

Clearinghouse Rule 06-060

STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION	:	LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 06-)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to create chs. RL 164 and 165, relating to a code of conduct and renewal requirements for 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 s. 440.88 (3), Stats., which was created as s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under s. 13.93 (1) (b), Stats.

Explanation of agency authority:

The Department of Regulation and Licensing has the authority under s. 440.88 (3), Stats., which was created as s. 440.75 by 2005 Wisconsin Act 25, section 9421 (10q) and renumbered by the revisor under s. 13.93 (1) (b), Stats., to create rules for the transfer of credentialing authority of substance abuse counselors, clinical supervisors and prevention specialists to the Department from the Department of Health and Family Services.

Related statute or rule:

Subchapter VII of chapter 440, Stats.

Plain language analysis:

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, 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 January 1, 2006. This proposed rule-making order creates rules relating to requirements for renewal, as well as the bases for discipline for substance abuse counselors, clinical supervisors and prevention specialists.

SECTION 1 defines “department” and “substance abuse professional” and as well establishes a uniform definition of unprofessional conduct for all substance abuse professionals certified by the Department of Regulation and Licensing.

SECTION 2 establishes the authority granted to the department (as the credentialing authority for substance abuse professionals) by Wis. Stat. § 440.08 (3) (b), to impose additional requirements for renewals 5 years after expiration of a certificate, in order to assure competency of the applicant.

Summary of, and comparison with, existing or 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:

§ 20 ILCS 301/15-5. Applicability. (a) It is unlawful for any person to provide treatment for alcoholism and other drug abuse or dependency or to provide services as specified in subsections (c), (d), (e), and (f) of Section 15-10 of this Act [20 ILCS 301/15-10] unless the person is licensed to do so by the Department. The performance of these activities by any person in violation of this Act is declared to be inimical to the public health and welfare, and to be a public nuisance. The Department may undertake such inspections and investigations as it deems appropriate to determine whether licensable activities are being conducted without the requisite license.

(b) Nothing in this Act shall be construed to require any hospital, as defined by the Hospital Licensing Act [210 ILCS 85/1 et seq.], required to have a license from the Department of Public Health pursuant to the Hospital Licensing Act [210 ILCS 85/1 et seq.] to obtain any license under this Act for any alcoholism and other drug dependency treatment services operated on the licensed premises of the hospital, and operated by the hospital or its designated agent, provided that such services are covered within the scope of the Hospital Licensing Act [210 ILCS 85/1 et seq.]. No person or facility required to be licensed under this Act shall be required to obtain a license pursuant to the Hospital Licensing Act [210 ILCS 85/1 et seq.] or the Child Care Act of 1969 [225 ILCS 10/1 et seq.].

(c) Nothing in this Act shall be construed to require an individual employee of a licensed program to be licensed under this Act.

(d) Nothing in this Act shall be construed to require any private professional practice, whether by an individual practitioner, by a partnership, or by a duly incorporated professional service corporation, that provides outpatient treatment for alcoholism and

other drug abuse to be licensed under this Act, provided that the treatment is rendered personally by the professional in his own name and the professional is authorized by individual professional licensure or registration from the Department of Professional Regulation to do such treatment unsupervised. This exemption shall not apply to such private professional practice which specializes primarily or exclusively in the treatment of alcoholism and other drug abuse. This exemption shall also not apply to intervention services, research, or residential treatment services as defined in this Act or by rule. Notwithstanding any other provisions of this subsection to the contrary, persons licensed to practice medicine in all of its branches in Illinois shall not require licensure under this Act unless their private professional practice specializes exclusively in the treatment of alcoholism and other drug abuse.

(e) Nothing in this Act shall be construed to require any employee assistance program operated by an employer or any intervener program operated by a professional association to obtain any license pursuant to this Act to perform services that do not constitute licensable treatment or intervention as defined in this Act

(f) Before any violation of this Act is reported by the Department or any of its agents to any State's Attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Department or its designated agent, either orally or in writing, in person or by an attorney, with regard to such contemplated proceeding. Nothing in this Act shall be construed as requiring the Department to report minor violations of this Act whenever the Department believes that the public interest would be adequately served by a suitable written notice or warning.

77 Ill. Adm. Code 2060.201 Types of Licenses. Substance abuse treatment and intervention services as specified in Section 2060.101 of this Part shall be licensed by the Department. An organization may apply for an intervention and a treatment license at the same facility and all services authorized by both an intervention and a treatment license shall be authorized by a single license issued to that facility. Consistent with rules herein, services may be provided to adults as well as adolescents. The license certificate for the facility shall specify all levels of care and a designation of adult and/or adolescent services. Individuals who are 16 and 17 may be admitted as adults and individuals who are 18, 19 and 20 may be admitted as adolescents provided that the assessment of such individuals includes justification based on the person's behavior and life experience.

a) Treatment. A treatment license issued by the Department may authorize substance abuse services as established in the ASAM Patient Placement Criteria. The level of care and category (adolescent/adult) shall be specified on the license application or, after licensure, on any application to add an additional level of care and/or category (adolescent/adult).

b) Intervention. An intervention license issued by the Department may authorize the following services:

1) DUI Evaluation. Substance abuse evaluation services for persons who are charged with driving under the influence (DUI) offenses pursuant to the Illinois Vehicle Code [625 ILCS 5/11-501] or similar local ordinances that determine the offender's risk to public safety and make a subsequent corresponding recommendation for intervention to the Illinois courts or the Office of the Secretary of State.

- 2) DUI Risk Education. Substance abuse risk education services for persons who are charged with driving under the influence (DUI) offenses pursuant to the Illinois Vehicle Code [625 ILCS 5/11-501] or similar local ordinances.
- 3) Designated Program. A program designated by the Department to provide screening, assessment, referral and tracking services pursuant to Article 40 of the Act.
- 4) Recovery Homes. Alcohol and drug free housing with rules, peer-led groups, staff activities and/or other structured operations which are directed toward maintenance of sobriety for persons in early recovery from substance abuse or persons who have completed substance abuse treatment services or who may still be receiving such treatment at another licensed facility.

77 Ill. Adm. Code 2060.205 Unlicensed Practice. (a) Whenever the Department determines that an unlicensed organization or person is engaging in activities that require licensure, pursuant to the specifications in Section 2060.101 of this Part, it shall issue an order to that organization or person to cease and desist from engaging in the activity. The order shall specify the particular services that require licensure, and shall include citation of relevant Sections of the Act and this Part.

(b) The Department's order shall be accompanied by a notice that instructs the recipient that written documentation may be submitted to the Department within 10 calendar days to support a claim that licensure is not required, or that the recipient is properly authorized to conduct the services.

(c) After the expiration of the 10 day period, if the Department believes that the organization or unlicensed person is continuing to provide services that require licensure, the matter shall be referred to the appropriate State's Attorney or to the Office of the Attorney General for prosecution.

77 Ill. Adm. Code s. 2060.221 Change of Ownership/Management. a) Each license issued by the Department shall be valid only for the premises and persons named in the application. Licensure is not transferable. A license shall become null and void when:

- 1) a change in ownership involving more than 25% of the aggregate ownership interest within a one year period or a significant change in management; or
- 2) a change of 50% or more in the board of directors of a not-for-profit corporation within a one year period.

b) In order to obtain a new license reflective of the change in ownership the licensee shall submit to the Department:

- 1) written notification at least ten calendar days prior to any of the above referenced changes in ownership; and
- 2) an application for initial licensure and the license application fee of \$200 per license.

c) Failure to notify the Department within ten calendar days relative to the above referenced changes in ownership will result in the imposition of a license fee of \$1000 for each affected license.

77 Ill. Adm. Code § 2060.309 Professional Staff Qualifications. (a) All professional staff providing clinical services (except as set forth in subsection (b)(2)), as defined in this Part, shall:

- 1) hold clinical certification as a Certified Alcohol and Drug Counselor from the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA), 1305 Wabash Avenue, Suite L, Springfield, Illinois 62704; or
 - 2) be a licensed professional counselor or licensed clinical professional counselor pursuant to the Professional Counselor and Clinical Professional Counselor Licensing Act [225 ILCS 107]; or
 - 3) be a physician licensed to practice medicine in all its branches pursuant to the Medical Practice Act of 1987; or
 - 4) be licensed as a psychologist pursuant to the Clinical Psychology Practice Act [225 ILCS 15]; or
 - 5) be licensed as a social worker or licensed clinical social worker pursuant to the Clinical Social Work and Social Work Practice Act [225 ILCS 20].
- b) All professional staff providing only clinical assessments, DUI evaluations or designated program intervention services, as defined in this Part, shall:
- 1) meet one of the qualifications specified in subsection (a) above; or
 - 2) hold assessor certification as a Certified Assessment and Referral Specialist (CARS) from IAODAPCA.
- c) In any medically managed or monitored detoxification service at least one staff, 24 hours a day, shall:
- 1) be a registered nurse pursuant to Section 3(k) of the Illinois Nursing and Advanced Practice Nursing Act of 1987 [225 ILCS 65/3(k)];
 - 2) be a licensed practical nurse pursuant to Section 3(i) of the Illinois Nursing and Advanced Practice Nursing Act of 1987 [225 ILCS 65/3(i)] who has completed at least 40 clock hours of formal training in the field of alcoholism or other substance abuse; or
 - 3) be a certified emergency medical technician pursuant to Section 4.12 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/4.12] who has completed at least 40 clock hours of formal training in the field of alcoholism or other substance abuse.
- d) Any other staff who provide direct patient care that is not defined as a clinical service shall be supervised by an individual who meets the requirements for professional staff as defined in subsection (a), (b) or (c)(1) and (2) as applicable to detoxification.
- e) any new professional staff, including interns, who will provide clinical services in a treatment or designated program service and who do not meet the requirements of subsection (a) or (b) when hired shall:
- 1) meet the requirements specified in subsection (a) or (b) within two years after the date of employment; and
 - 2) not work in any supervisory capacity until such requirements are met; and
 - 3) work under the direct, verifiable supervision of an individual who has staff supervisory responsibility at the facility and who meets the requirements for professional staff specified in subsection (a); and
 - 4) sign, and adhere to, a professional code of ethics developed by the organization.
- f) The above referenced supervision shall last until the employee meets at least one of the requirements for professional staff designation specified in subsection (a) or (b) or until the two year period has elapsed. Such supervision is verifiable, at a minimum, by:

- 1) signature of the supervisor and the affected employee on the treatment plan and all reviews of or any change to the patient's treatment plan; and
- 2) documentation of face-to-face supervision meetings, at least once monthly. This supervision can occur in a group or individual setting and shall be a distinct activity separate from regularly scheduled patient staffings.
- g) Any employee providing clinical services under supervision at one or more organizations who does not meet at least one of the requirements specified in subsection (a) or (b) within the relevant two year period shall not provide any direct clinical services at the end of the two years until such requirement is met.
- h) All staff providing DUI risk education services shall:
 - 1) meet one of the qualifications specified in subsection (a); or
 - 2) hold Alcohol and Other Drug Abuse (AODA) certification from IAODAPCA.
- i) It is the responsibility of each organization to ensure that all professional staff meet the requirements outlined in this Section.
- j) The Department will consider granting an exception to the requirements specified in subsection (e) of this Section based upon timing of certification or licensure examinations and part-time employment. In such cases, the exception will be time limited and based upon the minimum extension of time necessary to achieve full compliance. All exceptions shall be granted in accordance with Section 2060.303 of this Part.

77 Ill. Adm. Code § 2060.311 Staff Training Requirements. a) All organizations shall provide an initial employee orientation to all staff within the first seven days after employment that shall include, at a minimum, the following information:

- 1) An overview of all organization operations, including the specific duties assigned to the employee; emergencies and disaster drills; familiarization with existing staff backup and support; and all required training.
 - 2) An overview of this Part for all staff.
 - 3) Information on bloodborne pathogens and universal precautions (as those terms are defined in the regulations set forth in Section 2060.413 of this Part) and the importance of tuberculosis control and personal hygiene, the responsibilities of all staff with regard to infection control and an overview of the fundamentals of HIV, AIDS and tuberculosis control.
 - 4) Information on HIV and AIDS relative to the etiology and transmission of HIV infection and associated risk behaviors, the symptomatology and clinical progression of HIV infection and AIDS and their relationship to substance abuse behavior, the purposes, uses and meaning of available testing and test results, relapse prevention and sensitivity to the issues of an HIV infected patient.
 - 5) An overview of the principles of patient confidentiality, all related federal and state statutes and all record keeping requirements regarding confidential information.
- b) Within the first six months after employment, any and all staff providing a DUI evaluation service shall attend one complete DUI Orientation training session offered or approved by the Department.
- c) Within the first 12 months after employment, any and all staff providing a DUI risk education intervention service shall attend the first day of a DUI Orientation training session offered or approved by the Department.

d) In addition to mandatory training specified in subsections (b) and (c) of this Section, each DUI evaluator or Risk Education instructor shall obtain additional hours of substance abuse training annually consistent with the requirements of their professional staff credential.

77 Ill. Adm. Code § 2060.313 Personnel Requirements and Procedures. a) All professional staff:

- 1) shall be at least 18 years of age; and
 - 2) cannot have been convicted of any felony or had any subsequent incarceration for at least two years prior to the date of employment.
- b) Verification of the requirements specified in subsection a) above shall be documented on the Department's Schedule L at the time of employment and this form shall be maintained in the employee's personnel file. Prior to employment a copy of the Schedule L, along with a letter requesting an exception for employment, shall be sent to the Department relative to any person that indicates a felony conviction within the time period specified above.
- c) In addition, any staff providing DUI evaluation or risk education services shall not have a suspension or revocation of driving privileges for an alcohol or drug related driving offense for at least two years prior to the date of employment.
- d) Any staff providing clinical services to or any other supportive services for a child or adolescent who is receiving treatment at a facility, or is receiving child care at a facility, or is residing at a facility with a parent who is in treatment shall consent to a background check to determine whether they have been indicated as a perpetrator of child abuse or neglect in the Child Abuse and Neglect Tracking System (CANTS), maintained by the Department of Children and Family Services as authorized by the Abused and Neglected Child Reporting Act [325 ILCS 5/11.1(15)]. The organization shall have a procedure that precludes hiring of indicated perpetrators based on the reasons set forth in 89 Ill. Adm. Code 385.30(a) and procedures wherein exceptions will be made consistent with 89 Ill. Adm. Code 385.30(e) and procedures for record keeping consistent with 89 Ill. Adm. Code 385.60.
- e) The organization shall ensure that treatment services for special populations (gender, youth, criminal justice, HIV, etc.) are delivered by appropriate professional staff as clinical needs indicate.
- f) The organization shall have written personnel procedures approved by the management or, if applicable, the board of directors. Such procedures shall apply to all full and part-time employees and shall include the process for:
- 1) recruiting, selecting, promoting and terminating staff;
 - 2) verifying applicant or employee information;
 - 3) protecting the privacy of personnel records;
 - 4) performance appraisals, and review and update of job descriptions, for all positions in the organization;
 - 5) disciplinary action, including suspension and termination;
 - 6) employee grievances;
 - 7) employment related accident or injury;
 - 8) handling instances of suspected or confirmed patient/client abuse and/or neglect by staff, whether paid or volunteer;

- 9) handling instances of suspected or confirmed alcohol and other drug abuse by staff; and
- 10) documentation that the personnel procedures, and any changes in procedures, have been distributed to employees and are available on request.
- g) The organization shall provide documentation that all personnel procedures have been reviewed and approved at least annually by the Authorized Organization Representative or, if applicable, the board of directors.
- h) A personnel file shall be maintained for each employee that contains:
 - 1) the employee's name, address, telephone number, social security number, emergency contact and telephone number;
 - 2) resume and evidence of qualifications;
 - 3) documentation of the Schedule L and any relevant background checks and/or exception request;
 - 4) unless otherwise kept in a training file, documentation of required training and continuing education received while employed by the organization (as indicated by a certificate of completion or the title, date and location of the training and the signature of the staff member who attended the training);
 - 5) a copy of any professional certification, current license and/or registration, and date of employment and/or termination from the organization;
 - 6) a copy of the signed applicable professional code of ethics as referenced in Part 2060.309(e)(4) of this Part; and
 - 7) documentation of annual review of the organization's policy and procedures manual by all staff during their first year of employment and, annually thereafter, any updated sections that pertain to each staff member.
- i) Each personnel file shall be maintained for a period of five years from the date of employee termination.

77 Ill. Adm. Code § 2060.401 Levels of Care. Substance abuse treatment shall be offered in varying degrees of intensity based on the level of care in which the patient is placed and the subsequent treatment plan developed for that patient. The level of care provided shall be in accordance with that specified in the ASAM Patient Placement Criteria and with the following:

- a) Level 0.5: Early Intervention. An organized service, delivered in a wide variety of settings, for individuals (adult or adolescent) who, for a known reason, are at risk of developing substance-related problems. Early intervention services are considered sub-clinical or pre-treatment and are designed to explore and address problems or risk factors that appear to be related to substance use and to assist the individual in recognizing the harmful consequences of inappropriate substance use. The length of such service varies according to the individual's ability to comprehend the information provided and to use that information to make behavior changes to avoid problems related to substance use or the appearance of new problems that require treatment at another level of care. Early intervention services are for individuals whose problems and risk factors appear to be related to substance use but do not appear to meet any diagnostic criteria for substance related disorders. Examples of individuals who might receive early intervention are at-risk individuals (i.e., family members of an individual who is in treatment or in need of treatment) or DUI offenders classified at a moderate risk level.

- b) Level I: Outpatient. Non-residential substance abuse treatment consisting of face-to-face clinical services for adults or adolescents. The frequency and intensity of such treatment shall depend on patient need but shall be a planned regimen of regularly scheduled sessions that average less than nine hours per week.
- c) Level II: Intensive Outpatient/Partial Hospitalization. Non-residential substance abuse treatment consisting of face-to-face clinical services for adults or adolescents. The frequency and intensity of such treatment shall depend on patient need but shall be a planned regimen of scheduled sessions for a minimum of nine hours per week.
- d) Level III: Inpatient Subacute/Residential. Residential substance abuse treatment consisting of clinical services for adults or adolescents. The frequency and intensity of such treatment shall depend on patient need but shall, except in residential extended care as defined in this Part, include a planned regimen of clinical services for a minimum of 25 hours per week. Inpatient care, with the exception of residential extended care as defined in this Part, shall require staff that are on duty and awake, 24 hours a day, seven days per week. During any work period, if professional staff as defined in Section 2060.309(a) of this Part are not on duty, such staff shall be available on call for consultation relative to any aspect of patient care. Residential extended care shall require staff on duty 24 hours a day, seven days per week and that low intensity treatment services be offered at least five hours per week. Any staff providing clinical services shall meet the requirements for professional staff as defined in Section 2060.309(a) of this part. Individuals who have been in residence for at least three months without relapse may be used to fulfill any remaining staff requirements.
- e) Level IV: Medically Managed Intensive Inpatient. Inpatient subacute residential substance abuse treatment for patients whose acute bio/medical/emotional/behavioral problems are severe enough to require medical and nursing care services. Such services are for adults or adolescents and require 24 hours medically directed evaluation, care and treatment and that a physician see the patient daily.

Michigan:

MICH. ADMIN. CODE R 325.14201 Establishment or maintenance and operation of program without license prohibited.

Rule 201. A person shall not establish or maintain and operate a substance abuse program unless licensed by the office in accordance with the act and these rules.

MCLS §. 330.3101

B Department of Public Health

1. All the authority, powers, duties, functions and responsibilities of the Licensing of Substance Abuse Programs and the Certification of Substance Abuse Workers in the Division of Program Standards, Evaluation and Data Services of the Center for Substance Abuse Services, including the authority, powers, duties, functions and responsibilities set forth in the relevant parts of Act No. 368 of the Public Acts of 1978, as amended, being Section 333.6231 to 333.6251 of the Michigan Compiled Laws, are hereby transferred from the Department of Public Health to the Director of the Department of Commerce by

a Type U transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

MCLS § 333.6231 Rules.

(1) With the assistance of the department, and after consultation with the commission and the committee, the office shall promulgate rules for the administration of this article and the licensing of substance abuse service programs. The rules shall include reasonable criteria for the protection and well-being of individuals receiving services and the rights of recipients of services and shall define financial information. Rules governing recipient rights shall be promulgated not later than 1 year after the effective date of this section.

(2) The rules shall apply to a public or private firm, association, organization, or group offering or purporting to offer specific substance abuse treatment and rehabilitation services or prevention services, and which receives or requests public funds, patient fees, third party payments, or funds through public subscription for the treatment, rehabilitation, or prevention of substance abuse.

(3) The rules shall not apply to an individual currently licensed by this state to provide medical, psychological, or social services. The licensee may voluntarily apply for a license to provide substance abuse treatment and rehabilitation services or prevention services. To receive state or federal funds for substance abuse treatment and rehabilitation services or prevention services, a person shall obtain a license under this part.

Minnesota:

Minn. Stat. § 62J.52 Establishment of uniform billing forms.

(c) Services to be billed using the uniform billing form HCFA 1500 include physician services and supplies, durable medical equipment, noninstitutional ambulance services, independent ancillary services including occupational therapy, physical therapy, speech therapy and audiology, home infusion therapy, podiatry services, optometry services, mental health licensed professional services, substance abuse licensed professional services, nursing practitioner professional services, certified registered nurse anesthetists, chiropractors, physician assistants, laboratories, medical suppliers, and other health care providers such as day activity centers and freestanding ambulatory surgical centers.

Iowa:

“Counselor” means an individual who, by virtue of education, training or experience, provides treatment, which includes advice, opinion, or instruction to an individual or in a group setting to allow an opportunity for a person to explore the person’s problems related directly or indirectly to substance abuse or dependence.

643 IAC 3.1(125)

“Iowa board of substance abuse certification” means the professional certification board that certifies substance abuse counselors and prevention specialists in the state of Iowa.

643 IAC 3.1(125)

“Sole practitioner” means an individual incorporated under the laws of the state of Iowa, or an individual in private practice who is providing substance abuse treatment services independent from a program that is required to be licensed in accordance with Iowa Code section 125.13(1).

643 IAC 3.1(125)

i. Personnel 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; or be eligible for certification or have education, training, and experience in the substance abuse field.

643 IAC 3.21(125)

i. Personnel 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, or have education, training, and experience in the substance abuse field.

643 IAC 6.3(125)

Summary of factual data and analytical methodologies:

In preparation of ch. RL 164, department staff reviewed the existing practice standards of the Wisconsin Certification Board [“WCB”] and compared them to definitions of unprofessional conduct found for health care professions affiliated with the department. WCB had separate codes of conduct for each certification category, and staff consolidated them into one code, utilizing standard Department of Regulation and Licensing terms and phraseology. The draft was submitted for comment within the department and then routed to the Substance Abuse Advisory Committee. The Committee approved the language as drafted.

Department staff based ch. RL 165 on existing code provisions. The rule effectuates the intent of Wis. Stat. § 440.08 (3) (b), which requires a credentialing authority to promulgate rules to require completion of additional requirements establishing competency for the holder of a credential who fails to renew his or her credential within 5 years after its renewal date.

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

The rule represents a codification of existing standards for use by the Department of Regulation and Licensing. As this codification does not represent any significant change in the standards of unprofessional conduct, no effect on small businesses or economic impact is anticipated.

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:

These rules implement the regulation of substance abuse professionals as enacted by 2005 Wisconsin Act 25. These rules neither increase the department’s revenues or expenditures beyond those required by 2005 Wisconsin Act 25. These rules do not appear to have any impact on local government costs.

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 at the Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 89235, Madison, Wisconsin 53708-8935. Email to pamela.haack@drl.state.wi.us. Comments must be received on or before July 3, 2006 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapters RL 164 and 165 are created to read:

Chapter RL 164

UNPROFESSIONAL CONDUCT

RL 164.01 Unprofessional conduct. (1) For the purposes of this chapter:

(a) “Department” means the department of regulation and licensing.

(b) “Substance abuse professional” means the holder of any license, permit, certificate, or registration issued by the department pursuant to s. 440.88, Stats., or issued by the Wisconsin certification board.

(2) Unprofessional conduct comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. Misconduct or unprofessional conduct includes, but is not limited to, the following:

(a) Submitting fraudulent, or deceptive or misleading information in conjunction with an application for a credential.

(b) Violating, or aiding and abetting a violation of any law or rule substantially related to practice as a substance abuse professional. A certified copy of a judgment of conviction is prima facie evidence of a violation.

(c) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice as a substance abuse professional, which the granting jurisdiction limits, restricts, suspends, or revokes, or having been subject to other adverse action by a licensing authority, any state agency or an agency of the federal government, including but not limited to the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct. A certified copy of a state or federal final agency decision is prima facie evidence of a violation of this provision.

(d) Failing to notify the department that a license, certificate or registration for the practice of any profession issued to the substance abuse professional has been revoked, suspended, limited or denied, or subject to any other disciplinary action by the authorities of any jurisdiction.

Note: Pursuant to s. RL 4.09, all credential holders licensed by the department need to report a criminal conviction within 48 hours after entry of a judgment against them. The department form for reporting convictions is available on the department’s web site at <http://drl.wi.gov>.

(e) Violating or attempting to violate any term, provision, or condition of any order of the department.

(f) Performing or offering to perform services for which the substance abuse professional is not qualified by education, training or experience.

(g) Practicing or attempting to practice while the substance abuse professional is impaired as a result of any illness that impairs the substance abuse professional's ability to appropriately carry out his or her professional functions in a manner consistent with the safety of clients, patients, or the public.

(h) Using alcohol or any drug to an extent that such use impairs the ability of the substance abuse professional to safely or reliably practice, or practicing or attempting to practice while the substance abuse professional is impaired due to the utilization of alcohol or other drugs.

(i) Engaging in false, fraudulent, misleading or deceptive behavior associated with the practice as a substance abuse professional, including but not limited to advertising, billing practices, reporting or falsifying or inappropriately altering patient records.

(j) Discriminating in practice on the basis of age, race, color, sex, religion, creed, national origin, ancestry, disability or sexual orientation.

(k) Revealing to other personnel not engaged in the care of a client or to members of the public information which concerns a client's condition unless release of the information is authorized by the patient or required or authorized by law. This provision shall not be construed to prevent a credential holder from cooperating with the department in the investigation of complaints.

(L) Abusing a patient by any single or repeated act of force, violence, harassment, deprivation, neglect, or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.

(m) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a client. For the purposes of this subsection, an adult shall continue to be a client for 2 years after the termination of professional services. If the person receiving services is a minor, the person shall continue to be a client for the purposes of this subsection for 2 years after termination of services, or for one year after the client reaches the age of majority, whichever is longer.

(n) Failing to avoid dual relationships or relationships that may impair the substance abuse professional's objectivity or create a conflict of interest.

(o) Obtaining or attempting to obtain anything of value from a patient without the patient's consent.

(p) Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of practice.

(q) Offering, giving or receiving commissions, rebates or any other forms of remuneration for a client referral.

(r) Failing to provide the client or client's authorized representative a description of what may be expected in the way of tests, consultation, reports, fees, billing, therapeutic regimen or schedule, or failing to inform a client of financial interests which might accrue to the substance abuse professional for referral to or for any use of service, product or publication.

(s) Failing to conduct an assessment, evaluation, or diagnosis as a basis for treatment provided.

(t) Failing to maintain adequate records relating to services provided a client in the course of a professional relationship.

(u) Failing to make reasonable efforts to notify a client or a client's authorized representative when professional services will be interrupted or terminated by the substance abuse professional.

(v) Engaging in a single act of gross negligence or in a pattern of negligence as a substance abuse professional.

(w) Failing to respond honestly and in a timely manner to a request for information from the department or with any other request for information by the department. Taking longer than 30 days to respond creates a rebuttable presumption that the response is not timely.

(x) Failing to report to the department or to institutional supervisory personnel any violation of the rules of this chapter by a substance abuse professional.

Chapter RL 165

RENEWALS

RL 165.01 Renewals. (1) If a substance abuse professional applies for renewal of his or her certificate less than 5 years after its expiration, the department may renew the certificate upon receipt of the renewal fee and satisfactory evidence of fulfillment of all applicable continuing education requirements.

(2) If a substance abuse professional applies for renewal of a certificate 5 or more years after its expiration, the department shall require a certificate holder to pay renewal fees and to fulfill existing continuing education requirements. In addition, the department shall inquire as to whether the applicant is competent to practice in this state and shall impose any reasonable conditions on reinstatement of a certificate, including reexamination, as the department deems appropriate. An applicant under this subsection

is presumed to be competent to practice in this state if at the time of application for renewal the applicant holds a full unexpired certificate issued by a similar licensing department of another jurisdiction whose standards, in the opinion of the department, are equivalent to or higher than the requirements for certification in this state.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Secretary Celia M. Jackson
Department of Regulation and Licensing

Chs RL 164, 165 CR06- (Substance abuse counselors) Draft to CH 5-24-06