

Report From Agency

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 07-031
DEPARTMENT OF REGULATION : (s. 227.19 (3), Stats.)
AND LICENSING :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

A copy of Form #2751 is attached.

III. FISCAL ESTIMATES:

The Department of Regulation and Licensing estimates that this rule will require staff time in the Divisions of Management Services, Professional Credentialing, Office of Legal Counsel and Office of Examinations. The one-time salary and fringe costs in the Division of Professional Credentialing, Office of Legal Counsel and Office of Examinations are estimated at \$22,900. The on-going salary, fringe, supplies and services costs in the Division of Professional Credentialing, Division of Board Services and the Office of Examinations are estimated at \$77,300. The department finds that this rule has no significant fiscal effect on the private sector.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Subchapter VII of ch. 440, Stats., was enacted on July 25, 2005 by 2005 Wis. Act 25. It was amended by Act 407 which was enacted on May 10, 2006. Under subch. VII of ch. 440, Stats., the Department of Regulation and Licensing is required to promulgate rules relating to the issuance and renewal of credentials, requirements for certification, supervised practice, scope of practice, education approval, and grounds for discipline. Prior to Act 25, this profession was not regulated outside of ch. DHFS 75 clinics. Credentialing services were provided by private industry under contract with and funded by DHFS.

The goals of transferring regulatory authority to the department include cost savings, implementation of uniform statewide regulation of the profession and recognition of the

growing responsibility of these professionals to a healthy Wisconsin. The goal of cost savings was achieved by transferring responsibility from a private contractor paid from GPR funds to an agency funded by program revenue.

Act 25 transferred the responsibility for regulating this professional field from the Wisconsin Certification Board, Inc, to the Department of Regulation and Licensing and compressed the number of credentials from 13 to 8. This profession has not yet developed a standardized educational curriculum that is widely accepted as establishing competency in the field. The rules proposed by the department standardize the qualifications for credentialing in a manner consistent with the general parameters set by the International Certification & Reciprocity Consortium (IC&RC). The rules also take preliminary steps toward establishing a recognized educational curriculum leading to competency in the field.

The proposed rules are effective statewide whereas prior rules were only applicable within clinics operating under the provisions of ch. DHFS 75. The current rules provide consistency in scope of practice and code of conduct for substance abuse treatment professional both inside ch. DHFS 75 clinics and in all the other situations in which substance abuse counseling services may be delivered.

An additional achievement consistent with the goals of the Legislature is the integration of this profession into a regulatory body with experience and expertise with professions that provide similar, complementary and supplementary services. This complementary relationship is demonstrated by the crossover allowed in these rules for social workers, marriage and family therapists and licensed professional counselors and the interaction of these rules with s. MPSW 1.09.

There are three types of professional credentials, counselor, supervisor and prevention. Within each type there are multiple levels of credential. For all three types, the rules establish an entry level credential that allows for accumulation of education, training, experience and increasing competencies while actively participating in the field. These in-training credentials have a limited renewal feature that assures that credential holders either progress in their professional development or withdraw from the field.

The rules also contain provisions establishing parameters for the scope of practice of the various credentials, such as a provision that will prohibit supervisors-in-training from supervising those counseling credential holders who have a greater need for skillful supervision.

The department in the development of this regulatory framework joined the International Certification & Reciprocity Consortium, an international consortium of regulatory bodies with experience in this field. Substantial portions of the regulations adopted here are drawn from and are similar to the recommendations of that internationally recognized body.

Some of the rules developed have either delayed implementation dates or sunset provisions. The decision to delay the implementation of some of the requirements of this regulatory scheme was based upon concerns that the field would be unable to quickly adopt and implement significant changes would adversely impact the capacity of the profession to meet society's needs. Similarly, some aspects of current practice have been determined to be contrary to the continued pursuit of the public welfare but the immediate cessation of such activities would adversely impact capacity. Therefore sunset provisions were established to allow the credential holders adequate opportunity to comply.

Finally, this profession is unique in its longstanding tradition of welcoming members based upon competencies acquired through personal experiences including recovery. The rules adopted by the Department recognize this pathway to competency and preserve it with some minimal adjustments such as a requirement for a formal educational level equal to a general equivalency degree.

V. NOTICE OF PUBLIC HEARING AND PUBLIC COMMENTS:

A public hearing was held on May 22, 2007. The following individuals spoke and/or submitted written comments:

Rhonda Arman, Recovery Network, Milwaukee, WI
Dennis Markus, Human Services Instructor, Gateway Technical College, LCSW, C-SAC
Angela McAlister, Wisconsin Association on Alcohol & Other Drug Abuse, Minority Counselor Training Institute, Statewide Program Coordinator, Madison, WI
Jim Hahn, MEd/MSMFT, LCSW, LMFT, LPC, North Central Health Care, Langlade Health Care Center, Antigo, WI
Linda A. Hall, Executive Director, Wisconsin Association of Family & Children's Agencies, Madison, WI
Marc Herstand, MSW, CISW, Executive Director, NASW WI Chapter, Madison, WI

Summary of Public Comments:

1. One person appeared at the public hearing and registered in favor of the rule, however supplied written remarks at the meeting that were not in support or opposition to the rule and instead asked the board to consider options for education for clinical substance abuse counselor candidates.

2. The National Association of Social Workers – Wisconsin Chapter (NASW – WI Chapter) provided the following written recommendation to the Department of Regulation and Licensing:

Recommendation #1: The NASW-WI is recommending that the Department of Regulation and Licensing restrict the issuance of clinical substance abuse counselor and independent clinical supervisor certifications to those who hold a license as a mental health professional capable of diagnosing and treating mental and emotional disorders.

The NASW-WI reviews the department's proposed education minimum for a clinical substance abuse counselor, that of an associates degree in a behavioral science, to be inadequate for public protection. They argue that a majority of clients diagnosed with a substance abuse disorder are dually diagnosed with a mental illness, and if a counselor or their supervisor is not able to diagnose or treat mental or emotional disorders, then the client cannot be effectively treated.

Department Response: The department has not incorporated this recommendation into the permanent rules. Although the department agrees with the NASW-WI Chapter in the assumption that many individuals who have a substance use disorder also have a co-occurring mental health disorder, there seems to be little indication, if any, that requiring the ability to diagnose and treat mental disorders is required for those who hold the highest level substance abuse counselor or supervisor credentials.

Prior to 2005 Wisconsin Act 25, the practice of substance abuse counseling and clinical supervision (of AODA counselors) had "title protection" only and rules developed applied to staffing requirements for ch. HFS 75 certified alcohol and drug abuse treatment clinics. Clinic rules required the use of certified professionals, some of which were certified by the Wisconsin Certification Board (WCB). The WCB set the credential standards for all levels of professionals, in part based on the standards of TAP-21 federal guidelines and the certification standards of the IC&RC. The WCB did not require *any* underlying formal education. A person who did not hold a high school diploma or its equivalent, could achieve the highest levels of certifications of the WCB, which were the certified alcohol and drug abuse counselor III (CADC III) and the certified clinical supervisor II (CCS II). This profession has a long history of personal experience through recovery as a gateway to helping others. This pathway to the profession has been maintained by the department. The NASW proposal would eliminate this source of concerned and knowledgeable counselors.

When the legislature transferred the certifications to the department, the legislature changed the names of the certifications – CADC III to that of "clinical substance abuse counselor;" CCS II to that of "independent clinical supervisor;" however, the legislature gave no indication of intent to substantially increase education requirements, requirements commonly found in the regulatory statutes of other mental health professions. Nor was there any apparent legislative intent to transfer authority over clinical substance abuse counselors and independent clinical supervisors from the department to the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board via administrative rule; though if the department implemented the NASW-WI's recommendation, that would be the effect.

Finally, the department agrees that mental health professionals should be able to diagnose and treat mental and emotional disorders, which follows the definition of psychotherapy as well as the restrictions on who may practice psychotherapy, found in chs. 455 and 457, Stats. The current practice of substance abuse counseling, which includes qualified professionals in ch. HFS 75 clinics, and elsewhere, providing assessment, evaluation and treatment of substance abuse disorders simply does not rise to the level of restricted

mental health services envisioned under ch. 457, Stats., and therefore is simply not warranted. If the legislature could envision such a drastic departure from the norm, the department would recommend such a change to be implemented in statute and not through administrative rule.

Recommendation #2: NASW-WI is requesting the department to “grandparent” licensed clinical social workers who are working in ch. HFS 75 clinics as clinical supervisors to the certified intermediate clinical supervisor level.

Department Response: The department did not exempt or “grandparent” LCSWs currently working in ch. HFS 75 clinics as clinical supervisors. The department does recognize the similarity of interest of LCSWs with substance abuse treatment professionals. However, the department has been tasked with establishing credentials for this profession. As written, LCSWs and other credential holders under ch. 457, Stats., have an equal opportunity to enter this field. The NASW is asking for treatment inconsistent with that of other masters-level educated ch. 457, Stats., credential holders (licensed professional counselors, licensed marriage and family therapists, as well as other licensed clinical social workers who are not working currently as clinical supervisors). The department has not been able to find an educational or competency based reason for such disparate treatment. One final note on “grandparenting” or in the case of the recommendation of the NASW, including a provision in the rules allowing the department to issue a new department supervisory certification to a discrete group of individuals on the basis of their employment instead of through the transfer provisions for WCB credentials specified under 2005 Wisconsin Act 25, it remains unclear as to whether the department could discriminate in this fashion without specific statutory authority. Grandparenting of credentials seems to be the exclusive province of the legislature, and indeed 2005 Wisconsin Act 25 contained clear provisions on the automatic granting or transference of certification, regardless of qualification required under the new rules.

The department also recognizes the existing exemption under ch. HFS 75 rules that appear to have been implemented to ease supervisory staffing shortages experienced in ch. HFS 75 clinics. To ensure that the department’s proposed regulations do not negatively impact supervisory capacity, the department has included a substantial window of time – to January 1, 2011 – during which LCSWs who are currently practicing as clinical supervisors in ch. HFS 75 clinics may continue to practice while pursuing certification as a clinical supervisor.

Recommendation #3: NASW-WI is recommending that the department designate specific letter credentials for each of the certification categories.

Department Response: The department did not include specific letter designations in the proposed administrative rules. The practice of placing initials representing one’s education, or position along with one’s name is a transition that varies from profession to profession. In this circumstance, the titles for the various credentials were set by the Legislature in 2005 Wisconsin Act 25, renumbered Act 254 and amended by 2005

Wisconsin Act 407. No abbreviations were specifically mandated. Treatment or designation of appropriate letter credentials in statute or rule appears to be rare, though two such examples found include certified public accountants (CPAs) and nursing (LPN, RN) with the approved letter designations were mandated by statute. That said, it is interesting to note that the NASW's own profession lacks mandated credentials designations, such as CSW, APSW, CISW, LCSW in their own statutes and rules governing the profession.

3. Angela McAlister, Statewide Program Coordinator of the Minority Counselor Training Institute, issued a letter in support of the rules.

4. Linda Hall, Executive Director of the Wisconsin Association of Family and Children's Agencies (WAFCA) issued a letter in support of the rules. She had the following recommendation to add (underlined) language to ss. RL 166.02 (3) and 166.03 (3): "All of the content areas shall be infused with information and application to practice that is responsive to the characteristics of individual, group, family, and couple clients and significant others seeking substance use disorder treatment, including, but not limited to, age, gender, ability, disability, developmental level, sexual orientation, past sexual abuse, domestic violence, trauma, health status, ethnicity, culture, and social issues.

Department Response: The department did not implement the recommendation of WAFCA. The list as promulgated is for illustration and not intended to be comprehensive. Any number of additional items could theoretically be added but their addition would not strengthen or enhance the rule.

5. Jim Hahn, LMFT, LCSW, LPC, Director of the Langlade Health Center recommended that the department "grandparent" licensed clinical social workers who are working in ch. HFS 75 clinics as clinical supervisors.

Department Response: The department did not exempt or "grandparent" LCSWs currently working in ch. HFS 75 clinics as clinical supervisors for reasons stated above in the response to the same request from the NASW.

6. Dennis Markus, Human Services Instructor, Gateway Technical College, wrote in support of most of the proposed regulations with the following two concerns or recommendations:

Concern #1: The proposed regulations limit the amount of internet training in a comprehensive program to 180 hours of the 360 hours.

Department Response: The department did not amend or eliminate the limitation on the amount of hours of internet education allowed. The Substance Abuse Counselors Advisory Committee made the recommendations to the department in their advisory capacity to limit the amount of education hours that a provider may build into their program to no more than half of the full program. However, Mr. Markus states in his letter that educators apply rigorous standards in the development of their programs and

this limitation is arbitrary and may soon be outdated. The limitation may seem arbitrary, but it was in part based upon the previous restriction set by the WCB. Additionally, if programs can successfully demonstrate that they have delivered 180 hours of internet training during their program and thusly educated competent professions, then they would have a strong argument to the committee to raise the limitation.

Concern #2: Applicants should not have to complete their education before they are allowed to take the IC&RC counselor examination.

Department Response: This is a policy decision of the department and is not a requirement in the rules.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Prefatory Comment: The readability of the rule could be vastly improved if greater attention is given to structure, organization, cross-references, and integration with existing rules. As submitted, the rule makes relatively simple subject matter (albeit with substantial detail) seem complex. In short, the rule is difficult to read. The comments below, while numerous, are examples of problems with the rule. Many of the comments apply to multiple provisions of the rule, but the additional provisions to which a comment applies are not always identified. Editorial changes are in order.

Response: Extensive revisions were made in an attempt to improve the readability of the rule. Most of the comments of the legislative council staff were accepted and incorporated into the rule. Some areas of concern identified by legislative council staff were determined to be appropriately addressed as originally proposed. Following are responses to specific comments:

Comment 1. Statutory Authority. Is it clear that s. RL 160.03 (5) is consistent with s. 440.88 (3m)? The latter includes reference to “clinical supervisor.” See, also, in this regard, s. RL 162.02 (6).

Response: The department believes that the current restrictions on the practice of clinical supervision are appropriately authorized by statutory authority. The department is the only entity that may certify substance abuse counselors, clinical supervisors and prevention specialists. [s. 440.88 (8), Stats.] The department has been authorized to promulgate rules that establish minimum standards and qualifications for substance abuse counselors and for clinical supervisors under s. HFS 75.02 (11). [s. 440.88 (3)] The exception under s. 440.88 (3m), Stats., allows physicians, psychologists and clinical social workers who meet certain criteria to provide these services if within the scope of their license. Clinical social workers are prohibited by s. 457.02 (5m), Stats., from acting as a substance abuse counselor, clinical supervisor or prevention specialist unless they meet the requirements set under s. 440.88, Stats., (and therefore these rules) or meet the requirements set by the examining board. The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board is required to consider the

provisions of s. 440.88, Stats., and these rules when setting their standards. [s. 457.02 (5m), Stats.]

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board previously adopted rules implementing the provisions of 2001 Wisconsin Act 80 in which the restrictions of s. 457.02 (5m), Stats., were created. The rules include s. MPSW 1.09. This rule identifies the requirements for examining board credential holders to be able to provide substance abuse counseling as a specialty. These proposed rules incorporate substantially equivalent standards. However, s. MPSW 1.09 requires their credential holders who practice in this area to have a qualified supervisor. This requirement for supervision is not the equivalent of the profession of clinical supervisor in a substance abuse field. Consider the language of s. MPSW 1.09 (4), which speaks of supervising face-to-face counseling by *credential holders*. (emphasis added) The requirements and scope of practice of clinical supervisors extends beyond supervising face-to-face counseling.

The department has appropriately set standards and qualifications for the profession of clinical supervisor which are consistent with the statutory authority and do not conflict with other statutory provisions.

Comment 2.b. In the rule preface, the material comparing the rule with the rules of adjacent states is not adequate. As stated in previous clearinghouse reports to the department, providing copies of adjacent state's rules does not adequately summarize, for the reader, the content of those rules. A plain language comparison should be provided.

Response: This section has been extensively revised to include a summary of the rules existing in adjacent states.

Comment 2.w. Should s. RL 161.07 cover reciprocity for other credentials under the rule?

Response: The department has decided to join International Certification & Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc. (IC&RC). This international group sets standards for a small number of credentials in the substance abuse treatment and prevention field. The credentials available in Wisconsin are greater in number and are dissimilar in qualifications from the IC&RC standards except as provided in this section. For other levels of credentials there is little inconsistency among the states making the determination of equivalency impractical. For those credential levels that have reasonably standard qualifications board upon IC&RC provisions, reciprocity is available.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Chs. RL 160-168 CR07-031 (Substance abuse professionals) Report to Leg 7-11-07