



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 07-031

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

Prefatory Comment

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

1. Statutory Authority

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

2. Form, Style and Placement in Administrative Code

a. By itself, the department’s “plain language analysis” conveys almost no information about the substance of the rule. It is suggested that the analysis reference the discussion under “summary of factual data and analytical methodologies” and “analysis and supporting documents used to determine effect on small business or in preparation of economic impact report” as providing more complete information on the context and substance of the rule.

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

c. Section RL 160.02 (2) defines "assessment" for purposes of chs. RL 160 to 168. Note that the term "assessment" is also defined in s. RL 166.01 (1) for purposes of that chapter. Perhaps different terms could be used to avoid confusion over the different definitions for the same term.

d. It is not clear that defining a person holding the various credentials under the rule as "an individual who holds a...certificate granted by the department" is necessary or useful. See, generally, ss. RL 160.02 (5), (8), (17), (18), (23), (24), (26), and (27).

e. The second sentence of s. RL 161.02 (5) duplicates s. RL 161.02 (2) (c) 1. Furthermore, it is inappropriately included in the definition.

f. The definition of "clinical supervision" in s. RL 160.02 (6) contains several provisions that are more appropriately included in the substance of the rule. Consideration should be given to including these in the proposed chapter on supervised practice, ch. RL 162.

g. The rule should be reviewed to determine if the definition of "prevention domains" in s. RL 160.02 (22) is used in the rule (based on a computer search, it does not appear elsewhere in the rule).

h. In s. RL 160.02 (28), it is unnecessary to place quotes around "DSM."

i. Section RL 160.03 is confusing and incomplete. First, it is suggested that the provisions be relocated to ch. RL 161. Consideration should be given to creating separate sections identifying who must be certified under the chapter and who is exempt from the certification requirements of the chapter. In identifying who must be certified, proposed s. RL 161.02 and ch. RL 163 and current s. 440.88 (5), Stats., should be reviewed. Miscellaneous comments on the current provisions in s. RL 160.03 include: (1) the first "only" in the first sentence of sub. (1) is unnecessary; (2) "as defined in this chapter" in sub. (2) is unnecessary; and (3) the "a" preceding substance abuse counselor in sub. (2) is unnecessary.

j. In s. RL 160.03 (5), the phrase "(effective date of the rule)" should be replaced by the phrase "effective date of this section...[revisor inserts date]." [See also s. RL 162.02 (6).]

k. In s. RL 161.01 (4), is reference to the definition of crime in s. 939.12, Stats., too limiting? Should reference be made to crimes similarly defined in other jurisdictions?

l. It is suggested that s. RL 161.02, which is exceedingly long, be reorganized into several separate sections representing each of the credentials covered. Each section could begin with language such as: "An applicant for certification as [appropriate credential] shall submit evidence satisfactory to the department that all of the following have been met:.". Note that the

remaining comments on s. RL 161.02 refer to the current numbering (which includes excess subdividing), not the renumbering that will occur if reorganized as suggested.

m. The second sentence of s. RL 161.02 (2) (a) 4., should be placed in subd. 3. and reference to subd. 3. should be replaced by “this subdivision.”

n. Section RL 161.02 (2) (b) 1. (intro.) should include a clause “Except as provided in subd. 2.,”. In s. 161.02 (2) (b) 1. c., it is unnecessary to refer to the “8” practice dimensions. See the definition of “practice dimensions.” In the second sentence of that subparagraph, “may not be accepted” should be replaced with “does not count in meeting the experience requirement.”

o. It appears that s. RL 161.02 (2) (b) 1. d. (i) could be stated simply: “The requirements of s. RL 166.03.” Subparagraph d. should not be subdivided; the two subunits of that subparagraph may be combined. In the last sentence, the comma after s. RL 166.03 may be removed.

p. In s. RL 161.02 (2) (c) 7., “a,” preceding “doctoral degree,” should be removed.

q. In s. RL 161.02 (2) (e) 4., there is duplication in the introductory clause and subpar. a.

r. In s. RL 161.02 (2) (f) 2., “The applicant” should replace “Holds.”

s. In s. RL 161.02 (2) (f) 2., subpars. a. and d. appear to be misplaced.

t. In s. RL 161.02 (2) (g) 2., the defined term “prevention domains” should replace “5 prevention areas.” See, also, par. (h) 3.

u. In s. RL 161.03 (intro.), first sentence, the word “above” should be deleted and “may” should replace “shall.” See, also, the corresponding provision in s. RL 161.04 (intro.).

v. Consideration should be given to including ss. RL 161.03 and 161.04 in the appropriate certification provisions that precede these sections.

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

x. The titles to the first two sections of ch. RL 162 are not apt. A suggested title for s. RL 162.01 is “Required supervision”; and for s. RL 162.02, “Who may supervise.”

y. Should the first sentence of s. RL 162.01 (1) also refer to exercising supervisory responsibility over substance abuse counselors-in-training and clinical substance abuse counselors? See pars. (a) and (c) of the subsection. Paragraph (d) of the subsection should be rewritten along the following lines: “One in-person meeting each calendar month with a substance abuse counselor in training, substance abuse counselor, or clinical abuse counselor.” Is the latter requirement part of or in addition to the requirements of pars. (a) to (c)?

z. In s. RL 162.02 (1), a comma should replace “or” between “independent clinical supervisor” and “a physician knowledgeable in addiction treatment” and “a” should follow the final “or.”

aa. It is suggested that s. RL 162.02 (3) be included in the previous section.

bb. Consideration should be given to combining subs. (4) and (5) of s. RL 162.02, with subunits. The first sentence of sub. (5) should begin "A supervisor is..." Consideration should be given to providing a more specific reference than "substance abuse disorder professionals who supervise." In the second sentence of sub. (5), "shall be able to" is ambiguous.

cc. Section RL 162.03 (1) should refer to "A clinical supervisor" rather than to "Clinical supervisors." What does reference to students and employees add to "supervisees"?

dd. The title of ch. RL 163 is misleading. The chapter does not delineate what a credential under the rule allows a person to do. References to what is allowed or not allowed by a particular credential are contained throughout the rule, in varying degrees of completeness (for some credentials, there is virtually no indication). It would be useful to include in this chapter a straightforward delineation of the actual "scope of practice" of each credential.

ee. The title to s. RL 163.01 is misleading. A better title would be "who may treat substance abuse disorders." The two sentences of s. RL 163.01 are not consistent. The comma following "disorders" in the first sentence should be deleted. There is no need in the second sentence to reference "a DSM diagnosis"; see the definition of "substance abuse disorder." In the second sentence, following the first use of "counselor" the comma should be deleted and replaced by "or." The "or" preceding "to be employed" should be eliminated and "or" should be added following the next comma.

ff. Section RL 163.02 could be become a subunit of s. RL 163.01. "The" should precede the second use of "treatment" in the section.

gg. In s. RL 163.03 (2) (b) (and elsewhere), there is reference to the "Wisconsin certification board." There is no definition or cross-reference given for this body.

hh. In s. RL 166.01 (intro.), the phrase "as used in" should be replaced by the word "in."

ii. In s. RL 166.05 (1) (intro.), second sentence, the comma may be deleted. The third sentence may be deleted as redundant.

jj. In s. RL 166.05 (1) (c), "does" should replace "shall" and the "to" preceding "provide" should be deleted.

kk. In s. RL 166.05 (1) (g), "shall contain" should be replaced by "contains."

ll. In s. RL 166.05 (2), the introductory clause could be redrafted as follows: "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:." In par. (a) of the subsection, the second "or" should be deleted and replaced with a comma.

mm. The title to s. RL 166.06 should indicate that the section also deals with continuing education credit.

- nn. There is no mention of CEH's in s. RL 166.06 (4).
- oo. Reference to "credential holders" in the second sentence of s. RL 166.07 (1) should be in the singular.
- pp. It appears s. RL 166.07 (2) is more appropriately placed in s. RL 166.05.
- qq. It is suggested that consideration be given to placing s. RL 167.01 in another chapter to avoid creating an entire chapter with one relatively short provision.
- rr. In s. RL 168.01 (1) (d), it is recommended that "and desist from" be deleted and "otherwise authorized under the credential" be inserted after "practice."
- ss. Section RL 168.01 (1) (e) should be compared with s. RL 165.01 (1).
- tt. In s. RL 168.01 (1) (f), the comma should be deleted.
- uu. Section RL 168.01 (2) should be compared with s. RL 165.01 (3) (d) to (f).

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In the department's analysis under "related statute or rule," s. 457.02 (5) and (5m), Stats., should be included.
- b. In s. RL 161.02 (2) (e) 4. b., reference to "section" appears to be incorrect.
- c. In s. RL 161.03 (intro.), the reference to s. RL 161.02 (b) and (e) should be more specific. Should s. RL 161.03 be cross-referenced in s. RL 161.02? Regarding these comments, see also s. RL 161.04 (intro.).
- d. In s. 162.02 (3), reference to the clinical supervision "requirement" is inadequate.
- e. In s. RL 166.03 (2), it appears that "under s. RL 166.04" should be inserted before the period.
- f. In s. 166.04 (1) (intro.), should "that meets the requirements of s. RL 166.03" be inserted after "program"? Also, this provision refers to a form. The requirements of s. 227.14 (3), Stats., should be met.
- g. It appears that in s. RL 166.04 (5) and (6), reference should be made to education programs that "meet the requirements of [the pertinent rule provisions]."
- h. In s. RL 166.05 (1) (intro.), reference to "the requirements of this chapter" is insufficiently specific.
- i. Consideration should be given to cross-referencing s. RL 168.01 in ch. RL 165.
- f. In s. RL 168.01 (1) (intro.), reference to s. RL 165.01 should be more specific.

5. Clarity, Grammar, Punctuation and Use of Plain Language

Many of the comments under “Form, Style, and Placement in Administrative Code” could also have been included under this heading.

a. On page 13 of the rule preface, the word “effecting,” in the first sentence of the note, should be replaced by the word “affecting.”

b. The 4th bullet point under “Practice restrictions” in the department’s narrative analysis is unclear.

c. In the fiscal estimate, the word “estimates,” in the second sentence, should be replaced by the word “estimated.”

d. Section RL 162.03 (3) should conclude with a period.

e. In s. RL 166.02 (3), the phrase “be infused with” should be replaced by the word “contain.”

f. Section RL 166.04 (2) refers to “distance education.” Elsewhere in the rule there is reference to “Internet-based course work” and “Internet learning courses.” Is there a distinction? Should the provisions of s. RL 166.04 (2) apply to Internet courses as well?