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# State of Wisconsin

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**Governor Tony Evers**

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## **Emergency Order #35 Relating to the Department of Health Services and Department of Safety and Professional Services**

**WHEREAS**, in December, 2019, a novel strain of the coronavirus was detected, now named COVID-19, and it has spread throughout the world, including every state in the United States;

**WHEREAS**, on March 12, 2020, Governor Tony Evers declared a public health emergency and directed all agencies support the efforts to respond to and contain COVID-19 in Wisconsin;

**WHEREAS**, on March 13, 2020, President Donald Trump proclaimed a National Emergency concerning COVID-19;

**WHEREAS**, as of April 30, 2020, 3,090,445 people around the world have tested positive for COVID-19, including 1,031,659 in the United States and 6,854 in Wisconsin;

**WHEREAS**, the continued spread of COVID-19 demands that we have flexibility to allow providers to maximize time and resources dedicated to patient care in order to respond to the changing needs of this public health emergency;

**WHEREAS**, it is important that we maintain essential Medicaid services and operations in order to ensure the health and safety of patients and secure certain federal dollars;

**WHEREAS**, health care providers may need to implement temporary practices that allow for social distancing while still maintaining patient care; and,

**WHEREAS**, the continued spread of COVID-19 has effected the availability of health care workers, and strains on the health care industry demand that we have the help of as many skilled health care providers as possible and provide some flexibility to account for social distancing practices and staffing shortages.

**NOW THEREFORE**, under the authority vested in the Governor and the Department of Health by the Constitution and the Laws of the State, including but not limited to Article V, Section 4 of the Wisconsin Constitution and Sections 323.12(4)(b) and (d) and 252.02(6) of the Wisconsin Statutes, and the public health emergency declared in Executive Order #72, I, Governor Tony Evers, and I, Secretary-designee Andrea Palm, jointly order suspension of the following administrative rules and companion directives as follows:

## I. LOCAL PUBLIC HEALTH DEPARTMENTS

A. Local health departments have the discretion to suspend the rules identified in this Section and suspension is not automatic. The suspension of operations may lead to consequences which should be analyzed before implementation by individual local public health departments. As an alternative to suspension local health departments may consider establishing shared service arrangements.

B. Admin. Rule: Wis. Admin. Code § DHS 140.04(1)(g)3.  
Description of Rule: Requires Level I local health departments to conduct a community health assessment at least every five years.  
Status: Suspended as follows: "Conduct a community health assessment resulting in a community health improvement plan ~~at least every 5 years.~~"  
Companion Order: The Department of Health Services may establish new deadlines for submissions required in this administrative rule.

C. Admin. Rule: Wis. Admin. Code § DHS 140.04(1)(g)4.  
Description of Rule: Requires Level I local health departments to develop a community health improvement plan at least every five years.  
Status: Suspended as follows: "Develop a written community health improvement plan ~~at least every 5 years~~, by assessing applicable data, developing measurable health objectives, and partnering with persons, agencies, and organizations to cultivate community ownership throughout the entire development and implementation of the plan."  
Companion Order: The Department of Health Services may establish new deadlines for submissions required in this administrative rule.

D. Admin. Rule: Wis. Admin. Code § DHS 140.04(2)(a)  
Description of Rule: Requires Level I local health departments to submit an annual report by May 1.  
Status: Suspended  
Companion Order: The Department of Health Services may establish new deadlines for submissions required in this administrative rule.

## II. ELIGIBILITY FOR MEDICAID PROGRAMS

A. The Department of Health Services shall maintain Medicaid eligibility for persons who were enrolled on March 18, 2020 or after, in accordance with section 6008 of the Families First Coronavirus Response Act, and in anticipation that these members will need MA-provided testing and treatment.

B. Admin. Rule: Wis. Admin. Code § DHS 102.03

- Description of Rule: Establishes requirements for an applicant or member to submit verification of attested financial and nonfinancial conditions of eligibility within specific timeframes.
- Status: Suspended
- C. Admin. Rule: Wis. Admin. Code § DHS 102.04(3)
- Description of Rule: Establishes timeframes for the Department of Health Services to confirm ongoing eligibility of Medicaid members.
- Status: Suspended
- D. Admin. Rule: Wis. Admin. Code § DHS 103.03(1)(g)1.
- Description of Rule: Provides as a nonfinancial condition of eligibility that all MAPP participants be employed or in training, unless they qualify for a limited-term exception.
- Status: Suspended
- E. Admin. Rule: Wis. Admin. Code § DHS 103.08(2)(c)
- Description of Rule: Creates a six-month certification period tied to spend down requirements (the “Medicaid deductible”).
- Status: Suspended
- F. Admin. Rule: Wis. Admin. Code § DHS 103.09(2)&(3)
- Description of Rule: Creates continued time-limited eligibility for members whose counted income has increased above the eligibility limit.
- Status: Suspended
- G. Admin. Rule: Wis. Admin. Code § DHS 104.01(5)(a)3.
- Description of Rule: Requires applicants to request a fair hearing within 45 days of the adverse action and for an agency to conduct a hearing within 90 days of a member so requesting.
- Status: Suspended
- H. Admin. Rule: Wis. Admin. Code § DHS 109.11(6)
- Description of Rule: Establishes timeframes for the Department of Health Services to confirm ongoing eligibility of SeniorCare members
- Status: Suspended
- I. Admin. Rule: Wis. Admin. Code § DHS 103.087(1)(h)
- Description of Rule: Creates procedures for barring MAPP members from enrollment as a consequence of non-payment of premiums.
- Status: Suspended

### **III. FOODSHARE ADMINISTRATION**

- A. Admin. Rule: Wis. Admin. Code § DHS 252.10
- Description of Rule: Establishes time-restricted requirements related to the equipment for processing FoodShare transactions.
- Status: Suspended

#### **IV. BIRTH TO THREE PROGRAM AND CHILDREN'S LONG-TERM SUPPORT WAIVER**

- A. Admin. Rule: Wis. Admin. Code § DHS 90.06(2)(i)  
Description of Rule: Establishes cost share obligations for the families of children receiving Birth to 3 Services.  
Status: Suspended
- B. Admin. Rules: Wis. Admin. Code §§ DHS 90.06(2)(f), (j); 90.10(2)(a)(3); 90.10(2)(b); 90.11(2)(a)(1); 90.12(2)(a)(1)-(2) 90.12(2)(b)  
Description of Rule: Establishes requirements for parental consent.  
Status: Suspended as to form of consent  
Companion order: Consent may be provided verbally for purposes of these rules
- C. Admin. Rule: Wis. Admin. Code § DHS 90.10(5)(f)  
Description of Rule: Requires that an individualized family service plan contains a transition plan.  
Status: Suspended
- D. Admin. Rule: Wis. Admin. Code § DHS 90.11(2)(b)(2)  
Description of Rule: Requires that early intervention service providers annually obtain 5 hours of early intervention training.  
Status: Suspended
- E. Admin. Rule: Wis. Admin. Code § DHS 1.065  
Description of Rule: Parental payments for certain children's long-term support services  
Status: Suspended

#### **V. ADULT LONG TERM CARE**

- A. The Department of Health Services shall maintain Medicaid eligibility for persons who were enrolled on March 18, 2020 or after, in accordance with section 6008 of the Families First Coronavirus Response Act, and in anticipation that these members will need MA-provided testing and treatment.
- B. Admin. Rule: Wis. Admin. Code § DHS 10.31(4)(b)  
Description of Rule: Requires signature on application.  
Status: Suspended as follows: "The applicant or the applicant's legal guardian, authorized representative or, where the applicant is incapacitated, someone acting responsibly for the applicant, shall sign each application form ~~in the presence of a representative of the agency.~~ The signatures of 2 witnesses are required when the applicant signs the application with a mark."
- C. Admin. Rule: Wis. Admin. Code § DHS 10.32(4)  
Description of Rule: Requires eligibility re-determinations.  
Status: Suspended

- D. Admin. Rule: Wis. Admin. Code § DHS 10.34(4)(a)  
 Description of Rule: Creates ineligibility for Family Care benefits for members who fail to pay cost share.  
 Status: Suspended
- E. Admin. Rule: Wis. Admin. Code § DHS 10.44(2)(e)  
 Description of Rule: Requires assessments to identify member needs.  
 Status: Suspended as follows: “The CMO shall use assessment protocols that include a ~~face to face~~ interview with the enrollee and that comprehensively assess and identify all of the following...”
- F. Admin. Rule: Wis. Admin. Code § DHS 10.44(4)(e)  
 Description of Rule: Requires performance improvement projects.  
 Status: Suspended
- G. Admin. Rule: Wis. Admin. Code § DHS 10.45(2)(b)  
 Description of Rule: Requires managed care organizations not dis-enroll members except under certain circumstances.  
 Status: Suspended as follows: “A CMO may not disenroll any enrollee ~~except under circumstances specified in its contract with the department and the express approval of the department, unless the enrollee has requested to be disenrolled. When a CMO requests department approval to disenroll an enrollee, the CMO shall refer the enrollee to the resource center for counseling under s. DHS 10.23 (2) (j).~~ A CMO may not encourage any enrollee to disenroll.”
- H. Admin. Rule: Wis. Admin. Code § DHS 10.55(3)  
 Description of Rule: Requires applicants to request a fair hearing within 45 days of adverse action or be barred from administrative relief.  
 Status: Suspended

**VI. MEDICAID BENEFIT MANAGEMENT**

- A. Admin. Rule: Wis. Admin. Code § DHS 105.16(6)  
 Description of Rule: Requires certification in ventilator training and CPR  
 Status: Suspended only as to registered nurses whose certification expires during the public health emergency.
- B. Admin. Rule: Wis. Admin. Code § DHS 107.10(2)(e)  
 Description of Rule: Requires Prior Authorization before a provider can submit a claim for a drug that is not already subject to a federal rebate agreement.  
 Status: Suspended
- C. Admin. Rule: Wis. Admin. Code § DHS 107.10(3)(a), (b)

- Description of Rule: Establishes limitations on the number of refills or the time period of refills.  
 Status: Suspended
- D. Admin. Rule: Wis. Admin. Code § DHS 107.10(3)(d), (e)  
 Description of Rule: Establishes limitations on the number of days-supply that can be provided.  
 Status: Suspended
- E. Admin. Rule: Wis. Admin. Code § DHS 107.10(3)(h)  
 Description of Rule: Enumerates list of non-legend drugs and provides for Medicaid funding.  
 Status: Suspended  
 Companion Order: A non-legend drug may be covered as treatment of a diagnosable medical condition when it is a rational and cost-effective part of an accepted medical treatment plan, as determined by the The Department of Health Services.
- F. Admin. Rule: Wis. Admin. Code § DHS 107.113(5)(d)  
 Description of Rule: Prevents RNs from being able to bill for covered services in excess of daily and weekly limits.  
 Status: Suspended

## VII. EMERGENCY MENTAL HEALTH SERVICES

- A. Admin. Rule: Wis. Admin. Code § DHS 34.02 (8)  
 Description of Rule: Defines “emergency mental health services.”  
 Status: Supplemented as follows: “Emergency mental health services’ means a coordinated system of mental health services which provides an immediate response to assist a person experiencing a mental health crisis, but which prioritizes services based on need where needs outweigh resources.”
- B. Admin. Rule: Wis. Admin. Code § DHS 34.02 (23)  
 Description of Rule: Defines “walk-in services”  
 Status: Suspended and supplemented as follows: “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.”
- C. Admin. Rule: Wis. Admin. Code § DHS 34.21 (8) (b)  
 Description of Rule: Sets orientation training requirements.  
 Status: Suspended as follows: “(b) *Orientation training requirement.*  
 1. Each newly hired staff person who has had less than 6 months of experience in providing emergency mental health services shall complete a minimum of 40 hours of documented orientation training within ~~3~~ 6 months after beginning work with the program.

2. Each newly hired staff person who has had 6 months or more of prior experience in providing emergency mental health service shall complete a minimum of 20 hours of documented orientation training within 3 months after beginning work with the program.

3. Each volunteer shall receive at least ~~40~~ 8 hours of orientation training before working directly with clients or their families, with an additional 10 hours of orientation before the end of the first and second months, with the full 40 hours completed before the end of three months of the volunteer starting to work with crisis clients."

- D. Admin. Rule: Wis. Admin. Code § DHS 34.22 (3) (b)  
Description of Rule: Describes "mobile crisis service."  
Status: Suspended as follows: "*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:"  
Companion Order: Wis. Admin. § DHS 34.02(16) is commensurately suspended insofar as it conflicts with this suspension.
- E. Admin. Rule: Wis. Admin. Code § DHS 34.21 (7) (d)  
Description of Rule: Establishes supervision requirements for less senior or unlicensed staff.  
Status: Suspended as follows: "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 encounter per week or for every 30 clock hours of ~~face-to-face~~ mental health services they provide.
- F. Admin. Rule: Wis. Admin. Code § DHS 34.21 (7) (e)  
Description of Rule: Establishes peer clinical consultation for senior or licensed staff.  
Status: Suspended as follows: "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~~ mental health services they provide."

## VIII. OUTPATIENT MENTAL HEALTH CLINICS

- A. Admin. Rule: Wis. Admin. § DHS 35.03 (2)  
Description of Rule: Defines "available to provide outpatient mental health services"  
Status: Modified as follows: "Available to provide outpatient mental health services' means physical presence at any of the clinic's offices, or via telephonic, telehealth, or other electronic means."

B. Admin. Rule: Wis. Admin. Code § DHS 35.07(2)  
Description of Rule: Sets requirements for delivery of outpatient mental health services.  
Status: Modified by companion order.  
Companion Order: “[O]ther location appropriate to support the consumer's recovery” shall be interpreted to include delivery by telephonic, telehealth, or other electronic means.

C. Admin. Rule: Wis. Admin. Code § DHS 35.123 (2)  
Description of Rule: Sets staffing requirements for clinics.  
Status: Suspended as follows: (2) In addition to the clinic administrator, the clinic shall have a sufficient number of qualified staff members available to provide outpatient mental health services to consumers admitted to care. ~~Except as provided in s. DHS 35.12 (2m), the clinic shall implement any one of the following minimum staffing combinations to provide outpatient mental health services:~~  
(a) ~~Two or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 60 hours per week.~~  
(b) ~~One or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 30 hours per week and one or more mental health practitioners or recognized psychotherapy practitioners who combined are available to provide outpatient mental health services at least 30 hours per week.~~  
(c) ~~One or more licensed treatment professionals who combined are available to provide outpatient mental health services at least 37.5 hours per week, and at least one psychiatrist or advanced practice nurse prescriber who provides outpatient mental health services to consumers of the clinic at least 4 hours per month.~~

## IX. COMMUNITY SUPPORT PROGRAMS

A. Admin. Rule: Wis. Admin. Code § DHS 63.06 (5) (d) and (e)  
Description of Rule: Describes how clinical supervision shall be accomplished.  
Status: Suspended as follows: “(d) Clinical supervision shall be accomplished by one or more of the following means:  
1. Individual, ~~face to face~~ sessions with staff to review cases, assess performance and give feedback;  
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; or  
3. Regular client report or review staff meetings and treatment planning staff meetings to review and assess staff



performance and provide staff direction regarding individual cases.

(e) ~~For every 20 clients or every 40 hours of direct service in the CSP,~~ the clinical supervisor shall ~~spend at least 4 hours a weekly~~ providing supervision."

- B. Admin. Rule: Wis. Admin. Code § DHS 63.10 (1) (a)  
Description of Rule: Requirement of an initial assessment.  
Status: Suspended as follows: "An initial assessment shall be done at the time of the client's admission to the CSP, and an in-depth assessment shall be completed within ~~one month~~ 45 days after a client's admission. The physician shall make a psychiatric assessment of the client's need for CSP care and appropriate professional personal shall make a psychiatric and psychosocial assessment of the client's need for CSP care."
- C. Admin. Rule: Wis. Admin. Code § DHS 63.10 (2) (a)  
Description of Rule: Requirements for treatment planning.  
Status: Suspended as follows: "The case manager assigned to a client under s. DHS 63.12 (1) shall ensure that an initial written treatment plan is developed at the time of the client's admission to the CSP and that a comprehensive treatment plan is developed and written within ~~one month~~ 45 days after admission and is reviewed and updated in writing at least once every 6 months.

## **X. COMMUNITY SUBSTANCE ABUSE SERVICES**

- A. Admin. Rule: Wis. Admin. Code § DHS 75.02(12)  
Description of Rule: Defines "clinical supervision."  
Status: Suspended as follows: "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.
- B. Admin. Rule: Wis. Admin. Code § DHS 75.03(14)  
Description of Rule: Establishes signature requirements for staffing.  
Status: Suspended as follows: (14) STAFFING. (a) Staffing shall be completed for each patient and shall be documented in the patient's case record as follows:

1. Staffing for patients in an outpatient treatment service who attend treatment sessions one day per week or less frequently shall be completed at least every 90 days or every 6 treatment sessions, whichever is longer.

2. Staffing for patients who attend treatment sessions more frequently than one day per week shall be completed at least every 30 days

....

(e) A staffing report shall be signed by ~~the primary counselor and the clinical supervisor, and by a mental health professional if the patient is dually diagnosed. The consulting physician shall review and sign the staffing report.~~

- C. Admin. Rule: Wis. Admin. Code § DHS 75.03(17)(c)5.  
Description of Rule: Establishes requirements for the patient discharge summary.  
Status: Suspended  
Companion Order: The discharge summary shall be signed by the primary counselor, but if in training, also by the clinical supervisor.
- D. Admin. Rule: Wis. Admin. Code §§ DHS 75.03(20)(f) and DHS 75.16(4)(L)3  
Description of Rule: Service evaluations.  
Status: Suspended.
- E. Admin. Rule: Wis. Admin. Code § DHS 75.12(4)(c)  
Description of Rule: Required personnel during day treatment service.  
Status: Suspended as follows: "A trained staff member designated by the director to be responsible for the operation of the service shall be ~~on the premises~~ present at all times the service is in operation. That person may provide direct counseling or other duties in addition to being in charge of the service."
- F. Admin. Rule: Wis. Admin. Code § DHS 75.13(3)(c)  
Description of Rule: Required personnel during outpatient treatment service.  
Status: Suspended as follows: "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. That person may provide direct counseling or other duties in addition to being in charge of the service."
- G. Admin. Rule: Wis. Admin. Code § DHS 75.12(6)(e)  
Description of Rule: Establishes operational requirements for a substance use day treatment service.  
Status: Suspended as follows: (e) ~~A substance abuse counselor~~ qualified staff of a service shall provide a minimum of 12 hours of counseling per week for each patient, including individual and group counseling. Family and couples

counseling shall be provided or made available, when appropriate. The service shall ensure that:

1. Each patient receives at least one hour of individual counseling per week.

2. The service's treatment schedule is communicated to patients in writing and by any other means necessary for patients with communication difficulties.

3. The maximum amount of time between ~~counseling sessions~~ contacts with service staff does not exceed 72 hours in any consecutive 7-day period.

H. Admin. Rule: Wis. Admin. Code § DHS 75.13(5)(e)  
Description of Rule: Requires medical director or psychologist's review.  
Status: Suspended, unless medical consultation is clinically indicated based on risk level, co-occurring conditions, or to determine appropriate level of care.

## **XI. Licensing and Practice of Certain Health Care Providers**

1. Admin. Rule: Wis. Admin. Code § OT 4.04(3)  
Rule Description: Supervision and practice of occupational therapists  
Status: Suspended as follows: "When close supervision is required, the supervising occupational therapist shall have daily contact ~~on the premises~~ with the occupational therapy assistant. The occupational therapist shall provide direction in developing the plan of treatment and shall periodically inspect the actual implementation of the plan. The occupational therapist shall cosign evaluation contributions and intervention documents prepared by the occupational therapy assistant.
2. Admin. Rule: Wis. Admin. Code § OT 4.04(4)(ah) and (ap)  
Rule Description: Supervision and practice of occupational therapists  
Status: Suspended as follows: (ah) "When general supervision is allowed, the supervising occupational therapist shall, except as provided under par. (ap), have direct contact with the occupational therapy assistant and ~~face-to-face~~ direct contact with the client ~~by every tenth session of occupational therapy and no less than once per calendar month~~ as needed, to be determined by the supervising occupational therapist. (ap) When general supervision is allowed, and occupational therapy services are provided to a client once per calendar month or less frequently than once per calendar month, the supervising occupational therapist shall have direct contact with the occupational therapy assistant and ~~face-to-face~~ direct contact with the client ~~no less than every other session of occupational therapy, as needed, to be determined by the supervising occupational therapist.~~"
3. Admin. Rule: Wis. Admin. Code § HAS 2.01(4)

Rule Description: Supervision of trainees  
Status: Suspended

**XII. ADDITIONAL ORDERS**

- A. Where a suspension above conflicts with existing federal regulation, a waiver may have to be obtained in order for the administrative rule suspension to have its full intended effect.
- B. Violation or obstruction of this Order is punishable by up to 30 days imprisonment, or up to \$500 fine, or both. Wis. Stat. § 252.25.
- C. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
- D. This Order is effective immediately and shall remain in effect for the duration of the public health emergency as declared in Executive Order #72.



5/4/2020

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Tony Evers  
Governor  
State of Wisconsin

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Date



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Andrea Palm  
Secretary-designee  
State of Wisconsin Department of Health Services

05/04/2020

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Date