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DMHSAS Numbered Memo 2015-12
Reissue of 2014-02

To: Area Administrator / Human Services Area Coordinators
Bureau Directors/Program Office Directors / Section Chiefs
County Departments of Community Programs Directors
County Departments of Developmental Disabilities Services Directors
County Departments of Human Services Directors
county Departments of Social Services Directors
Tribal Chairpersons / Human Services Facilitators

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Administrator

**MA Reimbursement for Emergency Mental Health Services Reissue of DMHSAS Info
Memo 2014-02 with New Information and Clarification**

Document Summary

On December 16, 2013, the Department of Health Services (DHS) formally adopted the November 11, 2013 Administrative Law Judge decision in the matter of Milwaukee County Behavioral Health Division, case number ML-12-0156, regarding whether the definition of emergency mental health services for purposes of Medicaid (MA) reimbursement is most appropriately contained in the MA rules, [Wis. Admin. Code § DHS 101.03\(52\)](#), or in the emergency detention (ED) statute, Wis Stat. § 51.15.

The ruling states that for the purposes of MA reimbursement, the definition of emergency mental health services is most appropriately contained in MA rules, [Wis. Admin. Code § DHS 101.03\(52\)](#), which states,

(52) “Emergency Services” means those services which are necessary to prevent the death or serious impairment of the health of the individual.

This decision highlights the need for counties to accurately complete and submit the appropriate Certificate of Need (CON) form for all Elective/Urgent Emergency Detentions (EDs) of youth under the age of 21 admitted to Winnebago Mental Health Institute (WMHI) in order to receive Medicaid reimbursement.

For dates of services from September 1, 2015 and beyond, any fiscal recoupments for Medicaid reimbursement for WMHI admissions for youth under age 21, which were recouped due to county-required Elective/Urgent CON forms being incomplete, inaccurate, or not submitted according to policy, will be the fiscal liability of the county.

Institutes for Mental Disease (IMDs) and Medicaid Certificate of Need (CON) Policy for Youth Under Age 21

Federal and state regulations require providers to conduct and document a Certificate of Need assessment for all Medicaid participants under the age of 21 who are admitted to a psychiatric or substance abuse IMD (Institution for Mental Disease). There are two types of CON forms: Elective/Urgent CON and Emergency CON.

1. Elective/Urgent CONs

Elective/Urgent CONs are the responsibility of the county to complete and submit. The CON must accompany Emergency Detention (ED) admission to WMHI for any youth under age 21 in cases where a) the individual is a danger to others but not self; or b) the identified risk and/or impairment does not impose a serious threat to the health of the individual.

The Elective/Urgent CON form to be used in these cases is the “Certification of Need for Elective/Urgent Psychiatric Substance Abuse Admissions to Hospital Institutions for Mental Disease for Members Under Age 21 (F-11047)”. Forms must be filled out according to instructions found in ForwardHealth online handbook, Topic #1411 [ForwardHealth online handbook](#) and follow all applicable policy guidelines and instructions.

Elective/Urgent admissions require a team independent of the IMD to complete the Elective/Urgent CON assessment. The Elective/Urgent CON must be completed before hospital admission by members of an independent team that:

- Does **not** have an employment or consultant relationship with the admitting facility;
- Consist of at least two individuals, one of whom is a physician;
- Have competence in the diagnosis and treatment of mental illness, preferably in child psychiatry; and
- Have knowledge of the member's situation.

None of the members of the independent team may have an employment or consultant relationship with the admitting facility. A referring or admitting physician may be a part of the independent team if he or she does not have an employment or consultant relationship with the admitting facility and meets the independent team requirements listed above. Each team member is required to sign and date the Elective/Urgent CON form and state his or her credentials. The form must be signed prior to admission. The form must be dated no later than the day of admission.

Please use form [F-11047](#) “Certification of Need for Elective/Urgent Psychiatric/Substance Abuse Admissions to Hospital Institutions for Mental Disease for Members Under Age 21.” Without this document WMHI cannot seek payment from Medicaid and the county will be responsible for 100% of the cost of care. Medicaid reimbursement cannot be sought for CONs completed retrospectively, accentuating the importance of timely completion and submission of the CON form.

2. Emergency CONs

Emergency admissions are admissions necessary to prevent the death or serious impairment of the individual as defined in DHS 101.03(52). The IMD is responsible for ensuring that there is clinical documentation to justify an emergency admission; the county is not responsible for an Emergency CON. WMHI conducts the assessment and Emergency CON according to federal regulations (42 CFR 441.153 and 42 CFR 441.156). The CON form used is “Certification of Need for Emergency Psychiatric/Substance Abuse Admissions to Hospital Institutions for Mental Disease for Members Under Age 21 and in Cases of Medicaid Determination After Admission (F-11048)”. The Inpatient Hospital section of the ForwardHealth online handbook Topic #1411 contains the requirements for this CON. The Emergency CON should be used in any case where the services are required to prevent the death or serious impairment of the individual.

Additional Information

DHS-DMHSAS has informed counties that all child/youth admissions to the Mental Health Institutes billed to Medicaid are reviewed by an external auditing source after the Medicaid payment is made. The audits are identifying CON forms found to be incomplete, and in some cases the severity of impairment of the youth was not found to be evident. In these cases WMHI has experienced denials of Medicaid reimbursement and subsequent recoupment of payments. To date these recoupments have not been assessed to counties (counties are reimbursed by DHS as Medicaid payments are received, the recoupments occur after the county is reimbursed).

Counties are responsible for approving all admissions to mental health institutions, and as necessary in an Elective/Urgent case, engaging in the certificate of need process. In the summer of 2015, DHS met with county personnel via Area Administration regional meetings, the statewide Crisis Network, and WI County Human Service Association Policy Advisory Committee meetings to review practice expectations related to the CON. DHS will begin assessing MA recoupments to county agencies for dates of service of September 1, 2015 and beyond.

Emergency Detention Documentation

The following recommendations were developed based on consultation with Wisconsin Counties:

- Carefully review the statement of Emergency Detention whenever this is the pathway to admission. The language on the ED paperwork is how DHS determines the nature of any dangerousness and the severity of impairment associated with the admission.
- When the Medicaid standard of dangerousness (services needed to avoid death or serious injury/impairment to the individual) is clearly met, counties do not need to complete a CON document for any child emergently detained and admitted for dangerousness to self, or a combination of dangerousness to self and to others (though counties can complete a document if it's desirable to have a standard practice for all admissions). In these cases, WMHI will complete an Emergency CON form.

- For all children admitted for behavior that presents a danger to others alone, collaborate with local professionals to complete the Urgent/Elective CON form prior to admission. WMHI can only submit a CON to Medicaid if the professionals' signature is dated prior to or the day of admission. In the absence of a properly dated and executed Elective/Urgent CON, WMHI will not pursue MA reimbursement and the county will be responsible for the full cost of care.
- The physician and team members signing the CON form must sign their full names and write their credentials; initials may be used for the first and/or middle name only. Verbal orders and/or telephone orders are acceptable, but they must be co-signed by the physician giving the order and the date of the co-signature of the physician must be written beside the signature.
- Wisconsin Medicaid requires a CON assessment and form for all patient transfers when the receiving hospital is a psychiatric or substance abuse IMD. This applies even if the transferring hospital is an IMD and a CON assessment was previously completed. Providers are required to follow these procedures for elective/urgent and emergency admissions. Therefore, counties should collaborate with local professionals to complete the Urgent/Elective CON for all children being admitted under any other means (return to more restrictive setting, transfer from another facility, AODA referrals under Ch. 938.295). WMHI can submit a CON to Medicaid if dated prior to or the day of admission. In the absence of a properly dated and executed Urgent/Elective CON, WMHI will not pursue MA reimbursement and the county will be responsible for the full cost of care.
- The Elective/Urgent Psychiatric/Substance Abuse CON form must be completed in full and be legible. The signature dates on the form must be consistent and cannot be after the hospital admission date. Be sure to complete the last line, "Date of CON Form Completion." Additionally, the printed name of the physician must be present and be legible. If it is not, the CON form could be rejected.
- Carefully examine the circumstances identifying the need for hospitalization. Ensure that the language on the ED paperwork aligns with and substantiates criteria under Medicaid for an emergency or an elective/urgent admission. Be sure to determine if the Elective/Urgent CON needs to be completed. This implies that counties should work together with their law enforcement entities to ensure that the ED paperwork aligns with, is consistent with, and supports the CON criteria. In the case of the Elective/Urgent CON those criteria are:
 - Ambulatory care resources available in the community do not meet the treatment needs of this member.
 - Proper treatment of the youth's psychiatric condition requires services on an inpatient basis under the direction of a physician.
 - The services can reasonably be expected to improve the member's condition or prevent further regression so that the services will no longer be needed.
- In the case of the Emergency CON, the ED paperwork should evidence the need for emergency services necessary to prevent the death or serious impairment of the health of the individual. Absent behavior which has resulted in significant injury, the Elective/Urgent CON should be completed. When in doubt, if the criteria are met for emergency under Medicaid it is advisable to complete an Urgent/Elective CON.

Contacts with County Agencies

DHS is committed to a partnership with counties using mental health institution services. In the case of an Elective/Urgent ED, if no CON is received, DHS will make three attempts to contact the county referent/board authority to obtain the proper CON document when a youth is admitted. After that point if no CON is received, Medicaid cannot be billed.

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