63, and 75, they did address the impact of telehealth changes to Medicaid-reimbursable behavioral health services which are applicable to the rules covered in this proposed rule order.

### **Analysis and supporting documents used to determine effect on small business**

The department solicited the input of Medical Assistance providers, including small businesses, throughout the telehealth policy and proposed rule change process.

### **Effect on small business**

The proposed rule changes have the potential to impact Medical Assistance providers that are small businesses. These providers have the opportunity to provide covered services via telehealth, which expands the pool of potential members and services provided beyond that potentially available for traditional in person services but must ensure that the technology used meets applicable federal and state standards. These providers may also experience increased competition from non-local providers providing similar covered services, including out-of-state providers who meet certification criteria.

### **Agency contact person**

Sarah Coyle, sarah.coyle@dhs.wisconsin.gov, 608-266-2715

### **Statement on quality of agency data**

See summary of factual data and analytical methodologies.

### **Place where comments are to be submitted and deadline for submission**

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

## **RULE TEXT**

### **SECTION 1.** DHS 34.02 (8m) is created to read:

DHS 34.02 (8m) "Functionally equivalent" means a service provided via telehealth that meets all of the following criteria:

- (a) The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.
- (b). The service is of sufficient quality as to be the same level of service as an in-person visit. Transmission of voices, images, data, or video must be clear and understandable.

### **SECTION 2.** DHS 34.02 (16) is amended to read:

DHS 34.02 (16) "Mobile crisis service" means a mental health service which provides immediate, on-site, ~~in-person~~ mental health service for individuals experiencing a mental health crisis.

**SECTION 3.** DHS 34.02 (16m), (20m), and (21m) are created to read:

DHS 34.02 (16m) "On site" or "onsite response" means crisis service providers are deployed in real time to the location and in the physical presence of the person in crisis.

DHS 34.02 (20m) "Signature" or "signed" means a signature that meets the requirements in s. 990.01(38), Stats.

DHS 34.02 (21m) (a) "Telehealth" means the use of telecommunications technology to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data.

(b) "Telehealth" may include real-time interactive audio-visual or audio-only communication.

(c) "Telehealth" does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 4.** DHS 34.02 (23) is amended to read:

DHS 34.02 (23) "Walk-in services" means emergency mental health services provided at one or more locations in the county where a person can come and receive information and immediate, ~~face to face~~ counseling, support and referral.

**SECTION 5.** DHS 34.11 (3) (c) is amended to read:

DHS 34.11 (3) (c) A program shall provide face to face contact for crisis intervention. Face to face contact for crisis intervention may be provided as a function of the county's outpatient program during regular hours of outpatient program operation, with an on-call system for face to face contact for crisis intervention at all other times. A program shall have the capability of making home visits or seeing patients at other off-headquarter locations and shall have the resources to carry out on-site interventions when this is clinically desirable. A program may use telehealth in conjunction with face to face services.

**SECTION 6.** DHS 34.21 (7) (d), (e), and (k) are amended to read:

DHS 34.21 (7) (d) Program staff providing emergency mental health services who have not had 3000 hours of supervised clinical experience, or who are not qualified under sub. (3) (b) 1. to 8., receive a minimum of one hour of clinical supervision per week or for every 30 clock hours of ~~face to face~~ direct crisis mental health services they provide.

DHS 34.21 (7) (e) Program staff who have completed 3000 hours of supervised clinical experience and who are qualified under sub. (3) (b) 1. to 8., participate in a minimum of one hour of peer clinical consultation per month or for every 120 clock hours of ~~face to face~~ direct crisis mental health services they provide.

DHS 34.21 (7) (k) A mental health professional providing clinical supervision is permitted to deliver no more than 60 hours per week of ~~face-to-face~~ direct crisis mental health services and supervision in any combination of clinical settings.

**SECTION 7.** DHS 34.21 (8) (a) 11. is created to read:

DHS 34.21 (8) (a) 11. Appropriate delivery of telehealth services, where applicable, including ensuring privacy and confidentiality of recipient information and communications.

**SECTION 8.** DHS 34.22 (1) (a) 8. a. is amended to read:

DHS 34.22 (1) (a) 8. a. Outline the role program staff will have in responding to calls in which a person may be in need of hospitalization, including providing assistance on-site and ~~over the phone assistance~~ through telehealth.

**SECTION 9.** DHS 34.22 (3) (a) 5. is created to read:

DHS 34.22 (3) (a) 5. Provide telephone services as the minimum standard. Other forms of telehealth may also be used in addition to telephone.

**SECTION 10.** DHS 34.22 (3) (b) (intro.) is amended to read:

DHS 34.22 (3) (b) *Mobile crisis service.* A mobile crisis service that can provide onsite, ~~in person~~ intervention for individuals experiencing a mental health crisis. The mobile crisis service shall do all of the following:

**SECTION 11.** DHS 34.22 (3) (b) 4. is created to read:

DHS 34.22 (3) (b) 4. Permit the provision of mobile crisis services via telehealth when those services are provided in conjunction with onsite response.

Address the use of “face-to-face” in s. DHS 34.22 (3) (c) (intro.)?

**SECTION 12.** DHS 34.22 (3) (c) 3. is amended to read:

DHS 34.22 (3) (c) (3) Be provided by the program or through a contract with another mental health provider, such as an outpatient mental health clinic. If the walk-in services are delivered by another provider, the contract shall make specific arrangements to ensure that during the site's hours of operation clients experiencing mental health crises are able to obtain unscheduled, ~~face-to-face~~ services within a short period of time after coming to the walk-in site.

**SECTION 13.** DHS 34.22 (3) (c) 5. is created to read:

DHS 34.22 (3) (c) 5. Permit the provision of walk-in services via telehealth when those services are used in conjunction with in-person response.

**SECTION 14.** DHS 34.22 (5) is amended to read:

DHS 34.22 (5) OTHER SERVICES. Programs may offer additional services, such as information and referral or peer to peer ~~telephone~~ support designed to address needs identified in the coordinated emergency mental health services plan under sub. (1), but the additional services may not be provided in lieu of the services under sub. (3).

**SECTION 15.** DHS 34.23 (3) (a) is amended to read:

DHS 34.23 (3) (a) The individual's location, ~~if the contact is by telephone.~~

**SECTION 16.** DHS 34.26 (1) (a) and (c) are amended to read:

DHS 34.26 (1) Each program shall have a process for collecting and recording indications of client satisfaction with the services provided by the program. This process may include any of the following:

(a) Short ~~in person~~ interviews with persons who have received emergency services.

DHS 34.26 (1) (c) Follow-up ~~phone~~ conversations.

**SECTION 17.** DHS 35.03 (2) is amended to read:

DHS 35.03 (2) "Available to provide outpatient mental health services" means physical presence at any of the clinic's offices or via telehealth when functionally equivalent.

**SECTION 18.** DHS 35.03 (8m), (18m), and (22hm) are created to read:

DHS 35.03 (8m) "Functionally equivalent" means a service provided via telehealth that meets all of the following criteria:

(a). The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.

(b). The service is of sufficient quality as to be the same level of service as an in-person visit.

Transmission of voices, images, data, or video must be clear and understandable.

DHS 35.03 (18m) "Signature" or "signed" means a signature that meets the requirements in s. 990.01(38), Stats.

DHS 35.03 (22hm) (a) "Telehealth" means the use of telecommunications technology to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment or transfer of medically relevant data.

(b) "Telehealth" may include real-time interactive audio-visual or audio-only communication.

(c) "Telehealth" does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 19.** DHS 35.07 (2) is amended to read:

DHS 35.07 (2) A clinic may provide outpatient mental health services only at its offices, except in instances where therapeutic reasons are documented in the consumer file to show that it is appropriate to

use an alternative location such as a nursing home, school, medical clinic, the consumer's home, or other location appropriate to support the consumer's recovery. The clinic may also deliver services via telehealth when functionally equivalent.

**SECTION 20.** DHS 35.15 (2) (b) (7m) is created to read:

DHS 35.15 (2) (b) (7m) Appropriate delivery of telehealth services, including issues ensuring privacy and confidentiality of recipient information and communications.

**SECTION 21.** DHS 36.03 (10r) is created to read:

DHS 36.03 (10r) “Face to face” means engaging in contact with the recipient via in person, real-time interactive audio-visual telehealth, or real-time interactive audio-only telehealth.

**SECTION 22.** DHS 36.03 (11m) is created to read:

DHS 36.03 (11m) “Functionally equivalent” means a service provided via telehealth that meets all of the following criteria:

(a) The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.

(b) The service is of sufficient quality as to be the same level of service as an in-person visit. Transmission of voices, images, data, or video must be clear and understandable.

**SECTION 23.** DHS 36.03 (28m) is created to read:

DHS 36.03 (28m) “Signature” or “signed” means a signature that meets the requirements in s. 990.01(38), Stats.

**SECTION 24.** DHS 36.03 (32m) is created to read:

DHS 36.03 (32m) (a) “Telehealth” means the use of telecommunications technology to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data..

(b) “Telehealth” may include real-time interactive audio-visual or audio-only communication.

(c) “Telehealth” does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 25.** DHS 36.07 (5) (t) is created to read:

DHS 36.07 (5) (t) Providing telehealth services, if any, including information about privacy and security considerations and their right to decline services provided via telehealth.



**SECTION 26.** DHS 36.11 (1) (b) 2. is amended to read:

DHS 36.11 (1) (b) 2. Individual, ~~side-by-side~~ session in which the supervisor is present while the staff member provides assessments, service planning meetings or psychosocial rehabilitation services and in which the supervisor assesses, teaches and gives advice regarding the staff member's performance.

**SECTION 27.** DHS 36.12 (1) (b) 2. is amended to read:

DHS 36.12 (1) (b) 2. Policies and procedures pertinent to the services they provide, including any services provided via telehealth.

**SECTION 28.** DHS 36.17 (2m) (b) is amended to read:

DHS 36.17 (2m) (b) An attendance roster ~~shall be signed by each person, including~~ shall include recovery team members in attendance at each service planning meeting. The roster shall include the date of the meeting and the name, ~~address and telephone number~~ of each person attending the meeting. Each original, updated, and partially completed service plan shall be maintained in the consumer's service record as required in s. DHS 36.18.

**SECTION 29.** DHS 36.19 (1) (bm) is created to read:

DHS 36.19 (1) (bm) Consumers shall not be required to use telehealth to receive services and an in-person option must be available. Providers are not required to provide services via telehealth to an individual or a program.

**SECTION 30.** DHS 40.03 (18m) is created to read:

DHS 40.03 (18m) “Functionally equivalent” means a service provided via telehealth that meets all of the following criteria:

- (a). The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.
- (b) The service is of sufficient quality as to be the same level of service as an in-person visit. Transmission of voices, images, data, or video must be clear and understandable.

**SECTION 31.** DHS 40.03 (49m) and (51m) are created to read:

DHS 40.03 (49m) “Signature” or “signed” means a signature that meets the requirements in s. 990.01(38), Stats.

DHS 40.03 (51m) (a) “Telehealth” means the use of telecommunications technology to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data.

(b) “Telehealth” may include real-time interactive audio-visual or audio-only communication.

(c) “Telehealth” does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 32.** DH 40.07 (1) (fm) is created to read:

DHS 40.07 (1) (fm) Telehealth, including clinical guidelines for using telehealth, the right for both providers and youth to decline to use telehealth, telehealth documentation, and other policy.

**SECTION 33.** DHS 40.08 (7) (a) is amended to read:

DHS 40.08 (7) (a) Following a seclusion or restraint, a staff member shall talk with the youth ~~face-to-face~~ about each of the following:

**SECTION 34.** DHS 40.10 (2) is amended to read:

DHS 40.10 (2) STAFFING REQUIREMENTS. At all times that youth are present at a program, the program shall have a minimum of two staff members qualified under s. DHS 40.09 (3) on ~~duty site~~, at least one of whom shall be a mental health professional. The number of staff available shall be based on meeting the treatment needs of youth based on individualized treatment plans, with additional staff present when higher levels of clinical needs are indicated. Calculation of the staff-to-client ratios for the program shall not include volunteers. Programs shall meet all of the following staffing requirements:

**SECTION 35.** DHS 40.14 (1) (b) 6m. is created to read:

DHS 40.14 (1) (b) 6m. If any part of the services will be delivered via telehealth, a description of those services and clinical justification for delivering via telehealth.

**SECTION 36.** DHS 50.02 (10m) is created to read:

DHS 50.02 (10m) “Functionally equivalent” means a service provided via telehealth that meets all of the following criteria:

(a) The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.

(b) The service is of sufficient quality as to be the same level of service as an in-person visit. Transmission of voices, images, data, or video must be clear and understandable.

**SECTION 37.** DHS 50.02 (19hm) is created to read:

DHS 50.02 (19hm) “Signature” or “signed” means a signature that meets the requirements in s. 990.01(38), Stats.

**SECTION 38.** DHS 50.02 (19m) is created to read:

DHS 50.02 (19m) (a) “Telehealth” means the use of telecommunications technology to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data.

(b) “Telehealth” may include real-time interactive audio-visual or audio-only communication.

(c) “Telehealth” does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 39.** DHS 50.06 (11m) is created to read:

DHS 50.06 (11m) Policy on telehealth, including when telehealth would be used and by whom, patient privacy and information security considerations, and the right to decline services provided via telehealth.

**SECTION 40.** DHS 50.09 (4) is amended to read:

DHS 50.09 (4) Program staff who have not completed 3000 hours of supervised clinical experience, or who are not qualified under s. DHS 34.21 (3) (b) 1. to 8., shall receive a minimum of one hour of clinical supervision per week or for every 30 clock hours of ~~face-to-face~~ mental health services they provide.

**SECTION 41.** DHS 50.09 (5) is amended to read:

DHS 50.09 (5) Program staff who have completed 3000 hours of supervised clinical experience and who are qualified under s. DHS 34.21 (3) (b) 1. to 8., shall participate in a minimum of one hour of peer clinical consultation per month or for every 120 clock hours of ~~face-to-face~~ mental health services they provide.

**SECTION 42.** DHS 50.12 (5) (d) is amended to read:

DHS 50.12 (5) (d) Immediately, upon the termination of a physical restraint, a medical staff member, such as a physician, advanced practice nurse prescriber, physician assistant, or registered nurse shall conduct a follow-up assessment of the condition of the youth to ensure that the youth was not injured and shall document the finding of the assessment in the youth's clinical record. If a staff member who is a physician or nurse is not present on site, a licensed treatment professional shall conduct the ~~face-to-face~~ assessment immediately upon termination of the physical restraint and notify a medical staff consultant.

**SECTION 43.** DHS 50.12 (6) (a) is amended to read:

DHS 50.12 (6) (a) Unless clinically contraindicated, within 24 hours of administering a seclusion or physical restraint, a clinical staff member shall talk with the youth ~~face-to-face~~ about each of the following:

**SECTION 44.** DHS 61.021 (4m) and (13m) are created to read:

DHS 61.021 (4m) “Functionally equivalent” means a service provided via telehealth that meets all of the following criteria:

(a) The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.

(b) The service is of sufficient quality as to be the same level of service as an in-person visit.

Transmission of voices, images, data, or video must be clear and understandable.

DHS 61.021 (13m) (a) “Telehealth” means the use of telecommunications technology to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and

49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data.

(b) “Telehealth” may include real-time interactive audio-visual or audio-only communication.

(c) “Telehealth” does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 45.** DHS 61.075 is created to read:

DHS 61.075 USE OF TELEHEALTH. Telehealth may be used to deliver services in this subchapter when functionally equivalent to in-person services. Use of telehealth must be optional, and the provider and consumer have the right to decline the provision of any services via telehealth.

**SECTION 46.** DHS 63.02 (13m), (18m), and (19m) are created to read:

DHS 63.02 (13m) “Functionally equivalent” means a service provided via telehealth that meets all of the following criteria:

(a) The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.

2. The service is of sufficient quality as to be the same level of service as an in-person visit. Transmission of voices, images, data, or video must be clear and understandable.

DHS 63.02 (18m) “Signature” or “signed” means a signature that meets the requirements in s. 990.01(38), Stats.

DHS 63.02 (19m) (a) “Telehealth” means the use of telecommunications technology used to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data.

(b) “Telehealth” may include real-time interactive audio-visual or audio-only communication.

(c) “Telehealth” does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 47.** DHS 63.06 (5) (d) (1) and (2) are amended to read:

DHS 63.06 (5) (d) (1) Individual, ~~face to face~~ sessions with staff to review cases, assess performance and give feedback;

DHS 63.06 (5) (d) (2) Individual, ~~side by side~~ sessions in which the supervisor accompanies an individual staff member to meet with individual clients in regularly scheduled sessions or crisis situations and in which the supervisor assesses, teaches and gives feedback regarding the staff member's performance regarding the particular client;

**SECTION 48.** DHS 63.06 (5) (d) 2m. is created to read:

DHS 63.06 (5) (d) 2m. Any other form of professionally recognized method of supervision designed to provide sufficient guidance to assure the delivery of effective services to consumers by the staff member.

**SECTION 49.** DHS 63.06 (6) (a) 1. to 4. and (b) 1. to 3. are amended to read:

DHS 63.06 (6) (a)

1. Review of the applicable parts of this chapter;
2. Review of CSP policies;~~;~~
3. Review of job responsibilities specified in the job description;~~;~~
4. Review of ch. [DHS 94](#), patient rights; ~~and~~

DHS 63.06 (6) (b)

1. Use of staff meeting time which is set aside for training;~~;~~
2. Presentations by community resource staff from other agencies;~~;~~
3. Attendance at conferences and workshops; ~~and~~

**SECTION 50.** DHS 63.06 (6) (a) 6. is created to read:

DHS 63.06 (6) (a) 6. Review of agency's use of telehealth, including when telehealth would be used and by whom, privacy and security considerations, and the right to decline services provided via telehealth.

**SECTION 51.** DHS 63.09 (4m) is created to read:

DHS 63.09 (4m) The agency's telehealth policy, including when telehealth would be used and by whom, privacy and security considerations, and the right to decline services provided via telehealth.

**SECTION 52.** DHS 75.02 (12) is amended to read:

DHS 75.02 (12) "Clinical supervision" means intermittent ~~face-to-face~~ contact provided on or off the site of a service between a clinical supervisor and treatment staff to ensure that each patient has an individualized treatment plan and is receiving quality care. "Clinical supervision" includes auditing of patient files, review and discussion of active cases and direct observation of treatment and means also exercising supervisory responsibility over substance abuse counselors in regard to at least the following: counselor development, counselor skill assessment and performance evaluation, staff management and administration, and professional responsibility.

**SECTION 53.** DHS 75.02 (12), as affected by this rule, is repealed.

**SECTION 54.** DHS 75.02 (29m) is created to read:

DHS 75.02 (29m) "Functionally equivalent" means a service provided via telehealth that meets all of the following criteria:

1. The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.
2. The service is of sufficient quality as to be the same level of service as an in-person visit. Transmission of voices, images, data, or video must be clear and understandable.

**SECTION 55.** DHS 75.02 (29m), as affected by this rule, is repealed.

**SECTION 56.** DHS 75.02 (78g) is created to read:

DHS 75.02 (78g) “Signature” or “signed” means a signature that meets the requirements in s. 990.01(38), Stats.

**SECTION 57.** DHS 75.02 (78g), as affected by this rule, is repealed.

**SECTION 58.** DHS 75.02 (87m) is created to read:

DHS 75.02 (87m) (a) “Telehealth” means the use of telecommunications technology to deliver functionally equivalent services allowable under this chapter, s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data.

(b) “Telehealth” may include real-time interactive audio-visual or audio-only communication.

(c) “Telehealth” does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 59.** DHS 75.02 (87m), as affected by this rule, is repealed.

**SECTION 60.** DHS 75.13 (3) (c) is amended to read:

DHS 75.13 (3) (c) A trained staff member designated by the director to be responsible for the operation of the service shall be ~~on the premises~~ available at all times the service is in operation, unless the service is also certified under s. DHS 75.15 and staff is required to be on the premises. That person may provide direct counseling or other duties in addition to being in charge of the service.

**SECTION 61.** DHS 75.13 (3) (c), as affected by this rule, is repealed.

**SECTION 62.** DHS 75.16 (5) (a) 4. is amended to read:

DHS 75.16 (5) (a) (4) Classroom instruction time for programs that are in lieu of multiple offender traffic safety programs shall be a minimum of 24 hours, including a group-oriented follow-up session. The group-oriented follow-up session shall be held within 3 months after completion of the initial 23 hours of the program. If a participant's residence is 60 miles or more from the site of the group-oriented follow-up session, the follow-up session may be conducted by ~~telephone~~ telehealth with the participant and a concerned other, such as a spouse, parent, adult relative, or other appropriate person.

**SECTION 63.** DHS 75.16 (5) (a) 4., as affected by this rule, is repealed.

**SECTION 64.** DHS 75.03 (38m) is created to read:

DHS 75.03 (38m) “Functionally equivalent” means a service provided via telehealth that meets all of the following criteria:

(a) The quality, effectiveness, and delivery mode of the service provided is clinically appropriate to be delivered via telehealth.

(b) The service is of sufficient quality as to be the same level of service as an in-person visit. Transmission of voices, images, data, or video must be clear and understandable.

**SECTION 65.** DHS 75.03 (89) is renumbered DHS 75.03 (89) (a) and amended to read:

DHS 75.03 (89) (a) “Telehealth” means the use of ~~digital information and communication technologies, such as computers and mobile devices, for the provision of health care services remotely~~ telecommunications technology used to deliver functionally equivalent services allowable under this chapter s. DHS 107.01 (5), and ss. 49.45 (61) and 49.46 (2) (b) 21. to 23., Stats., including assessment, diagnosis, consultation, treatment, or transfer of medically relevant data.

**SECTION 66.** DHS 75.03 (b) and (c) are created to read:

DHS 75.03 (b) “Telehealth” may include real-time interactive audio-visual or audio-only communication.

(c) “Telehealth” does not include communication between a certified provider and a recipient that consists solely of an electronic mail, text, or facsimile transmission.

**SECTION 67.** DHS 75.12 (2) is amended to read:

DHS 75.12 (2) Services delivered through telehealth shall be of sufficient quality to be functionally equivalent. ~~to face-to-face services.~~

**SECTION 68.** DHS 75.24 (12) (a) is amended to read:

DHS 75.24 (12) REFERRAL. (a) A service shall have written policies and procedures for referring patients to other ~~community~~ service providers and for coordinating care with other providers.

**SECTION 69.** EFFECTIVE DATE: these rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats., except for sections 53, 55, 57, 69, and 61 to 68, which shall take effect when clearinghouse rule, CR 20-047, takes effect on October 1, 2022.