

## RULEMAKING REPORT TO LEGISLATURE

### CLEARINGHOUSE RULE 23-067

Ch. DHS 75, relating to advanced practice social workers and independent social workers treating substance use disorders as a specialty

#### **Basis and Purpose of Proposed Rule**

Section DHS 75.03 (85) (d) defines "substance abuse counselor" and provides a list of professionals who may provide substance abuse counseling under the scope of their credentials. Section DHS 75.59 (5) (e) defines licensed counselors who shall or may be employed at an opioid treatment program. The current rule enumerates professionals who fit the definitions are physicians, psychologists, clinical social workers, marriage and family therapists, and professional counselors with a license granted under chs. 448, 455, or 457, Stats.

2021 Wisconsin Act 222 amended s. 440.88 (3m), Stats., to expand the professionals who may treat substance use disorder as a specialty without obtaining a certification from DSPS or satisfying educational and supervised training requirements established by professional boards. Specifically, Act 222 added advanced practice social workers and independent social workers to the list of exempt individuals in s. 440.88 (3m), Stats.

The definitions in Sections DHS 75.03 (85) and 75.59 (5) (e) do not include advanced practice social workers and independent social workers. The department proposes to revise these provisions to expand the types of professionals—specifically advanced practice social workers and independent social workers—the department allows to provide substance abuse counseling, treatment, or prevention services within the scope of his or her credential, consistent with s. 440.88 (3m), Stats.

#### **Department Response to Legislative Council Rules Clearinghouse Recommendations**

The department accepted the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rules where suggested.

#### **Final Regulatory Flexibility Analysis**

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The issues raised by each small business during the public hearing(s).

The proposed rule will not have an economic impact on small businesses.

Any changes in the rule as a result of an alternative suggested by a small business and the reasons for rejecting any of those alternatives.

No changes were made to the rule's analysis.

Comments received were not germane to the limited scope of the proposed rule, which was to effectuate 2021 Wisconsin Act 222 by adding advanced practice social workers and independent social workers to the types of professionals who can provide substance use disorder counseling services under their professional certificate. DHS is updating DHS 75 to be in compliance with this Act.

The nature of any reports and estimated cost of their preparation by small businesses that must comply with the rule.

Not applicable.

The nature and estimated costs of other measures and investments that will be required by small businesses in complying with the rule.

Not applicable.

The reason for including or not including in the proposed rule any of the following methods for reducing the rule's impact on small businesses, including additional cost, if any, to the department for administering or enforcing a rule which includes methods for reducing the rule's impact on small businesses and the impact on public health, safety and welfare, if any, caused by including methods in rules

Not applicable. This change does not have a fiscal impact on small businesses.

#### **Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis**

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Analysis

No changes were made to the rule's analysis.

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### Fiscal Estimate/Economic Impact Analysis

No changes were made to the rule's fiscal estimate or analysis.

### **Public Hearing Summary**

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The department began accepting public comments on the proposed rule via the Wisconsin Legislature Administrative Rules website, and through the Department's Administrative Rules Website on February 26, 2024. A public hearing was held on March 8, in 2024 via zoom. Public comments on the proposed rule were accepted until 11:59 pm.

**List of the persons who appeared or registered for or against the Proposed Rule at the Public Hearing.**

<b>Registrant</b>	<b>Position Taken (Support or Opposed)</b>
Linda Olson	Opposed
Patty Heffernan	Opposed
Tekia Longstreet / Tekia Wells	Opposed
Kathy Markland, WI Assoc. of Family and Children's Agencies	Support
Barb Johnson-Giese	Opposed
Shannon Esala	Opposed
Michelle Euclide	Observer only
Kristin Austin	Observer only
Tara Razo	Observer only
Monica Mynsberge	Observer only
Bethany Kasprzyk	Observer only
Mark Johnson	Observer only
Brooke Johnson	Observer only
DeAnna Dertz	Observer only
Colleen Allen	Observer only
Danny Jordan	Observer only
Denise Johnson	Opposed
Erica Mueller	Observer only
Linda Norton	Opposed
Zachary Davenport	Observer only
John Bushmaker	Observer only
Genda Sousa	Observer only
Jess Kautter	Observer only
Sydney Kersten	Observer only
Hannah M	Observer only

Michele Crawford	Observer only
Judy	Observer only
Nikki Moore	Observer only
Dawn Reese	Observer only
Jessica Baldauf	Observer only
Shauna Grossman	DHS staff
Lauren Heitman	DHS staff
Meagan Sulikowski	Observer only
Claire	Observer only
Tom Carroll	Observer only
Greg Winkler	Support
Chyra Trost	Observer only
Courtney Bagneski	Observer only
D Depies	Observer only
Ingrid Hicks	Observer only
Heather Carlson	DHS staff
Ryan P	Observer only
Bridget Plautz	DHS staff
Zachary Grabot	Observer only
Marjorie Blaschko	DHS staff
John Kettler	Observer only
Sara Schnake	Observer only
Janeth Bravo	Observer only
Rebecca McAtee	DHS staff
Heidi Schulz	Observer only
Shar Lopez	Observer only

Ashley Greeno	Observer only
Lydia Burr	Observer only
Guille Montes	Observer only
Andrew Schreier	Observer only
Brenda Endthoff	Observer only
Heidi Blanks	Observer only
Mari Kriescher	Observer only
Aurora ACC	Observer only
John Engebret	Observer only
Brenda Schueller	Observer only
Kim Stein	Observer only
Joe Bodo	Observer only
Benjamin Mompier	Observer only
Carrie Kubasta	Observer only
Eliza Killian	Observer only
Rebecca Guynn	Observer only
Cheryl Westfal	Observer only
Sara MacDonald	Observer only
Nicole Close	Observer only
Julie Shew	DHS staff
Holly Audley	DHS staff
Chantel Wiedmeyer, Carly Bieri	DHS staff - ASL Interpreters

**Summary of Public Comments to the Proposed Rule and the Agency’s response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at the Public Hearing.**

Rule Provision	Public Comment	Department Response
General	<p>I completely support this change. This was missed when the law was changed several years ago, and APSWs and CISWs are capable of providing SUD treatment within the parameters defined in the updates. This will provide additional resources for services to clients and open up the applicant pool for related jobs across the state.</p> <p>The changes in Act 222 rectifies an unintended consequence of Act 262 which allowed LPC-ITs and LMFT-ITs to treat Substance Use Disorder under appropriate supervision. This issue has created a lot of confusion in recent years, and Act 222 realigns APSWs and CISWs to match with the scope of service that applies to other behavioral health professionals in training.</p> <p>There are people who oppose this legislation based on the false assumption that this reduces the education, supervision, and competence of those who treat substance abuse disorders. Because APSWs and CISWs have multiple other standards that they must meet, this Act only addresses the relatively minor oversight that occurred in Act 262. APSWs and CISWs are mandated, in other regulations, to work only under competent supervision, complete training in specialty subject areas, and work only within their scope of service. Act 222 simply enlarges the workforce available to provide services to people with substance use disorder and co-occurring disorders.</p>	<p>No rules changes were made in response.</p>
General	<p>Requesting a fiscal estimate and economic impact analysis on rural areas and current treatment centers within those areas. The areas identified to be impacted on the proposal fiscal review form are: (please refer to the form) County human services; tribal nation human services; substance use treatment providers certified under DHS 75; advocates and people with lived experience of substance use disorders; advanced practice social workers and independent social worker: Depending on the</p>	<p>The proposed rule order effectuates 2021 Wisconsin Act 222, which added advanced practice social workers and independent social workers to the types of professionals who can provide substance use disorder counseling services under their professional certificate. DHS is updating DHS 75 to be in compliance with this Act. These comments and recommendations are outside the scope of this rule project, but are useful considerations for future rulemaking.</p>

	<p>county populations depends on the funding, the financial abilities of these communities to pay for a bachelor's degree employee, and the economic barriers this could pose to the smaller communities that rely on the associate's degree level student will be moderate to severe in terms of impact.</p> <p>Requesting a review of the federal regulations and the implications of this proposal. This proposal may impede on the sole purpose of this regulation, which prohibits the disclosure/redisclosure of information directly related to clients who have a SUD. According to the summary there was no impact on any federal regulation.</p> <p>Requesting an ethics committee review to ensure and set a standard of education for those who seek to treat a specialty disorder. This may be in the education they (social workers) have obtained during schooling, but a standard needs to be identified and reviewed prior to licensure in terms of education for this area of specialty. This may be a responsibility of the educational institutes.</p> <p>Additionally, subchapter II 227.10 identifies c) Each person affected by a rule is entitled to the same benefits and is subject to the same obligations as any other person under similar circumstances. With that said, those who obtain a SAC or SAC-It credential will be impacted by this ruling. Therefore, they are entitled to the same benefits and obligations. Your current SAC-IT and SAC professionals receive decreased funding, decreased pay, and minimal insurance reimbursement when providing treatment due to current licensing requirements, insurance standards, and stigma. To ensure a standard of care, the expansion of the scope of practice for individuals trained and certified to treat substance use disorders is necessary and supports equity. Expand their scope to allow them to case manage and provide mental health treatment within their scope of practice. This will support rural areas, those with SES barriers who can't achieve a bachelor's or master's Degree, and provide a standard of care to those in need and align with the benefits of the proposed rule change in reducing barriers to providing treatment.</p>	
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	<p>Also wants to address impact of decreased standard of care on oppressed individuals. Ethically she thinks this needs to be reviewed. Asks that DHS identify and define scope of practice to assure a quality of care for oppressed people who run into stigmatizing situations.</p>	
General	<p>I firmly believe that individuals with a substance use disorder counselor degree are crucial, especially for those with a long history of recovery in SUD. I am concerned about the necessity of SUD counselors and the presence of two different degrees. Why should social workers, lacking sufficient training, practice, and a degree in SUD, potentially cause harm when working with those seeking SUD treatment or counseling? I strongly advocate for and insist that social workers should also possess secondary certifications or degrees, along with relevant practices and training, to effectively serve in the SUD field.</p> <p>I understand Act 222 already passed, but I have some concerns. Not requiring someone to have an SUD certificate will do more harm than good. A person with no experience or training in this realm but then providing these services is terrifying to me. You really need specialized training in SUD and MH. Now that it's already in law, SUD counselors are already being pushed to the side. I would prefer to have someone with the specialized training if I had to have those services. I think it will do harm and we want to reduce harm.</p>	<p>The proposed rule order effectuates 2021 Wisconsin Act 222, which added advanced practice social workers and independent social workers to the types of professionals who can provide substance use disorder counseling services under their professional certificate. DHS is updating DHS 75 to be in compliance with this Act. Therefore, no rule changes can be made in response to this comment.</p> <p>Concerns about APSWs having adequate training to provide SUD services is something that should be addressed at the level of an individual and agency. Act 222 is the law and administrative rules represent minimum standards. However, any agency or individual is free to apply higher standards of training if they consider it necessary.</p>
General	<p>Concerned this will affect DHS 72 and peer supervision. Concerned about the lack of training impacting people needing services. Bachelor-level professionals don't have even the bare minimum in recovery education. Doesn't see how this could be a positive thing. Even with staff shortages, training should be made more accessible and affordable as opposed to just eliminating SUD training requirements.</p>	<p>No rule changes were made in response to this comment because this rule project is incorporating Act 222 into DHS 75. However, it should be noted that administrative rules are minimum standards, and any agency is free to apply higher or additional standards of training or education requirements for their staff.</p>
General	<p>How do you define scope of practice for treating SUD when professionals have had so little SUD education.</p>	<p>This comment falls outside the scope of this rule project.</p>
General	<p>APSWs have training hours they need to complete, but by going between SUD and MH she doesn't see how DSPS will verify they are gaining their hours. Who will be their clinical supervisor? Do we need to have integrated</p>	<p>This comment falls outside the scope of this rule project. It is incumbent on an agency and their staff to make sure staff education and training is adequate to treat the population they are serving. Administrative rules are minimum</p>



	<p>clinics if they are in their practice? It's very messy and undefined.</p>	<p>standards, and any agency is free to apply higher or additional standards of training or education requirements for their staff.</p>
<p>General</p>	<p>Concern regarding lack of specialized training. It's misleading to call APSWs a specialized practice. Individuals receiving services will be meeting with people with limited education and training on SUD.</p>	<p>This comment falls outside the scope of this rule project. It is incumbent on an agency and their staff to make sure staff education and training is adequate to treat the population they are serving. Administrative rules are minimum standards, and any agency is free to apply higher or additional standards of training or education requirements for their staff.</p>
<p>General</p>	<p>Social workers she have a code of ethics they needs to follow and as a clinical supervisors they needs to work within her scope of practice. Rural areas are in need of SUD treatment. Working in your scope of practice should be added into DHS 75.</p>	<p>This comment falls outside the scope of this rule project. It is incumbent on an agency and their staff to make sure staff education and training is adequate to treat the population they are serving. Administrative rules are minimum standards and any agency is free to apply higher or additional standards of training or education requirements for their staff.</p>
<p>DHS 75.03 (85)(d) and 75.59(5)(e); DHS 105.23 and 105.22</p>	<p>Thank you for the modifications proposed to DHS 75.03 (85)(d) and 75.59(5)(e) to bring Administrative Code DHS 75 into alignment with changes adopted under 2021 Wisconsin Act 222. WAFCA was actively involved in the passage of WI Act 222 to align allowable practice for post-master's certified advance practice social workers and independent social workers with the other "in training" psychotherapists (marriage and family and professional counselors) who are authorized to provide substance use treatment within their scope of practice.</p> <p>While we appreciate the modifications to the definitions in 75 noted above, it has also come to our attention that DHS 105.23 has not been updated to align with 105.22 which permits in training therapists to be reimbursable by Medicaid. 105.23 appears to still exclude "in training" practitioners from Medicaid credentialing for AODA treatment services. This restriction does not align with the intent of 2017 WI Act 262, nor the more recent changes under 2021 WI Act 222 permitting APSW and ISW credentialed professionals to provide AODA services within their scope. It is unclear why DHS 105.23 would continue to exclude them from MA certification.</p> <p>I understand that the statement of scope for CR 23-067 did not include modifications to DHS 105, however, we believe it is essential that DHS address the inconsistencies that have emerged as administrative rules regarding Medicaid reimbursement have failed to keep pace with statutory and best practice changes in the field supporting integrated treatment for co-occurring conditions. Thank you for your consideration and attention to this matter. We</p>	<p>This comment is outside the scope of this rule project and has been forwarded to the Division of Medicaid Services so they can address this issue.</p>

	welcome further dialogue regarding modernization of the administrative code.	



## Summary of Items Submitted with this Report to the Legislature

Below is a checklist of the items that are attached to or included in this report to the legislature under s. 227.19 (3), Stats.

Documents/Information	Included in Report	Attached	Not Applicable
Final proposed rule -- Rule Summary and Rule Text		x	
Department response to Rules Clearinghouse recommendations	x		
Final Regulatory Flexibility Analysis	x		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis	x		
Public Hearing Summary	x		
List of Public Hearing Attendees and Commenters	x		
Summary of Public Comments and Department Responses	x		
Fiscal Estimate/Economic Impact Analysis		x	
Revised Fiscal Estimate/Economic Impact Analysis			x
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and Department's response			x
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			x
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			x
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and the Department's response, including a description of changes made to the rule			x