

State of Wisconsin



2023 Senate Bill 462

Date of enactment:
Date of publication*:

2023 WISCONSIN ACT

AN ACT *to renumber and amend* 49.45 (41) (a); *to amend* 49.45 (41) (b), 49.45 (41) (c) (intro.) and 51.15 (2) (d); and *to create* 49.45 (41) (a) 1., 49.45 (41) (d), 51.036 and 51.043 of the statutes; **relating to:** crisis urgent care and observation facilities, crisis hostels, and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 49.45 (41) (a) of the statutes is renumbered 49.45 (41) (a) (intro.) and amended to read:

49.45 (41) (a) (intro.) In this subsection, “crisis intervention services” means crisis intervention services for the treatment of mental illness, intellectual disability, substance abuse, and dementia that are provided by ~~a~~ any of the following:

2. A crisis intervention program operated by, or under contract with, a county, if the county is certified as a medical assistance provider.

SECTION 2. 49.45 (41) (a) 1. of the statutes is created to read:

49.45 (41) (a) 1. A crisis urgent care and observation facility certified under s. 51.036.

SECTION 3. 49.45 (41) (b) of the statutes is amended to read:

49.45 (41) (b) If a county elects to become certified as a provider of crisis intervention services under par. (a) 2., the county may provide crisis intervention services under this subsection in the county to medical assistance recipients through the medical assistance program. A county that elects to provide the services shall pay the amount of the allowable charges for the services under the medical assistance program that is not provided by

the federal government. The department shall reimburse the county under this subsection only for the amount of the allowable charges for those services under the medical assistance program that is provided by the federal government.

SECTION 4. 49.45 (41) (c) (intro.) of the statutes is amended to read:

49.45 (41) (c) (intro.) Notwithstanding par. (b), if a county elects, pursuant to par. (a) 2., to deliver crisis intervention services under the Medical Assistance program on a regional basis according to criteria established by the department, all of the following apply:

SECTION 5. 49.45 (41) (d) of the statutes is created to read:

49.45 (41) (d) The department shall, in accordance with all procedures set forth under s. 20.940, request a waiver under 42 USC 1315 or submit a Medical Assistance state plan amendment to the federal department of health and human services to obtain any necessary federal approval required to provide reimbursement to crisis urgent care and observation facilities certified under s. 51.036 for crisis intervention services under this subsection. If the department determines submission of a state plan amendment is appropriate, the department shall, notwithstanding whether the expected fiscal effect of the amendment is \$7,500,000 or more, submit the amend-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

ment to the joint committee on finance for review in accordance with the procedures under sub. (2t). If federal approval is granted or no federal approval is required, the department shall provide reimbursement under s. 49.46 (2) (b) 15. If federal approval is necessary but is not granted, the department may not provide reimbursement for crisis intervention services provided by crisis urgent care and observation facilities.

SECTION 6. 51.036 of the statutes is created to read:

51.036 Crisis urgent care and observation facilities. (1) **DEFINITIONS.** In this section:

(a) “Crisis” means a situation caused by an individual’s apparent mental or substance use disorder that results in a high level of stress or anxiety for the individual, persons providing care for the individual, or the public and that is not resolved by the available coping methods of the individual or by the efforts of those providing ordinary care or support for the individual.

(b) “Crisis urgent care and observation facility” means a treatment facility that admits an individual to prevent, de-escalate, or treat the individual’s mental health or substance use disorder and includes the necessary structure and staff to support the individual’s needs relating to the mental health or substance use disorder.

(2) **CERTIFICATION REQUIRED; EXEMPTION; GRANTS.** (a) The department shall establish a certification process for crisis urgent care and observation facilities and a grant program to award grants to develop and support crisis urgent care and observation facilities. No person may operate a crisis urgent care and observation facility without a certification from the department. The department may make announced and unannounced inspections and complaint investigations of crisis urgent care and observation facilities as it deems necessary, at reasonable times and in a reasonable manner. The department may limit the number of certifications it grants to operate crisis urgent care and observation facilities. The department shall, using the department’s division of the state into regions by county, include statewide geographic consideration in its evaluation of applications for certification under this section to ensure geographic diversity among the regions in the location of crisis urgent care and observation facilities certified under this section.

(b) 1. A crisis urgent care and observation facility certified under this section is not subject to facility regulation under ch. 50, unless otherwise required due to the facility’s licensure or certification for other services or purposes. A crisis urgent care and observation facility is not a hospital subject to approval under ss. 50.32 to 50.39 and nothing in this subsection limits services a hospital may provide under ch. 50.

2. Notwithstanding par. (d), the department shall promote certification and encourage any facility that is licensed as a hospital under ch. 50 and provides services consistent with those described in par. (c) 1. to 9. to apply for certification under this section. The requirements

under this section may not be construed to prohibit, limit, or otherwise interfere with services provided by a county or a hospital or other facility that are provided consistent with the facility’s existing licensure or certification, whether the facility is publicly or privately funded.

3. Notwithstanding s. 150.93, any hospital that expands psychiatric bed capacity to accommodate admissions under this section may increase its approved bed capacity by the number of psychiatric beds added under this subdivision.

4. The department shall take into account the geography of hospital facilities granted certification under subd. 2. when considering certification applications for other crisis urgent care and observation facilities.

(c) Subject to par. (d), the department may grant a certification to a crisis urgent care and observation facility that specifies in an application the level of care the facility can provide to patients and demonstrates in the application its ability to do all of the following:

1. Accept referrals for crisis services for adults and, if applicable, for youth, including any of the following:
 - a. Involuntary patients brought under s. 51.15.
 - b. Voluntary patients for services arriving as walk-ins or brought by law enforcement, emergency medical responders or emergency medical services practitioners, or county crisis personnel.
2. Abstain from having a requirement for medical clearance before admission assessment.
3. Provide assessments for physical health, substance use disorder, and mental health.
4. Provide screening for suicide and violence risk.
5. Provide medication management and therapeutic counseling.
6. Provide coordination of services for basic needs.
7. Provide for the safety and security of both the staff and the patients.

8. Have adequate staffing 24 hours a day, 7 days a week, including through use of telehealth, as described under s. 49.45 (61), with a multidisciplinary team that includes, as needed, psychiatrists or psychiatric nurse practitioners, physician assistants, nurses, licensed clinicians capable of completing assessments, peers with lived experience, and other appropriate staff.

9. Allow for voluntary and involuntary treatment of individuals in crisis as a means to avoid unnecessary placement of those individuals in hospital inpatient beds and allow for an effective conversion to voluntary stabilization when warranted in the same setting.

10. Contribute, from at least one nonstate, federal, or 3rd-party revenue source, an amount, as determined by the department, in addition to any grant awarded by the department under this section.

(d) Before the department may grant certification to a facility under this section, the department shall submit the proposal for certification to the joint committee on finance for approval. If the cochairpersons of the joint

committee on finance do not notify the department within 14 working days after the date of the submittal under this paragraph that the committee has scheduled a meeting for the purpose of reviewing the proposal, the department may grant certification of that facility as described in the proposal. If, within 14 working days after the date of the submittal under this paragraph, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposal, the department may grant certification of that facility only upon approval by the committee. When submitting a proposal regarding certification of a facility under this paragraph, the department shall provide the joint committee on finance with all of the following information about the facility proposed for certification:

1. The department's rationale for selecting the facility.
2. Where the facility is to be located.
3. A specific description of the entity that will be awarded certification.
4. A description of how the funding for the facility will work.
5. The timeline of the facility for accepting patients.
6. The distance from the facility to the nearest hospital.
7. A description of the facility's plan for staffing, including staff on call.
8. The number of beds in the facility.
9. A description of the facility's admission, hold, and discharge policies.
10. Security considerations for patients and staff at the facility.
11. The estimated population to be served.
12. The estimated number of diversions from the Winnebago Mental Health Institute had the facility been operating the past 5 years.

13. Policies that ensure the facility has the capacity to assess physical health needs and deliver care for most minor physical health challenges, while also having an identified process in order to transfer an individual to a facility with more medically staffed services if needed.

(e) No later than June 30 of each year, beginning by June 30, 2025, the department shall submit to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report regarding crisis urgent care and observation facilities under this section, including information relating to all of the following:

1. Applications for certification received by the department.
2. The number of admissions, including both voluntary and involuntary admissions.
3. Data regarding how patients are arriving for admission, including through transport by law enforcement, family, emergency medical responders or emer-

gency medical services practitioners, or county crisis personnel.

4. Average wait times, including for admission, treatment, discharge, and any other significant aspect of services provided by a crisis urgent care and observation facility.

5. The length of patient stays.

6. The time of day patients are admitted.

7. The source of payments for patient care, including private payment sources or payment under the Medical Assistance program under subch. IV of ch. 49.

8. Data regarding the county of residence for each patient in counties for which the county's data is equal to or greater than 20 patients.

9. The estimated number of diversions from the Winnebago Mental Health Institute.

10. A description of the number and type of employees providing staffing during the various times of day, including through the use of telehealth.

11. A description of rules and procedures for determining where to take an individual in need of crisis services if a crisis urgent care and observation facility does not have capacity or otherwise does not accept an individual.

12. The number of repeat clients and readmissions.

13. Utilization of follow-up services, as applicable.

14. The number of transfers to other facilities, including Winnebago Mental Health Institute, hospitals, or other facilities.

15. A description of any injuries, assaults, or other safety-related incidents.

16. A breakdown of funding, including the amounts and sources of funding.

17. The number of clients served.

18. Facility capacity, specifically the number of staffed beds.

(f) Notwithstanding the certification requirements set forth under this subsection, any facility that before the effective date of this paragraph [LRB inserts date], is providing crisis intervention services that on or after the effective date of this paragraph [LRB inserts date], would otherwise require certification as a crisis urgent care and observation facility may on and after the effective date of this paragraph [LRB inserts date], continue to provide these services without obtaining certification from the department under this subsection.

(3) ADMISSIONS. (a) A crisis urgent care and observation facility certified under this section may accept individuals for any of the following services:

1. Voluntary stabilization.
2. Observation and treatment, including for assessments for mental health or substance use disorder.
3. Screening for suicide and violence risk.
4. Medication management and therapeutic counseling.

(b) A crisis urgent care and observation facility certified under this section shall accept an adult individual for emergency detention under s. 51.15 and may accept a youth for emergency detention under s. 51.15. If the facility does not have capacity to accept an adult individual for purposes of emergency detention or if the facility does not accept a youth for purposes of emergency detention, that individual shall be transported to another appropriate facility in accordance with rules established by the department under sub. (4). A county crisis assessment under s. 51.15 (2) (c) is required prior to admission to a crisis urgent care and observation facility for purposes of emergency detention, but the medical clearance requirement under s. 51.15 (2) (b) does not apply to crisis urgent care and observation facility admissions for purposes of emergency detention.

(c) The department shall encourage each crisis urgent care and observation facility certified under this section to operate with the intent to admit individuals for no longer than 5 days, except in exceptional circumstances.

(4) RULES. The department shall promulgate rules to implement this section, including all of the following:

(a) Establishment of the grant program described under sub. (2), including procedures for administration and establishment of criteria for awarding grants.

(b) Establishment of requirements for crisis urgent care and observation facilities to match a portion of any grant awarded by the department under this section, as set forth under sub. (2) (c) 10., and for determining what types of contributions may count toward the matching requirement. The matching requirement established by the department under this paragraph may be fulfilled through in-kind contributions.

(c) Requirements for admitting, holding, and discharging individuals for purposes of emergency detention.

(d) Minimum security requirements for crisis urgent care and observation facilities certified under this section.

(e) Establishment of a target range for the number of beds in a crisis urgent care and observation facility certified under this section.

(f) Establishment of policies and criteria to ensure that law enforcement and other persons authorized to transport or cause transportation of an individual for purposes of emergency detention have clear standards and procedures regarding all of the following:

1. The circumstances under which law enforcement and other persons may bring an individual to a crisis urgent care and observation facility certified under this section.

2. The determination as to which facility law enforcement and other persons authorized to transport or cause transportation of an individual for purposes of emergency detention may take an individual.

(g) Establishment of policies relating to interfacility transfers initiated at a crisis urgent care and observation facility, including how such transfers should occur and who should be involved in such transfers. Barring exigent circumstances that necessitate law enforcement involvement, law enforcement may not transport an individual for purposes of an interfacility transfer from a crisis urgent care and observation facility.

(h) Establishment of procedures to coordinate communication regarding bed availability in a crisis urgent care and observation facility before the arrival of a patient and establishment of a process for determining where to take an individual in need of crisis services if a crisis urgent care and observation facility does not have capacity or otherwise does not accept an individual.

(i) Establishment of policies for coordination between crisis urgent care and observation facilities certified under this section and any facility established or operated with funding received under s. 165.12 from settlement proceeds from the opiate litigation, as defined in s. 165.12 (1), as well as policies to encourage awareness of and communication and coordination with other facilities that provide services similar to those provided by crisis urgent care and observation facilities.

(j) Establishment of procedures to require a crisis urgent care and observation facility to coordinate continuity of care with, when appropriate, a hub-and-spoke health home pilot program for any patient treated at a crisis urgent care and observation facility for a period of 5 or fewer days. The department shall establish procedures for follow-up with other transition facilities in the event that a hub-and-spoke health home pilot program is appropriate but not available.

(k) Establishment of policies and procedures for crisis urgent care and observation facilities that intend to accept both youths and adults, including requirements that youths be treated in a separate part of the facility from adults, policies to address youth-related treatment issues, including parental input, and staff training for youth-specific issues.

(L) Establishment of appropriate staffing level requirements, including policies to ensure the availability of adequate in-person and on-site care.

(m) Establishment of requirements to define the population to be served at a given crisis urgent care and observation facility, including establishment of any minimum age requirements.

(5) COORDINATION. In accordance with rules established by the department under sub. (4) (i), a crisis urgent care and observation facility certified under this section shall coordinate to the fullest extent possible with any facility established or operated with funding received under s. 165.12 from settlement proceeds from the opiate litigation, as defined in s. 165.12 (1), as well as with other

facilities that provide services similar to those provided by crisis urgent care and observation facilities.

SECTION 6m. 51.043 of the statutes is created to read:

51.043 Crisis hostels. (1) DEFINITIONS. In this section:

(a) "Crisis hostel" means a mental health stabilization program with a maximum of 15 beds that provides crisis stabilization services to an adult individual to prevent or de-escalate the individual's mental health crisis and avoid admission of the individual to a more restrictive setting.

(b) "Crisis stabilization services" means optional emergency mental health services that provide short-term, intensive, community-based services to avoid the need for inpatient hospitalization.

(2) CERTIFICATION REQUIRED; EXEMPTION. (a) Except as provided in par. (b), no person may operate a crisis hostel without a certification from the department.

(b) If a county has, by the effective date of this paragraph [LRB inserts date], established a crisis hostel and operates the crisis hostel pursuant only to certification under ch. DHS 34, Wis. Adm. Code, where individuals whose anticipated length-of-stay is longer than 23 hours due to needs outside of crisis stabilization, and crisis stabilization services are provided in a distinct and separate area from where an individual may spend the night, the county may continue to provide crisis stabilization services without obtaining additional residential licensure and is not required to receive a certification under this section. Needs outside of crisis stabilization may include housing insecurity or stability issues necessitating coordination of transportation, advocacy, and housing assistance.

(c) The department may not limit the number of certifications it issues to operate a crisis hostel.

(d) The department shall establish application fees and biennial certification fees.

(e) A crisis hostel operated under par. (a) or (b) is not subject to facility regulation under ch. 50.

(3) ADMISSIONS. (a) An individual 18 years of age or older may be admitted to a crisis hostel to receive crisis stabilization services.

(b) Crisis stabilization services may only be provided at a crisis hostel on a voluntary basis to individuals who are 18 years of age or older. Crisis hostel staff may not admit an individual who is transported to the hostel involuntarily for emergency detention under s. 51.15.

(4) RULES. The department shall promulgate rules to implement this section.

SECTION 7. 51.15 (2) (d) of the statutes is amended to read:

51.15 (2) (d) Detention under this section may only be in a treatment facility approved by the department or the county department, if the facility agrees to detain the individual, or a state treatment facility. The department shall approve for purposes of this subsection any facility certified under s. 51.036.

SECTION 8. Nonstatutory provisions.

(1) When considering the initial certifications of crisis urgent care and observation facilities under s. 51.036, the department of health services shall, to the fullest extent possible, prioritize certification of a crisis urgent care and observation facility to be located at least 100 miles from the Winnebago Mental Health Institute and in the region of the state defined as the western region according to the department's division of the state into five regions by county as of January 5, 2023, for purposes of data analysis and communication.