

## Clearinghouse Rule 23-067

DEPARTMENT OF HEALTH SERVICES  
Office of Legal Counsel  
F-02318 (12/2018)

STATE OF WISCONSIN

### WISCONSIN DEPARTMENT OF HEALTH SERVICES PROPOSED ORDER TO ADOPT PERMANENT RULES

The Wisconsin Department of Health Services ('the department') proposes an order to **amend** DHS 75.03 (85) (d) and DHS 75.59 (5) (e), relating to advanced practice social workers and independent social workers treating substance use disorder as a specialty.

#### FINDING OF EMERGENCY

#### RULE SUMMARY

##### **Statute interpreted**

Section 440.88 (3m), Stats.

##### **Statutory authority**

The department is authorized to promulgate the proposed substance use disorder rules based upon the following: Sections 227.11 (2), 46.973 (2) (c), 51.42 (7) (b) and (8), 51.4224 (1), and 51.45 (3).

##### **Explanation of agency authority**

The department is authorized to "promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation." Section 227.11 (2) (b), Stats., provides authority "to prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute . . . ."

The following statutory sections authorize the department to promulgate rules for certifying community substance use service standards:

- Section 46.973, Stats., authorizes the department to establish a drug dependence and drug abuse program. The secretary may develop and carry out programs concerned with education about and prevention of drug dependence and drug abuse, and programs concerned with treatment and rehabilitation of drug dependent persons and persons who abuse drugs. The secretary shall appoint a drug dependence program coordinator to handle liaison with other departments and agencies, including the state council on alcohol and other drug abuse. These programs may include, but are not limited to: (c) Development of standards and provision of consultation for local drug dependence and drug abuse programs.
- Section 51.42 (7) (b) 11., Stats., provides that the department shall promulgate rules to prescribe requirements for certification of community mental health programs.
- Section 51.4224, Stats., provides that the department shall promulgate rules establishing standards for certification of community support programs by county departments.

##### **Related statute or rule**

Chapter DHS 75, relating to Community Substance Use Service Standards.

##### **Plain language analysis**

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

ch. [448](#), [455](#), or [457](#), Stats.

2021 Wisconsin Act 222 amended s. 440.88 (3m) 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 professional types—specifically including advanced practice social workers and independent social workers—which 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.

### **Summary of, and comparison with, existing or proposed federal regulations**

There appears to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rules.

### **Comparison with rules in adjacent states**

#### **Illinois:**

Under Illinois Administrative Code Section 2060.309 Professional Staff Qualifications for Substance Abuse Treatment and Intervention facilities:

- a) All professional staff providing clinical services (except as set forth in subsection (b)(2)), as defined in this Part, shall:
  - 1) hold clinical certification as a Certified Alcohol and Drug Counselor from the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA), 1305 Wabash Avenue, Suite L, Springfield, Illinois 62704; or
  - 2) be a licensed professional counselor or licensed clinical professional counselor pursuant to the Professional Counselor and Clinical Professional Counselor Licensing Act [225 ILCS 107]; or
  - 3) be a physician licensed to practice medicine in all its branches pursuant to the Medical Practice Act of 1987; or
  - 4) be licensed as a psychologist pursuant to the Clinical Psychology Practice Act [225 ILCS 15]; or
  - 5) be licensed as a social worker or licensed clinical social worker pursuant to the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

Illinois does not have the option of being an advanced practice social worker.

#### **Iowa:**

Iowa administrative code provides accreditation for providers of services to persons with mental illness, intellectual disability or developmental disability but not substance use services specifically. Iowa licenses three types of social workers: Licensed Bachelor Social Worker (LBSW), Licensed Master Social Worker (LMSW), and Licensed Independent Social Worker (LISW).

#### **Michigan:**

In substance use disorders services program administrative rule R 325.1301 Definitions. (p) “Licensed master’s social worker” or “LMSW” means an individual engaged in counseling of recipients in a substance use disorder services program who is licensed under part 185 of the public health code, MCL 333.18501 to 333.18518, and is providing services in compliance with the scope of his or her license.

#### **Minnesota:**

Minnesota has four levels of social worker licenses: Licensed Social Worker (LSW) is the bachelor's license type; Licensed Graduate Social Worker (LGSW) is a master's license type; Licensed

Independent Social Worker (LISW) is a master's license type plus nonclinical supervised practice; and Licensed Independent Clinical Social Worker (LICSW) is a master's license type plus clinical supervised practice. The LGSW is the equivalent of the APSW.

### **Summary of factual data and analytical methodologies**

The department relied on requirements under ch. 227, Stats., and information provided to the department by the Legislative Reference Bureau.

### **Analysis and supporting documents used to determine effect on small business**

Not applicable.

### **Effect on small business**

The proposed rules are not anticipated to have an effect on small businesses.

### **Agency contact person**

Sarah Coyle, sarah.coyle@dhs.wisconsin.gov, 608-266-2715

### **Statement on quality of agency data**

See summary of factual data and analytical methodologies.

### **Place where comments are to be submitted and deadline for submission**

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

## **RULE TEXT**

**SECTION 1.** DHS 75.03 (85) (d) is amended to read:

DHS 75.03 (85) (d) An individual who holds a physician, psychologist, clinical social worker, marriage and family therapist, or professional counselor license, or an advanced practice social worker certificate or independent social worker certificate granted under ch. 448, 455, or 457, Stats., and practices within their scope.

**SECTION 2.** DHS 75.59 (5) (e) is amended to read:

DHS 75.59 (5) (e) *Licensed counselors.* The service shall employ at least one of the following: substance abuse counselors, substance abuse counselors-in training, licensed marriage and family therapists, licensed professional counselors, licensed clinical social workers, certified advanced practice social workers, certified independent social workers, or clinical substance abuse counselors who are under the supervision of a clinical supervisor. An OTP shall employ one of these identified clinicians for a minimum of one full-time equivalent of 40 hours per week for every 55 enrolled patients in the service. All counselors rostered to the service are subject to this ratio.

**SECTION 3.** EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.