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September 29, 2025

Sukhvir Singh
Wisconsin Department of Health Services
Division of Care and Treatment Services
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Comments submitted via email

RE: Invitation to comment on CR 25-054 and EmR2511 - relating to community substance use services standards

Dear Mr. Singh:

The Department of Health Services published notice on September 15, 2025, for the public to provide written comments on CR 25-054 and EmR2511 - relating to community substance use services standards by September 29, 2025. This letter is in response to that opportunity to provide formal comments on that permanent and emergency rule pertaining to DHS 75 substance use disorder treatment rules and related rule provisions.

The Wisconsin Hospital Association's membership provides mental health services and substance use disorder services to their communities across the continuum of care, including in hospital, residential and clinic settings. Because of the broad array of mental health and substance use disorder services provided by WHA member hospitals and health systems, WHA's members have an interest in ensuring that Wisconsin's regulatory structure governing mental health and substance use disorder services, and that regulatory structure's interpretation and implementation by providers, payors, the department and other stakeholders, supports – and does not impede – the provision of accessible, efficient, and sustainable services for individuals seeking mental health or substance use disorder treatment.

WHA's members have long supported integrated mental health and substance use disorder treatment. Establishing regulatory distinctions between mental health and substance use disorder frequently makes little clinical or operational sense. WHA supports DHS's overall intent to reduce such distinctions.

However, WHA continues to hear significant concerns from the WHA Mental Health and Addiction Care Forum and the Rural Wisconsin Healthcare Cooperative's Behavioral Health Roundtable regarding unnecessary complexity, unnecessary and counter-productive regulatory prescription, and considerable confusion from providers, payers, stakeholders, and state staff regarding DHS 75 as amended in 2021 and as amended under EmR2511/CR 25-054 on August 11, 2025.

Multiple mental health and substance use disorder providers have continuously engaged the Department since 2021 through on-site discussions, webinars, public meetings, private meetings, advisory committees, and today's rulemaking hearing, to communicate their concerns, frustrations, challenges and recommendations to help enable their clinicians to provide clinically sound, efficient access to mental health and substance use disorder services to their communities and patients.

For many of WHA's members, the potentially most positive and impactful change in EmR2511/CR 25-054 was the creation of DHS 75.49 (3) and DHS 75.49 (4) exempting federally regulated Rural Health Clinics from the requirement to be DHS 75 certified to provide outpatient substance use disorder treatment. As federally regulated and surveyed care settings, Rural Health Clinics are utilized throughout Wisconsin to provide outpatient clinic services. DHS 75 certification has been a barrier to adding outpatient substance use disorder services because of the additional regulatory costs and complexities of becoming DHS 75 certified.

However, compared to the clear statement in SS 047-24 – "In addition, an added exclusion in applicability would be put in place for rural health clinics" – since EmR2511 went into effect in August, WHA members have shared with the WHA Mental Health and Addiction Care Forum and the Rural Wisconsin Healthcare Cooperative's Behavioral Health Roundtable that in practice, DHS staff are communicating that whether the Rural Health Clinic exclusion in EmR2511 applies or not depends on whether a patient's substance use disorder diagnosis or treatment is primary or secondary.

From a treating provider and patient perspective, it is particularly challenging to understand how such distinction in application of the DHS 75 regulation is beneficial from a clinical perspective or a community access perspective. The regulatory nuance and confusion created by this distinction has created fresh frustration among Rural Health Clinics seeking to provide access to substance use disorder services in their rural communities.

Further, making a regulatory distinction based on whether an individual patient's primary diagnosis is mental health, substance use disorder or something else, runs counter to the overall shared intent of DHS and WHA members to support integrated care and remove separate regulatory and payment silos between mental health, substance use disorder, and physical health.

Conversely, some of the changes in EmR2511/CR 25-054 are blurring lines between mental health certifications and Medicaid payment provisions and substance use disorder certifications and Medicaid payment provisions that are creating confusion among providers, insurers, and other key stakeholders, and potentially adding new certification standards and requirements for primarily mental health services that did not previously exist.

For example, in April 2025, WHA sent a letter to the Department identifying issues one provider was encountering with a Medicaid managed care organization regarding Forward Health Update 2024-38, which was drafted concurrently with much of the language in EmR2511/CR 25-054. In particular, concerns were raised that it appeared that existing mental health IOP services that are entirely or primarily mental health services would no longer be reimbursable unless the provider added an additional DHS 75 certification.

If DHS 75 certification were less onerous than the comparable mental health IOP requirements, that would not be a significant concern. However, WHA members report that DHS 75 certification creates significant new requirements compared to mental health IOP requirements. Even worse, questions have been raised whether services previously provided as mental health IOP services that were provided without prior authorization would now potentially require prior authorization as a DHS 75 service.

In closing, WHA's November 2020 comment letter on CR 20-047 – which was the total repeal and recreation of DHS 75 that is in effect today – noted that some stakeholders were suggesting that the Department "'start over' on DHS 75 rulemaking recognizing the significant amount of work that remains to address the myriad concerns raised by stakeholders." WHA did not recommend the "start over" approach in its comments, but noted that "additional prioritization should be given to removing barriers to access to care by significantly reducing regulatory burden on and providing additional flexibility to providers providing or considering providing substance use disorder services."

Since 2020, WHA and WHA members, rural and urban, large and small, have spent very significant time engaging with the Department trying to navigate DHS 75 so that their clinicians can provide clinically relevant, efficient mental health and substance use disorder treatment to patients needing those services in their communities. All too often, DHS 75 continues to be a source of confusion, complexity, and frustration to WHA members seeking to provide mental health and substance use disorder services that are not otherwise available to patients in their communities.

WHA and WHA's members share the Department's goal in expanding mental health and substance use disorder services to meet expanding community needs for such services, and we appreciate the Department's goal of CR 25-054 and EmR2511 to address existing challenges to achieve that shared goal. But feedback from providers on the WHA Mental Health and Addiction Care Forum and the Rural Wisconsin Healthcare Cooperative's Behavioral Health Roundtable indicates that CR 25-054 and EmR2511 still need work to achieve such goals. WHA and our members stand ready to continue to work with the department and other stakeholders providing mental health and substance use disorder services to make changes within the scope of CR 25-054 and EmR2511 and outside that scope to achieve our mutual goals of supporting and expanding access to mental health and substance use disorder services.

Sincerely,

/s/

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