

☞ 07hr_JCR-AR_Misc_pt25



☞ Details: Emergency Rules by Department of Regulation & Licensing.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington
Ave
PO Box 8935
Madison WI 53708-
8935

Celia M. Jackson
Secretary



Email:
web@drl.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

December 7, 2006

Senator Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 20 South, State Capitol
Madison, WI 53702

Representative Daniel LeMahieu, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 17 North, State Capitol
Madison, WI 53702

RE: Emergency Rules for the Dentistry Examining Board

Dear Senator Grothman and Rep. LeMahieu:

I am writing to inform you that the Dentistry Examining Board has prepared an emergency rule extending the effective date of CR04-095, which would otherwise be effective January 1, 2007.

CR04-095 relates to standards of care for administering anesthesia, including office facilities and equipment, and it requires reporting of adverse occurrences related to anesthesia administration. It establishes and modifies the training and certification staffing requirements for administering sedation and anesthesia at all levels performed in the course of dental practice. It also requires reporting of adverse occurrences related to anesthesia administration. A system of permits, which designates by class the various levels of sedation and anesthesia practice, was established by the Board.

The Dentistry Examining Board finds that failure to delay the effective date of CR04-095 to July 1, 2007 will create a danger to the public health, safety and welfare. The Board believes the additional six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

A draft of the Order Adopting Emergency Rules is attached.

Sincerely,

A handwritten signature in cursive script that reads "Keith Clemence".

Keith Clemence, DDS
Chair, Dentistry Examining Board

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD : ADOPTING EMERGENCY RULES

ORDER

An order of the Dentistry Examining Board to amend the effective date of CR04-095, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statute interpreted:

Section 447.02 (2) (b), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 447.02 (2) (b), Stats.

Explanation of agency authority:

The Dentistry Examining Board has the authority under s. 447.02, Stats., to establish the standards, conditions, and any educational requirements that must be met by a dentist in order to induce anesthesia in connection with the practice of dentistry. Presently, those standards are set forth in Ch. DE 11. The adopted rules better identify the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation-enteral, conscious sedation-parenteral, deep sedation, and general anesthesia, and the requirements for each level. The rule is intended to ensure that practitioners are adequately trained before they induce anesthesia and that the public is sufficiently protected.

Related statute or rule:

There are no related statutes or rules other than those listed above.

Plain language analysis:

The purpose of this rule is to delay the effective date of CR04-095, from January 1, 2007, to July 1, 2007. That rule establishes and modifies the training, certification and staffing requirements for administering sedation and anesthesia at all levels performed in the

course of dental practice. A system of permits issued by the Department of Regulation and Licensing, which designates by class the various levels of sedation and anesthesia practice, was established. Office facility and equipment prerequisites for safe and effective administration are delineated, the applicable standards of care are specified, and the procedure necessary for reporting adverse occurrences related to anesthesia administration is described.

These requirements emerged from recent efforts by state licensing boards to regulate "oral conscious sedation." Oral conscious sedation drugs are being marketed to dentists for the purpose of managing patient anxiety surrounding dental work in patients that remain conscious throughout the procedure.

Summary of, and comparison with, existing or proposed federal regulation:

No proposed or existing federal regulation intended to address oral conscious sedation currently exists.

Comparison with rules in adjacent states:

Illinois

The Illinois Dental Practice Act contains specific provisions governing anesthesia. Permits are required for the administration of conscious sedation. Dentists are required to have specialized training and office facilities must contain certain equipment. Adverse occurrences are also required to be reported. Permits must be renewed biennially. Additional information is available at the Illinois website:
<http://www.ildpr.com/WHO/ARprospd/WEBdentrules.pdf>

Indiana

The Indiana State Board of Dentistry requires dentists to obtain a permit prior to administering general anesthesia, deep sedation, or light parenteral conscious sedation. Education and training are required to obtain such permits. Permits must be renewed biennially. Five hours of continuing education are required for permit renewal. Certain emergency equipment is also required. Additional information is available at Indiana's website: <http://www.ai.org/legislative/jac/T08280/A00030.PDF>

Iowa

The Iowa Board of Dental Examiners requires a permit for the administration of deep sedation, general anesthesia, and conscious sedation. Dentists are required to have specialized training and office facilities must contain certain equipment. Adverse occurrences are also required to be reported. Six hours of continuing education are required for permit renewals. Additional information is available at Iowa's website:
<http://www.legis.state.ia.us/Rules/Current/jac/650iac/65029/65029.pdf>

Michigan

The Michigan Board of Dentistry has rules governing general anesthesia and intravenous conscious sedation. The Michigan Board is currently contemplating a rules' revision to include specific rules for conscious sedation. Additional information is available at Michigan's website:

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33811101&Dpt=CH&RngHigh

Minnesota

The Minnesota Board of Dentistry has rules governing general anesthesia and conscious sedation. Education and training are required for both. However, no special permit is issued. Additional information is available at Minnesota's website:

<http://www.revisor.leg.state.mn.us/arule/3100/3600.html>

Summary of factual data and analytical methodologies:

The Dentistry Examining Board gathered information from various entities involved in promoting oral conscious sedation and others experienced in regulating the practice. Dr. Joseph Best, Clinical Assistant Professor at Marquette University School of Dentistry, presented information to the board in March, 2003. Dr. Jason Goodchild, representing The Dental Organization for Conscious Sedation, delivered a presentation to the board in May, 2003. Initially, the board decided its focus in regulating oral conscious sedation should be on how it is advertised, how it is titrated so that overdosing is prevented, and how many hours of adequate training and what level of clinical experience should be required to administer it. The subject was further discussed at the American Association of Dental Examiners' 2003 annual meeting in San Francisco. The board held open session discussions as the rules process advanced, and legal counsel reviewed the rules of other states. Eventually the focus of the board broadened, resulting in revision of the board's anesthesia rule with sedation levels identified and a system of permits required for various levels of anesthesia.

Anticipated costs incurred by private sector:

The Department of Regulation and Licensing has determined that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

See attached.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

TEXT OF RULE

SECTION 1. Rules adopted by the Dentistry Examining Board under CR04-095 shall be effective July 1, 2007.

(END OF TEXT OF RULE)

FINDING OF EMERGENCY

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04-095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Dated _____

Agency _____

Chairperson
Dentistry Examining Board

FISCAL ESTIMATE

Implementing the provisions of these rule changes will cost the Department of Regulation and Licensing the value of salary and fringe for one time of \$18,611 and on-going annually \$10,100.

Assumptions:

One time Costs:

Develop Course List for Specialty Code

Forms development -- 60 hours PA Time @ 17 hr including fringe	1,020
Database Update -- 50 hrs (1 hr/wk)	850
Intake, correspondence -- 600 hrs (1 hr per course)	10,200
Calls@10 min ea, 2/crse -- 200 hrs	3,400

Office of Legal Council – Rules development

10 hr. paralegal @ 29 hr including fringe	290
5 hr. attorney @ 59 hr including fringe	295

Changes to IT systems for new permit

2 hours programmer @ \$48 per hour including overhead	96
---	----

Credentialing--develop forms and applications

20 Credentialing program manger @ 36 hr including fringe	720
40 hours PA 3 @ \$17 including fringe	680
20 hours legal counsel @ \$53 including fringe	1,060

Total One Time **18,611**

On-going Costs:

Increased Complaint Costs approx 10 additional complaints per year

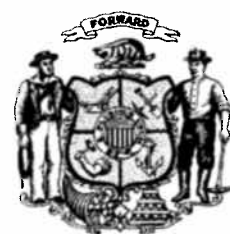
All staff hourly amounts include fringe

	<u>2 complaints to full hearing</u>	
Screen	4 hrs prog asst @ 17 hr X 2	136
	1hr leg couns @ 53 X 2	106
Investigate	6 hrs invest @ 26 X 2	312
Formal action	32 hrs pros @ 53 X 2	3,392
	40 rs alj @ 51 X 2	4,080
Close	1 hr pa3 @ 17 hr X 2	34
	<u>8 other through invest</u>	
Screen	4 hrs prog asst @ 17 hr X 8	544
	1hr leg couns @ 53 X 8	424

Investigate	6 hrs invest @ 26 X 8	1,248
Close	1 hr pa3 @ 17 hr X 8	136
Total On-going		10,100



WISCONSIN STATE LEGISLATURE



Jim Doyle
Governor

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935

Celia M. Jackson
Secretary



Email: web@drl.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

July 12, 2007

Senator Robert Jauch, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 118 South, State Capitol
Madison, WI 53702

Representative Daniel LeMahieu, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 17 North, State Capitol
Madison, WI 53702

RE: Emergency Rules for the Regulation of Substance Abuse Counselors

Dear Senator Jauch and Representative LeMahieu:

I am writing to inform you that the Department of Regulation and Licensing has prepared emergency rules relating to the regulation of substance abuse counselors. Chapter 440, Subchapter VII, Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists was created by 2005 Wisconsin Act 25.

2005 Wisconsin Act 25 allows the department to promulgate rules under s. 440.88 (3), Stats., which was created as s. 440.75, Stats., and renumbered by the revisor under s. 13.93 (1) (b), Stats., for the period before the effective date of the permanent rules. Notwithstanding s. 227.24 (1) (a), (2) (b) and (3), Stats., the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety or welfare and is not required to provide a finding of emergency.

A draft of the Order Adopting Emergency Rules is attached. If you have any questions, please feel free to contact the department.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Celia M. Jackson".

Celia M. Jackson, Secretary
Department of Regulation and Licensing

cc: Dennis Schuh, Legal Counsel
Jeff Scanlan, Bureau Director
Larry Martin, Executive Assistant
Pamela Haack, Paralegal

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING. :
PROCEEDINGS BEFORE THE : ORDER ADOPTING
DEPARTMENT OF REGULATION : EMERGENCY RULES
AND LICENSING :

ORDER

An order of the Department of Regulation and Licensing to create chs. RL 160, 161, 162, 163, 166, 167 and 168 relating to substance abuse professionals.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 440.88, Stats.

Statutory authority:

Section 227.11 (2), Stats., and Subchapter VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by 2005 Wisconsin Act 254, and amended by 2005 Wisconsin Act 407.

Explanation of agency authority:

Subchapter VII of ch 440, Stats., was enacted on July 25, 2005. 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, grounds for discipline and professional liability insurance.

Related statute or rule:

Wisconsin Administrative Code s. MPSW 1.09 which relates to certification of social workers, professional counselors and marriage and family therapists to treat substance use disorder patients as a specialty.

Wisconsin Administrative Code ch. HFS 75 which relates to the certification of substance use disorder treatment clinics and programs.

Section 457.02 (5) and (5m), Stats.

Plain language analysis:

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and Other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval, and professional liability insurance for substance abuse professionals. Please refer to the "Summary of factual data and analytical methodologies" section and the section on "Analysis and supporting documentation used to determine effect on small business or in preparation of economic impact report."

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for "accredited," "assessment," "behavioral science field," "CEH," "clinical substance abuse counselor," "clinical supervision," "clinical supervisor," "clinical supervisor-in-training," "comprehensive program," "core functions," "credential," "department," "DSM," "hour," "independent clinical supervisor," "intermediate clinical supervisor," "patient," "practice dimensions," "prevention," "prevention domains," "prevention specialist," "prevention specialist-in-training," "substance," "substance abuse counselor," "substance abuse counselor-in-training," "substance use disorder" and "transdisciplinary foundations."

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being created to require credential holders to have liability insurance in effect.

Chapter RL 168 is being created to identify the requirements for continuing education.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by this rule.

Comparison with rules in adjacent states:

Illinois:

The state of Illinois does not credential AODA or Substance Abuse Professionals, but does mandate the certification and use of those professions in their state certified alcohol and drug abuse clinics. This is similar to the status in Wisconsin prior to 2005 Wisconsin Act 25. Under Illinois code: Title 77: Chapter 2060.309 part of the staffing requirements of their clinics require counselors to hold clinical certification as a Certified Alcohol and Drug Counselor issued by the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA). This is a private, not-for-profit association, which was similar to the defunct Wisconsin Certification Board. Certification is still largely voluntary as certification is not required outside the clinics and there are broad exemptions in the code for certification requirements, which allow other professionals including clinical psychologists, licensed professional counselors, licensed clinical professional counselors, licensed clinical social workers, advanced practice nurses and licensed practical nurses to practice without an AODA certification.

IAODAPCA bases their requirements of those of the International Certification and Reciprocity (IC&RC). To obtain certification as a certified alcohol and drug counselor, an applicant must: hold a high school diploma or GED; complete 225 hours of education; complete 2 years of supervised practice; pass the IC&RC counselor examination. To achieve the certified reciprocal level of drug and alcohol counselor, the applicant must: have a high school diploma or GED; complete 3 years of supervised practice; complete 300 hours of training; complete 300 hours of education; pass the reciprocal level counselor examination as well as the case presentation method (CPM – a written and oral examination provided by the IC&RC). To achieve the supervisor credential, the counselor applicant must demonstrate 5 years of practice as counselor, including 1 year as a clinical counselor, 350 hours of education and the passage of the clinical supervisor examination.

See: §20 ILCS 301/15-5, 77 Ill. Adm. Code 2060.20 et. seq.

Iowa:

The state of Iowa does not credential AODA or Substance Abuse Professionals, but does mandate the certification and use of those professions in their state certified alcohol and drug abuse clinics. Under Iowa administrative code: 641 IAC 155.21 (8) i part of the staffing requirements of their clinics require that persons providing screening, evaluations, assessments or treatment shall be certified through the Iowa board of substance abuse certification, or certified by an international certification and reciprocity consortium member board in the states of Illinois, Minnesota, Nebraska, Missouri, South Dakota, and Wisconsin. The Iowa board appears to be a private organization, which is similar to the defunct Wisconsin Certification Board. Certification appears voluntary in practice outside of their certified clinics.

The Iowa Board is a member of the IC&RC and as such bases their credentials and requirement off those of the IC&RC. To obtain counselor certifications in Iowa, a person may apply through the educational path or through an experiential pathway. The Iowa certification as a drug and alcohol counselor requires a high school degree or GED and at least 24 semester hours in substance abuse or a related behavioral science, 150 clock hours of substance abuse specific education and training, and 1000 hours of supervised training. The experiential route requires the high school diploma or GED, 150 clock hours of education and 3,000 hours of supervised training. The advanced level of the certified drug and alcohol counselor requires 700 clock hours of substance abuse related education, 6,000 hours of supervised practice, and passage of the IC&RC counselor examination. There are no supervisor credentials in Iowa, instead a counselor at an equal or higher level of certification may be eligible to supervise.

For reciprocity, if an Iowa certified advanced alcohol and drug abuse counselor wishes to achieve a reciprocal credential, they must complete the written and oral portion of the IC&RC CPM examination.

See: §641 IAC chapter 155

Minnesota:

Licensed Alcohol and Drug Counselors (LADC's) are governed by Minnesota Statutes section 148C and Minnesota Administrative Code Chapter 4747.

In Minnesota, although licensure is available through the state and certification through the Minnesota Certification Board (MCB – a private organization), state licensure is required for practice, with exemptions for other professional licenses. The certification offered by the MCB is not recognized by the state. Exemption for licensure requirements includes, but is not limited to: licensed physicians; registered nurses; licensed practical nurses; licensed psychological practitioners; members of the clergy; American Indian medicine men and women; licensed attorneys; probation officers; licensed marriage and family therapists; licensed social workers; social workers employed by city, county, or state agencies; licensed professional counselors; licensed school counselors; registered occupational therapists or occupational therapy assistants; city, county, or state employees when providing assessments or case management.

Licensure through the state requires substance abuse education in an accredited school setting, supervised practice hours and a counselor examination provided by the IC&RC or a counselor examination provided by the National Association of Alcohol and Drug Abuse Counselors (NAADAC). The MCB offers certification based upon the standards of the IC&RC, which includes supervised practice requirements, specialized education and training in substance abuse counseling, and counselor examinations. Minnesota, in part to satisfy the standards of the licensure, will accept the certificates provided by the MCB as fulfilling their licensure requirements.

Licensure in Minnesota requires the following (before July 1, 2008): an associate degree or equivalent credit hours; 270 hours of substance abuse related education; completed either the case presentation method (an IC&RC) designed written and Oral examination) or 2,000 hours of supervised practice; passage of the NAADAC or IC&RC Counselor Examination. After July 1, 2008, Minnesota requires: a bachelor's degree including 18 semester credits or 270 clock hours of substance abuse related education; either the case presentation method, or a plan for 2000 hours of professional practice or proof of 2000 hours of professional practice; passage of the NAADAC or IC&RC counselor examination.

Minnesota does not offer separate supervisor credentials other than those through the MCB, which are based off IC&RC supervisory standards. Adequate supervision is provided by a licensed alcohol and drug counselor or another qualified professional (as determined by the Board), 4 years of substance abuse counseling and 12 hours of training in clinical and ethical supervision.

Minnesota has reciprocity provisions in their statutes. Reciprocity in Minnesota allows applicants with credentials in good standing from other jurisdictions that have substantially equivalent requirements to that of Minnesota's licensure to be licensed. Minnesota requires 40 hours of continuing education for renewal.

Michigan:

In Michigan, although certification is not required for most employment, some substance abuse counselors choose to be tested by Michigan's Center for Substance Abuse, within the Michigan Dept. of Community Health. Passage of an examination is required of substance abuse counselors employed by agencies receiving the funding from the office of substance abuse services. Recognition is also available as an apprentice counselor or an addictions counselor. Written examinations must also be passed for certification. In addition, to become a certified addictions counselor (CAC), applicants must demonstrate 3 years of supervised experience within an 8 year period, supply 3 professional references, make a written and oral case presentation, submit 270 hours of substance abuse education, and have completed an approved practicum. They must also sign a code of ethics statement.

Summary of factual data and analytical methodologies:

The professions had previously been under the authority of the Department of Health and Family Services (under ch. HFS 75), who contracted the regulation and certification of substance abuse professionals to the Wisconsin Certification Board, Inc. The Legislative Audit Bureau performed a limited review of the Wisconsin Certification Board, Inc. and issued a report on May 11, 2005.

The rules proposed represent a re-codification of existing standards for certification developed by the Wisconsin Certification Board, Inc. The legislature, under 2005 Wisconsin Act 25 and later amended by 2005 Wisconsin Act 407, set the statutory

requirements for the new levels of licensure and mandated that the Department of Regulation and Licensing draft language for certification and regulation of substance abuse professionals.

To assist in promulgation of the rules, the department has held regular meetings with the Substance Abuse Counselors Advisory Committee for recommendations and development of the draft rules. Subsequently, the department promulgated emergency rules effective December 15, 2006 which includes chs. RL 160 to 163 and chs. RL 166 to 168 (the department had promulgated chs. RL 164 and 165 as permanent rules on January 1, 2007). As the emergency rules were promulgated in December of 2006, the final permanent rules (below) are essentially a redraft of the emergency rules, with changes made for errors in the initial drafting, changes in timelines for effective dates of applicability and minor policy changes where prudent - again at the recommendation of the advisory committee.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The Department of Regulation and Licensing, based upon the advice of the advisory committee is proposing changes to the existing standards of certification and regulation of substance abuse professionals. The department, to minimize impact on the profession, and preserve the experiential pathway into the profession, has attempted to minimize drastic changes, and make changes only where the advice of the committee and the protection of the public are preserved.

These proposed rules will affect the existing 4,631 credential holders regulated by the department (Database count of in state active and inactive substance abuse credential holders, as of February 2007). These credential holders may operate at state departmental locations (e.g. Department of Corrections) as well as state certified AODA treatment clinics under ch. HFS 75 (DHFS). An unknown number of certificate holders are likely to be operating in public, not-for-profit private treatment centers and for-profit treatment centers.

There were significant "grandparenting" provisions within the statutes that will ensure that existing (active and renewal) certificate holders will not lose their certification upon transfer if they do not meet the requirements for the new certificate (e.g. higher educational requirements). The grandparenting provisions do not apply for new applicants after December 15, 2006. Those who applied (new applicants) after December 15, 2006 were under the jurisdiction of the department, and as such were required to meet the requirements specified in our rules. Additionally, the department has instituted substantial grace periods for supervision of substance abuse counselors which would allow clinics one year's time for the supervisors to attain appropriate credentials required for supervision in their clinics.

The department is proposing changes as follows:

Educational Standards:

- The proposed rules require a minimum of an associate's degree in a behavioral science to qualify for the clinical level counselor, and by extension, qualification for supervisory certification. This is an increase in educational requirements; however, an underlying degree is often a standard for professional requirements in other professions. This may prevent existing non-clinical substance abuse counselors from accessing higher levels of credentials until they achieve the underlying degree; however, the advisory committee has recommended that for protection of the public, a minimum of an associate's degree in a related behavioral science field should be instituted.
- The proposed rules reduce the required level of continuing education from 48 hours in the biennium to 40 for both substance abuse counselors and clinical substance abuse counselors. This is a reduction for applicable credential holders.
- The proposed rules eliminate the existing system of pre-certification education and training from multiple and separate sources, including Wisconsin Certification Board, Inc. accredited programs, endorsed trainings, seminars and home study (etc.), and require that the core training for the effective treatment of substance use disorder treatment be obtained from comprehensive and cohesive programs.

Note: The changes to the educational structure may be the primary area affecting the practice of small business. As per above, companies that operate as a small business do sell home study programs and trainings to the Wisconsin substance abuse professional education market. One such business, Laban's Trainings of Pennsylvania (<http://www.last-homestudy.com> 3 employees, unknown earnings), sells home study programs to the AODA counselor community nationwide. They were an endorsed trainer of the WCB, prior to the transference of AODA regulation from the WCB to the DRL, and home study programs such as theirs could be counted for over 200 hours of the 360 hours of training required. The remainder was required to come from association sponsored workshops, seminars and school-based coursework.

Under the new rules, program providers like Laban's still have access to the certificate holders through the offering of continuing education programs required for recertification. For substance abuse counselors, that means 40 hours of continuing education is required in the biennium (a reduction from 48 hours to 40). In addition, Laban's and other home study providers may still access the market held by "comprehensive program providers" because the rules are written to restrict individuals from assembling their own education from untracked or uncoordinated sources, however, the rules allow those program providers to assemble the comprehensive program of 360 hours that they provide to their students. This assembled program may include a local provider which could source a 3rd party such as Laban's to supplement the coursework requirement.

Practice Restrictions. The proposed rules contain scope of practice and restrictions which include:

- Restrictions on the practice of substance abuse counselors-in-training: This credential does not assure competency; therefore, a clinical supervisor will be required to authorize the in-training counselor to provide functions when adequately trained to assure competency.
- The supervision of in-training counselors may not be done by clinical supervisors-in-training.
- Clinical supervisors will be legally and ethically responsible for the practice of their supervisees, shall have the authority and responsibility to provide emergency consultation, interrupt/stop unsafe practice and to terminate the supervised relationship if necessary.
- New definitions of who may provide supervision or qualify as a clinical supervisor: Supervision may only be provided by those with exemptions under the statutes (psychologists, psychiatrists, clinical substance abuse supervisors, or ch. 457, Stats., credential holders who have obtained a clinical supervision certification via their specialty AODA certification under s. MPSW 1.09).

These changes may affect small business; however, where standards were increased, the department is proposing grace periods for these requirements. Additionally, these changes were seen as necessary to achieve the minimal competency required for safe practice and protection of the public.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The Department 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.

Effect on small business:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before _____ to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapters RL 160, 161, 162, 163, 166, 167 and 168 are created to read:

Chapter RL 160

DEFINITIONS

RL 160.01 Authority. Chapters RL 160 to 168 are adopted pursuant to s. 227.11 (2), Stats., and subch. VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, s. 337am, and amended by 2005 Wisconsin Act 407.

RL 160.02 Definitions. In chs. RL 160 to 168:

(1) "Accredited" means accredited by an accrediting agency recognized by the U.S. Department of Education.

(2) "Assessment" means the process and procedures by which a counselor or service identifies and evaluates an individual's strengths, weaknesses, problems and needs in order to develop a treatment plan for the individual.

(3) "Behavioral science field" means any of the following:

- (a) Health science.
- (b) Psychology.
- (c) Sociology.
- (d) Criminal justice.

(e) Social work.

(f) A field approved by the department.

(4) "CEH" means continuing education hour.

(5) "Clinical substance abuse counselor" means an individual who holds a clinical substance abuse counselor certificate granted by the department.

(6) "Clinical supervision" means a specific and definitive process of oversight of a counselor's professional development in the didactic, experiential and application of the transdisciplinary foundations, and practice dimensions including core functions. Supervision takes place in intermittent in person contact between a clinical supervisor and treatment staff provided on or off the site of a service to ensure that each patient has an individualized treatment plan and is receiving quality care. A primary purpose of "clinical supervision" is to ensure skill development evidenced in quality patient care.

(7) "Clinical supervisor" means an individual who holds a clinical supervisor-in-training certificate, an intermediate clinical supervisor certificate or an independent clinical supervisor certificate granted by the department.

(8) "Clinical supervisor-in-training" means an individual who holds a clinical supervisor-in-training certificate granted by the department.

(9) "Comprehensive program" means a program that is coordinated by a single entity that provides directly, or provides access to, educational programs with integrated and identified program outcomes that fulfill the requirements in s. RL 166.03 in a preplanned and guided educational progression that enables a student to meet the requirements while building on information already learned.

(10) "Core functions" means those tasks which a substance abuse counselor performs encompassing the following areas:

(a) Screening.

(b) Intake.

(c) Orientation.

(d) Assessment.

(e) Treatment planning.

(f) Counseling.

- (g) Case management.
- (h) Crisis intervention.
- (i) Client education.
- (j) Referral.
- (k) Reports and record keeping.
- (L) Consultation with other professionals regarding patient treatment and services.

(11) "Credential" means a certificate or license granted by the department.

(12) "Department" means the department of regulation and licensing.

(13) "DSM" means the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(14) "GED" means a general education development certification.

(15) "Hour" for purposes of the educational requirement means a period of education consisting of no less than 50 minutes.

(16) "HSED" means a high school equivalency diploma.

(17) "Independent clinical supervisor" means an individual who holds an independent clinical supervisor certificate granted by the department.

(18) "Intermediate clinical supervisor" means an individual who holds an intermediate clinical supervisor certificate granted by the department.

(19) "Patient" means an individual who has completed the screening, placement and intake process and is receiving substance use disorder treatment services.

(20) "Practice dimensions" means the 8 counselor practice dimensions used to effectively treat substance use disorders. They are:

- (a) Clinical evaluation.
- (b) Treatment planning.
- (c) Referral.

- (d) Service coordination.
- (e) Counseling.
- (f) Patient, family and community education.
- (g) Documentation.
- (h) Professional and ethical responsibilities.

(21) "Prevention" means a pro-active process of promoting supportive institutions, neighborhoods and communities that foster an environment conducive to the health and well being of individuals and families. Prevention may be targeted to specific populations or the larger community by any of the following:

- (a) Promoting knowledge, attitudes, skills, values and relationships conducive to the health and well being of individuals and families.
- (b) Promoting personal competence, significance and empowerment.
- (c) Promoting responsibility, judgment, communication and conflict resolution.
- (d) Promoting cultural competency and sensitivity to differences.
- (e) Promoting community-wide asset building initiatives.
- (f) Promoting healthy support systems in families, schools, workplaces and communities.
- (g) Promoting healthy lifestyles and resistance to physical and psychological illness or psychological injury.
- (h) Involving citizens in creating cultural changes related to health and wellness.
- (i) Counteracting harmful circumstances such as substance use, health and safety hazards, isolation, violence, economic hardship and inadequate housing, childcare, transportation, education or social services.

(22) "Prevention domains" means the areas of knowledge essential to the validity of the prevention process and include the following:

- (a) Domain 1, planning and evaluation.

- (b) Domain 2, education and skill development.
- (c) Domain 3, community organization.
- (d) Domain 4, public and organizational policy.
- (e) Domain 5, professional growth and responsibility.

(23) "Prevention specialist" means an individual who holds a prevention specialist certificate granted by the department.

(24) "Prevention specialist-in training" means an individual who holds a prevention specialist-in-training certificate granted by the department.

(25) "Substance" means a psychoactive agent or chemical which principally affects the central nervous system and alters mood or behavior.

(26) "Substance abuse counselor" means an individual who holds a substance abuse counselor certificate granted by the department.

(27) "Substance abuse counselor-in-training" means an individual who holds a substance abuse counselor-in-training certificate granted by the department.

(28) "Substance use disorder" means the existence of a diagnosis of "substance dependence" or "substance abuse" listed in the most current edition of DSM.

(29) "Transdisciplinary foundations" means that set of competencies that underlie the work of all addictions professionals. These foundations include:

- (a) Understanding addiction.
- (b) Treatment knowledge.
- (c) Application to practice.
- (d) Professional readiness.
- (e) Disabilities.

RL 160.03 Use of title. A person may use the title "addiction counselor," "substance abuse counselor," "alcohol and drug counselor," "substance use disorder counselor" or "chemical dependency counselor" only if he or she is certified as a substance abuse counselor, or as a clinical substance abuse counselor under s. 440.88, Stats., or as allowed under the provisions of s. 457.02 (5m), Stats.

Chapter RL 161

REQUIREMENTS FOR CERTIFICATION

RL 161.01 Applicability. (1) A person credentialed by the department who treats alcohol or substance dependency or abuse in a clinic certified under ch. HFS 75, shall be a substance abuse counselor-in-training, a substance abuse counselor or a clinical substance abuse counselor, or possess the specialty certification under s. MPSW 1.09.

(2) All persons employed in positions providing substance use disorder treatment shall be certified under this chapter or under s. MPSW 1.09.

(3) Chapters RL 160 to 168 do not apply to any of the following:

(a) A physician, as defined in s. 448.01 (5), Stats., who practices as a substance abuse clinical supervisor, or provides substance use disorder counseling, treatment, or prevention services within the scope of his or her license.

(b) A licensed clinical social worker, as defined in s. 457.01 (1r), Stats., a licensed professional counselor as defined in s. 457.01 (7), Stats., or a licensed marriage and family therapist as defined in s. 457.01 (3), Stats., who provides substance use disorder counseling, treatment, or prevention services within the scope of his or her credential.

(c) A licensed psychologist, as defined in s. 455.01 (4), Stats., who practices as a substance abuse clinical supervisor, or provides substance use disorder counseling, treatment, or prevention services within the scope of his or her license.

(4) Until January 1, 2011, a licensed clinical social worker as defined in s. 457.01 (1r), Stats., who worked as a clinical supervisor as defined in s. HFS 75.02 (11) (d), in a ch. HFS 75 clinic prior to (the effective date of this rule) [revisor insert effective date], may act as a clinical supervisor and provide clinical supervision under chs. RL 160 to 168.

RL 161.02 Translation required. An application for certification is incomplete until all materials requested are received by the department, in English or accompanied by a certified English translation.

RL 161.03 General requirements for certification. The department shall not grant any certificate under this chapter unless the applicant does all of the following:

(1) Submits an application for the certificate to the department on a form provided by the department.

Note: Applications are available on request from the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or from the department's website at: <http://drl.wi.gov>.

(2) Pays the fee specified in s. 440.05 (1), Stats.

(3) Meets the qualifications established by the department for the credential sought.

(4) For applicants who have a pending criminal charge or have been convicted of a crime under the laws of this state or any other state or of the United States or any other country, submits all information necessary for the department to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the duties of the credentialed activity.

RL 161.04 Counselor applications. (1) **SUBSTANCE ABUSE COUNSELOR-IN-TRAINING.** An applicant for certification as a substance abuse counselor-in-training shall submit evidence satisfactory to the department that all of the following have been met:

(a) That the applicant has a high school diploma, an HSED or GED.

(b) Successful passage of an ethics, boundaries and jurisprudence examination developed or approved by the department.

(c) Successful completion of 100 hours of specialized education in the transdisciplinary foundations in compliance with s. RL 166.02. An organized educational field experience program from an accredited school fulfills this requirement.

(d) Current employment, a written offer of employment or an agreement authorizing volunteer hours at an agency providing substance use disorder treatment. The applicant's clinical supervisor shall review the education submitted pursuant to par. (c), and attest that the education submitted by the applicant fulfills the requirements of s. RL 166.02.

(2) **SUBSTANCE ABUSE COUNSELOR.** (a) Except as provided in par. (b), an applicant for certification as a substance abuse counselor shall submit evidence satisfactory to the department of all of the following:

1. Successful passage of the International Certification Reciprocity Consortium Alcohol and Other Drug Abuse written counselor examination.

2. That the applicant has a high school diploma, an HSED or GED.

3. Completion of 4,000 hours of work experience performing the practice dimensions, supervised by an individual defined in s. RL 162.02 (1), within 5 years immediately preceding the date of application. Experience in excess of 40 hours per week or 2,000 hours per year does not count in meeting the experience requirement. The 4,000 hours shall include all of the following:

a. Two thousand hours in performing the practice dimensions with patients who have a primary substance use disorder diagnosis.

b. One thousand hours in substance use disorder counseling with at least 500 hours in a one-on-one individual modality setting.

c. A minimum of 200 hours of counseling during the 12 month period immediately preceding the date of application, of which 100 hours shall have been completed using an individual modality setting.

4. Completion of the requirements of s. RL 166.03. An applicant who previously held a certificate from the Wisconsin Certification Board, Inc., and can provide documentation of accumulation of 100 or more hours of approved specialized education as of March 1, 2007, may submit proof of completion of the balance of the 360 hours specified in s. RL 166.03 from sources other than a comprehensive program.

(b) An applicant for certification as a substance abuse counselor who is previously credentialed by the marriage and family therapy, professional counseling and social work examining board shall submit evidence satisfactory to the department of fulfilling the requirements of s. MPSW 1.09.

(3) CLINICAL SUBSTANCE ABUSE COUNSELOR. An applicant for certification as a clinical substance abuse counselor shall submit evidence satisfactory to the department of all of the following:

(a) Successful passage of the International Certification Reciprocity Consortium Alcohol and Other Drug Abuse written counselor certification examination.

(b) Completion of 7,000 hours of patient counseling experience performing the practice dimensions as a substance abuse counselor, supervised by an individual defined in s. RL 162.02 (1), within 5 years immediately preceding the date of application. The 7,000 hours shall include 2,000 hours in direct, in person substance use disorder patient counseling. Experience in excess of 40 hours per week or 2,000 hours per year does not count in meeting the experience requirement.

(c) As specified in s. RL 166.03, attendance and completion of 360 hours of approved specialized education in substance use disorder counseling within a comprehensive program covering the transdisciplinary foundations and practice or

attendance and completion of 360 hours of approved specialized education in substance use disorder counseling within a degree program approved by the department in a field with an addiction emphasis or concentration in clinical counseling.

(d) An applicant who previously held a certificate from the Wisconsin Certification Board, Inc., and can provide documentation of accumulation of 100 or more hours of approved specialized education as of March 1, 2007, may submit proof of completion of the balance of the 360 hours from sources other than a comprehensive program.

(e) Completion and passage of the International Certification Reciprocity Consortium case presentation method interview.

(f) Successful passage of an ethics, boundaries and jurisprudence examination developed or approved by the department.

(g) Graduation from an accredited school with an associate's, bachelor's, master's or doctoral degree in a behavioral science field.

RL 161.05 Supervisor applications. (1) **CLINICAL SUPERVISOR-IN-TRAINING.** An applicant for certification as a clinical supervisor-in-training shall submit evidence satisfactory to the department of all of the following:

(a) Current employment, a written offer of employment or an agreement authorizing volunteer hours at an agency providing substance use disorder treatment service as a clinical supervisor of counselors certified under this section or under s. MPSW 1.09.

(b) Successful passage of an ethics, boundaries and jurisprudence examination developed or approved by the department.

(c) Current certification as one of the following:

1. A clinical substance abuse counselor.

2. A professional counselor, marriage and family therapist or social worker holding a credential under ch. 457, Stats., at the master's level or higher with the specialty authorization of s. MPSW 1.09.

(d) Completion of 2,000 hours of patient counseling experience performing the practice dimensions as a clinical substance abuse counselor, supervised by an individual defined in s. RL 162.02 (1), within 5 years immediately preceding the date of application. The 2,000 hours shall include 200 hours in direct, in person substance use disorder patient counseling. Experience in excess of 40 hours per week or 2,000 hours per year does not count in meeting the experience requirement.

(2) INTERMEDIATE CLINICAL SUPERVISOR. An applicant for certification as an intermediate clinical supervisor shall submit evidence satisfactory to the department of all of the following:

(a) Current certification as one of the following:

1. A clinical substance abuse counselor.
2. A professional counselor, marriage and family therapist or social worker holding a credential under ch. 457, Stats., at the master's level or higher with the specialty authorization of s. MPSW 1.09.

(b) Verification of one year clinical supervisory experience as the supervisor of counselors certified under this section or under s. MPSW 1.09. Clinical supervisory experience obtained after December 15, 2009, shall be supervised by an intermediate clinical supervisor, an independent clinical supervisor, a physician, or a psychologist who practices as a substance abuse clinical supervisor within the scope of his or her license. This year shall include the provision of 200 contact hours of in person clinical supervision.

(c) Verification of 30 hours of classroom training in clinical supervision. This shall include a minimum of 6 hours of training in each of the following domains:

1. Assessment or evaluation.
2. Counselor development.
3. Management or administration.
4. Professional responsibility.

(d) Completion of 2,000 hours of patient counseling experience performing the practice dimensions as a clinical substance abuse counselor, supervised by an individual defined in s. RL 162.02 (1), within 5 years immediately preceding the date of application.

1. Experience in excess of 40 hours per week or 2,000 hours per year does not count in meeting the experience requirement.
2. The hours referred to in this paragraph shall include 200 hours in direct, in person substance use disorder patient counseling.

(e) Successful passage of the International Certification Reciprocity Consortium written clinical supervisor certification examination.

(f) Successful passage of an ethics, boundaries and jurisprudence examination developed or approved by the department.

(3) INDEPENDENT CLINICAL SUPERVISOR. An applicant for certification as an independent clinical supervisor shall submit evidence satisfactory to the department of all of the following:

(a) Successful passage of an ethics, boundaries and jurisprudence examination developed or approved by the department.

(b) The applicant holds a current certificate listed in subd. 1. or 2. with verification of 10,000 hours of counseling experience within a period of no less than 5 years. This experience shall include at least completion of 2,000 hours of patient counseling experience performing the practice dimensions as a clinical substance abuse counselor, supervised by an individual defined in s. RL 162.02 (1), within 5 years immediately preceding the date of application. The 2,000 hours shall include 200 hours in direct, in person substance use disorder patient counseling. Experience in excess of 40 hours per week or 2,000 hours per year does not count in meeting the experience requirement.

1. A clinical substance abuse counselor.

2. A professional counselor, marriage and family therapist or social worker holding a credential under ch. 457, Stats., at the master's level or higher with the specialty authorization of s. MPSW 1.09.

(c) Verification of 2 years clinical supervisory experience as the supervisor of counselors certified under this chapter. Clinical supervisory experience obtained after December 15, 2009, shall be supervised by an intermediate clinical supervisor, an independent clinical supervisor, a physician, or a psychologist who practices as a substance abuse clinical supervisor within the scope of his or her license. These 2 years shall include the provision of 200 contact hours of in person clinical supervision.

(d) Verification of 30 hours of classroom training in clinical supervision. This shall include a minimum of 6 hours of training in each of the following domains:

1. Assessment or evaluation.

2. Counselor development.

3. Management or administration.

4. Professional responsibility.

(e) Successful passage of the International Certification Reciprocity Consortium written clinical supervisor certification examination.

RL 161.06 Prevention applications. (1) PREVENTION SPECIALIST-IN-TRAINING. An applicant for certification as a prevention specialist shall submit evidence satisfactory to the department of all of the following:

(a) That the applicant has a high school diploma, an HSED or GED.

(b) Completion of 40 hours of approved education and training covering the prevention domains. At least 5 hours shall be in ethics.

(2) PREVENTION SPECIALIST. An applicant for certification as a prevention specialist shall submit evidence satisfactory to the department of all of the following:

(a) That the applicant has a high school diploma, an HSED or GED.

(b) Successful passage of an ethics, boundaries and jurisprudence examination developed or approved by the department.

(c) Completion of 240 hours of approved education and training covering the prevention domains. Fifty hours of this training shall be specific to alcohol, tobacco or other substance abuse. At least 6 hours shall be in ethics.

(d) Verification of 2,000 hours of work experience as a prevention specialist-in-training with a minimum of 100 hours of the experience in each prevention domain.

(e) Successful passage of the International Certification Reciprocity Consortium written prevention specialist certification examination.

(f) Verification of a 120 hour practicum in the prevention domain areas with no less than 10 hours in any prevention domain area.

RL 161.07 Educational equivalencies - substance abuse counselor and intermediate clinical supervisor. For the purposes of s. RL 161.04 (2) and 161.05 (2), successful completion of education resulting in a degree in a behavioral science field with an addiction emphasis or a concentration in clinical counseling from an accredited school may be used to satisfy, in part, the experience requirement. The possession of the following levels of the degrees may be exchanged for experience at the following rate:

(1) An associate degree equals 500 hours of supervised experience.

(2) A bachelor degree equals 1,000 hours of supervised experience.

(3) A master or doctoral degree equals 2,000 hours of supervised experience.

RL 161.08 Educational equivalencies - clinical substance abuse counselor and independent clinical supervisor. For the purposes of ss. RL 161.04 (3) and 161.05 (3), successful completion of education resulting in a degree in a behavioral science field with an addiction emphasis or concentration in clinical counseling from an accredited school may be used to satisfy, in part, the experience requirement. The possession of the following levels of the degrees shall be exchanged for experience at the following rate:

(1) An associate degree equals 1,000 hours of supervised experience.

(2) A bachelor degree equals 2,000 hours of supervised experience.

(3) A master or doctoral degree equals 4,000 hours of supervised experience.

RL 161.09 Work experience restrictions. (1) All experience other than educational equivalencies shall be in the areas of the practice dimensions with a patient who has a primary substance use disorder diagnosis under appropriate clinical supervision.

(2) Experience beyond 40 hours per week and 2,000 hours per calendar year may not be counted.

RL 161.10 Display of credential. The credential or certificate of biennial certification shall be displayed in a prominent place at the location where services are provided by each person while certified by the department.

RL 161.11 Certification by reciprocity. (1) Applicants who hold a credential substantially similar to a clinical substance abuse counselor who are credentialed in another state or territory that is a member of the International Certification Reciprocity Consortium shall:

(a) Meet the requirements of ss. RL 161.03 and 161.04 (3) (a), (e) and (f).

(b) Provide verification of the applicant's eligibility for reciprocity by the International Certification Reciprocity Consortium.

(c) Provide verification of the applicant's credentials in all states or countries in which the applicant has ever held a credential.

(2) Applicants who hold a credential substantially similar to an independent clinical supervisor issued by another state or territory that is a member of the International Certification Reciprocity Consortium shall:

(a) Meet the requirements of ss. RL 161.03 and 161.05 (3) (a) and (e).

(b) Provide verification of the applicant's eligibility for reciprocity by the International Certification Reciprocity Consortium.

(c) Provide verification of the applicant's credentials in all states and countries in which the applicant has held a credential.

(d) Show evidence of holding a valid current certification as an independent substance abuse counselor in Wisconsin or concurrently submits an application for reciprocal credentialing which satisfies the terms of s. RL 161.11 (1).

(3) Applicants who hold a credential substantially similar to a prevention specialist issued by another state or territory that is a member of the International Certification Reciprocity Consortium shall:

(a) Meet the requirements of ss. RL 161.03 and 161.06 (2) (b) and (e).

(b) Provide verification of the applicant's eligibility for reciprocity by the International Certification Reciprocity Consortium.

(c) Provide verification of the applicant's credentials in all states and countries in which the applicant has held a credential.

Chapter RL 162

SUPERVISED PRACTICE

RL 162.01 Required supervision. (1) Clinical supervisors shall exercise supervisory responsibility over substance abuse counselors-in-training, substance abuse counselors, clinical substance abuse counselors, clinical supervisors-in-training and intermediate clinical supervisors in regard to all activities including, but not limited to, counselor development, counselor skill assessment and performance evaluation, staff management and administration, and professional responsibility. A clinical supervisor shall provide a minimum of:

(a) Two hours of clinical supervision for every 40 hours of work performed by a substance abuse counselor-in-training.

(b) Two hours of clinical supervision for every 40 hours of counseling provided by a substance abuse counselor.

(c) One hour of clinical supervision for every 40 hours of counseling provided by a clinical substance abuse counselor.

(d) One in person meeting each calendar month with a substance abuse counselor-in-training, substance abuse counselor or clinical substance abuse counselor. This meeting may fulfill a part of the requirements of pars. (a) to (c).

(2) Clinical supervisors shall exercise supervisory responsibility over clinical supervisors-in-training in regard to all activities. A clinical supervisor shall provide a minimum of one hour of clinical supervision for every 40 hours of work performed by a clinical supervisor-in-training.

(3) The required clinical supervision shall include in person individual or group sessions consisting of no more than 6 supervisees per group. The clinical supervision hourly requirement may be averaged out over a period no longer than one month.

(4) Methods for supervision may include, but are not limited to, auditing of patient files, case review and discussion of active cases, direct observation of treatment, video or audio review and observation of the counselor's professional interaction with patients and staff.

(5) The goals of clinical supervision are to provide the opportunity to develop competency in the transdisciplinary foundations, practice dimensions and core functions, provide a context for professional growth and development and ensure a continuance of quality patient care.

RL 162.02 Who may supervise. (1) Except as provided in subs. (2) and (5), clinical supervision may be provided by a clinical supervisor-in-training, an intermediate or independent clinical supervisor, a physician knowledgeable in addiction treatment, or a psychologist knowledgeable in psychopharmacology and addiction treatment.

(2) Beginning June 1, 2008, a credential holder acquiring supervised experience as a substance abuse counselor-in-training may not practice under the supervision of an individual holding a certificate as a clinical supervisor-in-training.

(3) The supervisor shall not permit a supervisee to engage in any practice that the supervisee is not competent to perform. The supervisor shall not permit a supervisee to engage in any practice that the supervisor cannot competently supervise.

(4) A supervisor is legally and ethically responsible for the supervised activities of the substance use disorder professional supervisee. Supervisors shall be available or make appropriate provision for emergency consultation and intervention.

Supervisors shall be able to interrupt or stop the supervisee from practicing in given cases, or recommend to the supervisee's employer that the employer interrupt or stop the supervisee from practicing in given cases, and to terminate the supervised relationship, if necessary.

(5) Until January 1, 2011, a licensed clinical social worker as defined in s. 457.01 (1r), Stats., who worked as a clinical supervisor as defined in s. HFS 75.02 (11) (d), in a ch. HFS 75 clinic prior to (the effective date of this rule) [revisor insert effective date], may act as a clinical supervisor and provide clinical supervision under chs. RL 160 to 168.

RL 162.03 Prohibited practice. (1) A clinical supervisor may not permit students, employees, or supervisees to perform or hold themselves out as competent to perform professional services beyond their training, level of experience, competence or credential.

(2) Clinical supervisors may not disclose supervisee confidences, except:

(a) As mandated by law.

(b) To prevent a clear and immediate danger to a person or persons.

(c) In educational or training settings where there are multiple supervisors, and then only to other professional colleagues who share responsibility for training of the supervisee.

(3) Beginning June 1, 2008, a clinical supervisor-in-training shall not supervise a credential holder acquiring supervised experience as a substance abuse counselor-in-training.

Chapter RL 163

PRACTICE RESTRICTIONS

RL 163.01 Who may treat substance abuse disorders. (1) **EMPLOYMENT RESTRICTIONS.** A person credentialed by the department as a substance abuse counselor-in-training, a substance abuse counselor or clinical substance abuse counselor may treat substance use disorders only if he or she is qualified to do so by education, training and experience and is certified under s. 440.88, Stats. In order to treat persons with a substance use disorder, to treat the substance use disorder issues of a person with a dual diagnosis, to advertise as a substance abuse counselor or as a substance use disorder specialist, to be employed in a position identified as a substance use disorder specialist, or to be employed in a position within a program that is identified as a substance use disorder treatment program, a person shall be certified as a substance abuse counselor-in-training, a substance abuse counselor or a clinical substance abuse counselor.

(2) EXCEPTIONS. The preparation of a patient for substance use disorder treatment by referral, the treatment of a patient for substance use disorder until a referral for substance use disorder treatment is completed, and the continuation of treatment with the non-substance use disorder issues of a person are not restricted by this chapter, when performed by a mental health provider practicing within the scope of their credential.

RL 163.02 Substance abuse counselor-in-training; limited scope of practice.

(1) The granting of a substance abuse counselor-in-training certificate does not denote or assure competency to provide substance use disorder counseling. A substance abuse counselor-in-training may provide services in any of the core functions, except counseling, if authorized by the clinical supervisor. A clinical supervisor may only authorize a substance abuse counselor-in-training to provide counseling in accordance with sub. (2).

(2) (a) Except as provided in par. (b), the practice of substance use disorder counseling by a substance abuse counselor-in-training may be authorized by the individual's clinical supervisor after the substance abuse counselor-in-training has completed 300 hours of supervised training or supervised work experience in the core functions.

(b) A substance abuse counselor-in-training who transferred from a previous credential issued by the Wisconsin Certification Board, Inc., may practice substance use disorder counseling after providing proof to his or her clinical supervisor that within the previous 5 years he or she completed a total of 100 hours of specialized education in the content areas listed in s. RL 166.02.

(3) Notwithstanding subs. (1) and (2), a substance abuse counselor-in-training who transferred from a previous credential issued by the Wisconsin Certification Board, Inc., may continue to practice under the terms of their Wisconsin Certification Board, Inc., credential until March 1, 2007. Beginning March 1, 2007, a clinical supervisor may only authorize a substance abuse counselor-in-training to provide counseling after receiving proof from the substance abuse counselor-in-training that within the previous 5 years he or she completed 100 hours of specialized education in any combination of the performance domains listed in s. RL 166.02.

Chapter RL 166

EDUCATION APPROVAL

RL 166.01 Definitions. In ss. RL 166.02 and 166.03:

(1) "Assessment training" means education on the comprehensive process of collecting pertinent data about patient or patient systems and their environment and appraising the data as a basis for making decisions regarding substance use disorder

diagnosis and treatment or referral. The education shall consist of culturally inclusive studies in understanding addiction, psychopharmacology, recognition and differentiation of co-occurring medical and psychological disorders, clinical evaluation and treatment planning.

(2) "Case management" means education on culturally appropriate administrative, clinical, and evaluative activities included in the process of coordinating and prioritizing patient treatment goals and working with the patient and significant others, as well as other services, agencies and resources to achieve those treatment goals. The education shall include studies in implementing treatment plans including continuing assessment, the referral process, service coordination, including for co-occurring medical and psychological disorders, record management and documentation and utilizing the written client record to guide and monitor services to reach measurable goals and objectives.

(3) "Counseling" means education which includes the study of fundamental theories, principles and techniques of substance use disorder counseling to facilitate the progress of diverse patients toward mutually determined treatment goals and objectives using culturally sensitive modalities. Counseling education shall include studies of understanding addiction, recognized treatment theory and practice, the recovery process, effective strategies for meeting the counseling needs of diverse patients, crisis management skills, and treatment of co-occurring medical and psychological disorders.

(4) "Education" means education about the process of providing patients, groups, families, couples, significant others, and communities with information on risks related to substance use, the processes of dependence including signs, symptoms and behavior patterns, and available resources for prevention, treatment, and recovery in culturally relevant ways. The education shall include studies in understanding addiction, including addiction to nicotine, the classification and basic pharmacology of drugs, basic physiology and the effects of drug use on the human body and patient, learning styles and teaching methods, delivery of educational programs, health and behavior problems related to substance use including transmission and prevention of HIV/AIDS, tuberculosis, sexually transmitted infections, and other infectious diseases, and basic life skills such as stress management, communication, and assertiveness.

(5) "Professional responsibility" means education which addresses standards of conduct or professional behavior expectations for counselors, supervisors and prevention workers. Professional behavior areas to be studied shall include, at a minimum, legal issues specific to substance use disorder professional practice, patient welfare as a primary concern, responsibility for professional competence and professional development, participation in ongoing supervision and consultation, counselor values and self-care, relationships with other professionals and institutions and the establishment of limits and boundaries in the patient relationship. This education shall also address the impact of specific cultural, ethnic and racial influences and expectations.

RL 166.02 Substance abuse counselor-in-training core curriculum. (1) The following content areas and related hours for entry training for substance abuse counselor-in-training students are required.

CONTENT AREA	HOURS
Assessment Training	15
Counseling	15
Case Management	10
Education	15
Professional Responsibility	20
Electives within the performance domains listed above	25
Total	100

(2) The training hours shall be in seminars, courses or other presentations that meet the criteria in s. RL 166.08 or 166.09.

(3) All of the content areas shall contain 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, health status, ethnicity, culture, and social issues.

RL 166.03 Substance abuse counselor education requirements. (1) The following content areas and related hours are required as a portion of the educational requirements in s. RL 161.04:

CONTENT AREA	HOURS
Assessment Training	60
Counseling	60
Case Management	60
Education	60
Professional Responsibility	60
Electives within the performance domains listed above	60
Total	360

(2) The training shall be in a comprehensive program approved by the department under s. RL 166.09.

(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, health status, ethnicity, culture, and social issues.

(4) No more than 180 of the 360 hours and no more than 30 of the 60 hours for any content area, may be completed through internet based coursework.

RL 166.04 Clinical supervision education requirements. (1) The following content areas and related hours are required as a portion of the education requirements in s. RL 161.04:

CONTENT AREA	HOURS
Assessment or Evaluation	6
Counselor Development	6
Management or Administration	6
Professional Responsibility	6
Electives within the performance domains listed above	6
Total	30

(2) No more than 15 hours of the education submitted may be non-face to face educational programs.

(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, health status, ethnicity, culture, and social issues.

RL 166.05 Prevention specialist-in-training core curriculum. (1) The following content areas and related hours for prevention specialist-in-training are required:

CONTENT AREA	HOURS
Ethics	5
Prevention Education covering any of the prevention domains	35
Total	40

(2) All of the content areas shall contain 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, health status, ethnicity, culture, and social issues.

RL 166.06 Prevention specialist core curriculum. (1) The following content areas and related hours are required for a prevention specialist:

CONTENT AREA	HOURS
Ethics	6
Prevention of alcohol, tobacco or other substance abuse	50
Prevention education covering any of the prevention domains	184
Total	240

(2) All of the content areas shall contain 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, health status, ethnicity, culture, and social issues.

RL 166.07 Approval of pre-certification education programs for substance abuse counselors. (1) A provider of education programs shall submit an application for approval of a 360 hour comprehensive program that meets the requirements of s. RL 166.03 on a form provided by the department. The application shall include:

(a) A detailed outline of each course with specific allocations of classroom hours on each required topic, an explanation of the integrated and identified program outcomes and how the program outcomes will be measured and an explanation of how the comprehensive program meets all of the required content in s. RL 166.03.

(b) Method of instruction used, such as classroom or distance education.

(c) Instructor qualifications.

(2) Providers of internet-based education shall insure instructor availability to students at reasonable times by reasonable means, reasonable oversight of student identity and reasonable opportunity for student self evaluation of mastery.

(3) Instructors shall be knowledgeable in the subject and shall meet one of the following:

(a) Be an instructor of substance use disorder related courses in an accredited institution.

(b) Be a current certificate holder as a substance abuse counselor, clinical substance abuse counselor, clinical supervisor-in-training, intermediate clinical supervisor or independent clinical supervisor.

(c) Be a credential holder in a related field such as a physician, social worker, marriage and family therapist, professional counselor or psychologist, with knowledge and experience related to substance use disorder counseling.

(d) Be a person who in the judgment of the department is qualified by experience or education or both to supervise a course of study.

(4) An instructor whose credential has been limited, suspended or revoked may not instruct in approved programs while the disciplinary action is in effect.

(5) The department shall approve education programs that meet the requirements of s. RL 166.03 that are not part of a degree in an accredited institution for a period of 2 years. The education provider shall resubmit the program for approval every 2 years.

(6) The department shall approve education programs that meet the requirements of s. RL 166.03 that are part of a degree in an accredited institution for a period of 5 years. The education provider shall resubmit the program for approval every 5 years.

(7) Education providers shall have an effective method of tracking student attendance and of assessing mastery of content.

(8) Education providers shall provide certificates of completion to students and retain a student's records for 7 years after a student has completed the program.

(9) Once the department approves a program, the provider is required to inform the department in advance of any major changes in courses or instructor qualifications and receive reapproval.

RL 166.08 Approval of substance abuse prevention education. The department will accept substance abuse prevention education that consists of prevention domain subject matter taught by qualified presenters. Education submitted to the department in fulfillment of s. RL 161.06 (1) (b), prevention specialist-in-training education and s. RL 161.06 (2) (c), prevention specialist education that meets one or more of the following criteria:

(1) The education is provided by an accredited college or university.

(2) The education is provided, sponsored or approved by one of the following:

(a) The Wisconsin association of alcohol and drug abuse
(WAAODA).

(b) The national association of alcohol and drug abuse counselors
(NAADAC).

(c) The Wisconsin clearinghouse for prevention resources.

(d) The federal center for substance abuse prevention.

(e) The national center for the application of prevention technologies or their regional centers.

(f) The United States department of health and human services, its agencies, institutes, administrations and centers.

(g) The White House office of national drug control policy (ONDCP).

(h) The Wisconsin department of health and family services.

(i) The Wisconsin department of public instruction.

(3) The educational program is endorsed, accredited or approved by another IC&RC member jurisdiction.

(4) The educational program is approved in advance by the department.

RL 166.09 Approval of continuing education programs. (1) The department does not pre-approve continuing education programs. The department may accept for continuing education credit programs consisting of relevant subject matter taught by qualified presenters. To qualify as a continuing education program used to satisfy the requirements of s. RL 166.03, the program shall meet all of the following minimum requirements:

(a) The program subject matter includes core curriculum education in one or more of the following areas:

1. Substance use disorder counseling, prevention domains, clinical practice, knowledge and skills.

2. A field or subject area allied with and relevant to the clinical practice of substance use disorder counseling including work toward an academic degree.

3. Substance use disorder counseling practice ethics.

4. Professional boundaries.

5. Administration.

6. Advanced counseling theory and techniques.

7. Family issues.

8. Mental health issues.

9. Substance use disorders studies.

10. Clinical supervision principles and procedures.

(b) The program sponsor agrees to provide a responsible person to monitor and verify the attendance of each registered student at the program, and the program sponsor agrees to keep the records of attendance for 3 years from the date of the program and to furnish each participant with evidence of having attended the program.

(c) The program sponsor does not assign or delegate its responsibilities to monitor or record attendance, provide evidence of attendance, compare course content with subject matter content required under par. (a), or provide information on instructors or other aspects of the program unless the assignment or delegation is specifically identified in the course material and approved by the department.

(d) The program sponsor has reviewed and validated the program's content to insure its compliance with par. (a).

(e) The program offers significant professional educational benefit for participants.

(f) The instructor is qualified to present the course.

(g) The program contains a reasonable security procedure to assure that the student enrolled is the actual participant.

(2) The department shall approve all of the following programs and courses that meet the requirements of sub. (1) if relevant to the professional practice of substance abuse disorder counseling, clinical supervision, or prevention work:

(a) Undergraduate or graduate level courses or continuing education courses relevant to the professional practice of substance use disorder counseling, clinical supervision, prevention work offered by an accredited college or university, a local or national professional substance use disorder association, or other professional mental health or medical health related organizations.

(b) Programs or continuing education courses that are sponsored by one of the entities mentioned in par. (a).

(3) The provider of the continuing education course agrees to monitor attendance and furnish a certificate of attendance to each participant. The certificate shall identify the educational components listed in s. RL 166.10 or 166.11 that were covered by the course or seminar and the total hours for each component.

RL 166.10 Continuing education credit and format. A continuing education program may take any of the following forms, with credit for relevant subject matter granted as follows:

(1) Formal presentations of relevant professional material at seminars, workshops, programs or institutes, which may include formal presentation and directed discussion of videotaped material: 1 CEH per hour of continuing education for attendees, 2 CEHs per hour of continuing education for presenters, but no additional CEHs may be granted for subsequent presentations of the same material.

(2) University, college or vocational technical adult education courses, which may include formal presentation and directed discussion of videotaped instruction: 10 CEHs per semester credit or 6.6 CEHs per quarter credit for students, 20 CEHs per semester hour or 13.2 CEHs per quarter hour for instructors, but no additional CEHs may be granted for subsequent presentations of the same material.

(3) Educational sessions at state and national conferences: 1 CEH per hour of continuing education for students; 2 CEHs per hour of continuing education for presenters, but no additional CEHs may be granted for subsequent presentations of the same material.

(4) Internet learning courses offered by an accredited college or university: 10 CEHs per semester credit or 6.6 CEHs per quarter credit.

(5) Self-study courses approved by accredited college or university schools, local or national professional or mental health related organizations, 1 CEH per credit completed, but self-study courses may not be used to satisfy the ethics requirement.

RL 166.11 Recordkeeping. Every credential holder shall retain original documents showing attendance at programs and completion of self-developed programs for at least 4 years from the time that credit is claimed for the continuing education program. At the request of the department, a credential holder shall deliver their documents to the department.

Chapter RL 167

PROFESSIONAL LIABILITY INSURANCE

RL 167.01 Insurance requirement. (1) Except as provided in sub. (2), a person certified under s. 440.88, Stats., shall not practice substance use disorder counseling unless he or she has in effect professional liability insurance in the amount of at least \$1,000,000 for each occurrence and \$3,000,000 for all occurrences in one year.

(2) Subsection (1) does not apply to a person practicing substance use disorder counseling as an employee of a federal, state, or local governmental agency, if the practice is part of the duties for which he or she is employed and is solely within the confines of or under the jurisdiction of the agency by which he or she is employed.

Chapter RL 168

CONTINUING EDUCATION

RL 168.01 Continuing education. (1) **REQUIREMENTS FOR CONTINUING EDUCATION.** (a) Unless granted a postponement or waiver under s. RL 165.01 (9), every credential holder shall complete at least the number of hours of board-approved continuing education as listed in s. RL 165.01 (3) in each biennial registration period.

(b) Continuing education hours may apply only to the registration period in which the hours are acquired. If a credential has been allowed to lapse, the department may grant permission to apply continuing education hours acquired after lapse of a credential to a previous biennial period of licensure during which required continuing education was not acquired. In no case may continuing education hours be applied to more than one biennial period.

(c) To meet the continuing education requirement, a credential holder shall submit to the department a certificate of attendance upon the department's request.

(d) Unless granted a postponement or waiver under s. RL 165.01 (9), a credential holder who fails to meet the continuing education requirements by the renewal deadline shall cease practice otherwise authorized under the credential.

(e) During the time between initial credentialing and commencement of a full 2-year credential period new credential holders shall not be required to meet continuing education requirements.

(f) Applicants from other states applying under s. RL 161.11 shall submit proof of completion of at least 40 hours of approved continuing education within 2 years prior to application.

(2) **CLINICAL SUPERVISION EDUCATION.** Applicants seeking renewal of a certificate for clinical supervisor-in-training, intermediate clinical supervisor and independent clinical supervisor shall attend at least 6 hours of continuing education per biennium in the area of clinical supervision in addition to the appropriate number of hours of continuing education for the certificate of clinical substance abuse counselor.

FINDING OF EMERGENCY

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: "Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection"

These emergency rules shall take effect on September 10, 2007.

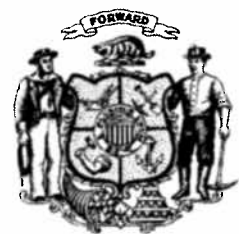
Dated _____

Agency _____
Celia M. Jackson, Secretary
Department of Regulation and Licensing

Chs RL 160-168 (Substance abuse professionals) Emergency Rules 7-11-07



WISCONSIN STATE LEGISLATURE



Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

1400 E Washington
Ave
PO Box 8935
Madison WI 53708-
8935

Celia M. Jackson
Secretary



Email:
web@drl.state.wi.us
Voice: 608-266-2112
FAX: 608-267-0644
TTY: 608-267-2416

March 17, 2008

Senator Robert Jauch, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 118 South, State Capitol
Madison, WI 53702

Representative Daniel LeMahieu, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 17 North, State Capitol
Madison, WI 53702

RE: Emergency Rules – Department of Regulation and Licensing, Real Estate Board

Dear Senator Jauch and Representative LeMahieu:

I am writing to inform you that the Department of Regulation and Licensing has prepared emergency rules relating to the modification of real estate forms under Wis. Admin. Code § RL 16.06.

The Department finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take effect if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats.

A draft of the Order Adopting Emergency Rules is attached. If you have any questions, please feel free to contact the department.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Celia M. Jackson'.

Celia M. Jackson, Secretary
Department of Regulation and Licensing

cc: William A. Black, Legal Counsel
Tim Wellnitz, Bureau Director
Larry Martin, Executive Assistant
Pamela Haack, Paralegal

DRAFT OF EMERGENCY RULE

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : ORDER ADOPTING
DEPARTMENT OF REGULATION : EMERGENCY RULES
AND LICENSING :

ORDER

An order of the Department of Regulation and Licensing to amend RL 16.06 (1) (a), (b) and (d), relating to how to use approved forms for the practice of real estate.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Sections 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

Statutory authority:

Sections 15.405 (11), 227.11 (2), 452.04 (2), 452.05 (1) (b) and 452.07, Stats.

Explanation of agency authority:

The Department of Regulation and Licensing has authority under ss. 452.05 (1) (b) and 452.07, Stats., to promulgate rules for the guidance of the real estate profession and to approve forms for use in real estate practice. The emergency rule has also been reviewed and approved by the council on forms which is currently meeting to review and revise forms for real estate transactions as provided in s. 452.06, Stats., as well as reviewed by the Real Estate Board as required by s. 452.07 (3), Stats., and recommended by the board for promulgation.

Related statute or rule:

Section RL 16.06.

Plain language analysis:

The purpose of this emergency rule is to prohibit the altering of approved real estate forms such that blank lines are inserted between provisions of department approved text,

similar in form, content and appearance, such that the inserted provisions create the implication that they are approved by the department.

Section RL 16.06 (1) (a) amends a paragraph relating to the appearance and numbering of lines appearing on a page of an approved form. Section RL 16.06 (1) (b) amends a paragraph changing the words “spaces” and “blanks” to “blanks” and “blank lines.” And Section RL 16.06 (1) (d) amends a paragraph to prohibit the altering of a form except for modifying margins or font size.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states:

Iowa:

Iowa does not have rules or statutory authority relating to governmental approval of forms.

Illinois:

Illinois does not have rules or statutory authority relating to governmental approval of forms.

Michigan:

Michigan does not have rules or statutory authority relating to governmental approval of forms.

Minnesota:

Minnesota does not have rules or statutory authority relating to governmental approval of forms.

Summary of factual data and analytical methodologies:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department’s council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting

that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

The proposed changes to s. RL 16.06 are designed to prohibit the altering of the format of approved forms and the subsequent addition of textual content, rather such changes must be made by either filling in blank lines currently inserted into the text of a form for such purpose, or by the attachment of an addendum where proper under the currently existing rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

This rule will more clearly specify that department approved real estate contract forms cannot be substantively altered. At the start of the biennium, there were 13,090 real estate brokers licensed in Wisconsin and 15,914 real estate salespersons licensed in Wisconsin. A significant percentage of these real estate brokers and salespersons work in small businesses. This rule change should not have an effect on small business as the department is aware of only one individual that is currently altering the substantive content of department approved real estate contract forms.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

(Is being prepared)

Effect on small business:

(Is being reviewed)

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Phone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us.

TEXT OF RULE

SECTION 1. RL 16.06 (1) (a), (b) and (d) are amended to read:

RL 16.06 (1) (a) Shall assure that the numbering of lines ~~and~~, line contents and the lines appearing on each page are identical to those on the department's forms.

(b) May not reproduce the form in such a manner that optional provisions are left out and blank ~~spaces~~ lines are filled in without any indication of where the optional provisions and ~~blanks~~ blank lines occur on the department's form.

(d) May not add additional blank lines, ~~provided that such lines remain unnumbered and the contents and line numbers on the department's form are not altered~~ or add additional lines containing textual content, or alter the format of the form in any other manner. "Alter the format" does not include modifying margins or font size consistent with par. (a). To add textual content or additional provisions, a licensee shall only fill in blank lines provided for that purpose on a form or add addenda containing additional or altered provisions as provided in subs. (4) and (5).

FINDING OF EMERGENCY

The Department of Regulation and Licensing finds that preservation of the public peace, health, safety or welfare necessitates putting the rule amendments into effect prior to the time the amendments would take if the agency complied with the notice, hearing and publication requirements established for rule-making in ch. 227, Stats. The facts warranting adoption of these rule amendments under s. 227.24, Stats., are as follows:

The department reviewed a proposed draft of a modified form of the residential real estate listing contract, WB-1, which contained inserted text that appeared to be or could be construed to be approved by the department. The modified form was forwarded to the department as an example of work product that was purportedly to be the subject of a continuing education class demonstrating the allowed means to modify an approved form. The modified form was shown to industry stakeholders, the department's council on forms, and the Real Estate Board, for review and comment. All parties agreed that the modified form was, or could be, construed to be misleading based upon its formatting that the modified text was approved by the department, when in actuality, it was not. This potential for consumer confusion was agreed to be a cause for immediate rule-making to prevent modification of forms such as WB-1 in the manner submitted.

This rule shall take effect upon publication in the official state newspaper.

Dated _____

Agency _____

Secretary Celia M. Jackson
Department of Regulation and Licensing

RL 16.06 Emergency Rule (Use of real estate approved forms) Draft 3-12-08