

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 75
RELATING TO: Advanced practice social workers and independent social workers treating substance use disorder as a specialty
RULE TYPE: Permanent
SCOPE TYPE: Original
FINDINGS OF EMERGENCY: Not Applicable

SUMMARY

1. Description of rule objective/s

Section 440.88 (3m), Stats., which was amended by 2021 Wis. Act 222 (“Act 222”), expands the types of professionals regulated by the department of health services (“the department”) who are exempt from the statutory requirements for substance abuse counselors, clinical supervisors, and prevention specialists. Specifically, under Act 222 an independent social worker, as defined in s. 457.01 (2g), and an advanced practice social worker, as defined in s. 457.01 (1c) may practice as a substance abuse clinical supervisor, or provide substance abuse counseling, treatment, or prevention services within the scope of their credentials. The department proposes to revise section DHS 75.03 (85) (d) and DHS 75.59 (5) (e) to comport with s. 440.88 (3m), Stats.

2. Existing policies relevant to the rule

Section DHS 75.03 (85) (d) defines substance abuse counselor and provides a list of professionals who may provide substance abuse counseling under the scope of their credentials. Section DHS 75.59 (5) (e) defines licensed counselors who shall or may be employed at an opioid treatment program. The current list of professionals in these definitions are physicians, psychologists, clinical social workers, marriage and family therapists, and professional counselors license granted under ch. 448, 455, or 457, Stats. These definitions do not include advanced practice social workers and independent social workers.

3. Policies proposed to be included in the rule

The department proposes to revise provisions in ss. DHS 75.03 and DHS 75.59 to expand professional types which the department allows to practice as a substance abuse clinical supervisor or provide substance abuse counseling, treatment, or prevention services within the scope of his or her credential. Advanced practice social workers and independent social workers must be added to this list, consistent with s. 440.88 (3m), Stats.

4. Analysis of policy alternative

There are no reasonable alternatives to the proposed rulemaking. The department’s current administrative rules are in conflict with s. 440.88 (3m), Stats.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The department’s authority to promulgate the proposed rules is provided in ss. 440.88 (3m), 457.02 (5), 457.02 (5m), and 227.11 (2), Stats.

b. Statute/s that authorize/s the promulgation of the proposed rule

Section 51.24 (7) (b) (3) reads:

(b) The department shall promulgate rules which do all of the following:

3. Prescribe standards for qualifications and salaries of personnel.

Section 51.45 (8) (a) reads:

STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES.

(a) The department shall establish minimum standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, except as provided in s. 51.032, and fix the fees to be charged by the department for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall distinguish between facilities rendering different modes of treatment. In setting standards, the department shall consider the residents' needs and abilities, the services to be provided by the facility, and the relationship between the physical structure and the objectives of the program. Nothing in this subsection shall prevent county departments from establishing reasonable higher standards.

Section 227.11 (2), Stats., reads:

Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

c. Statute/s or rule/s that will affect the proposed rule or be affected by it

Chapter DHS 75, Community Substance Use Service Standards.

6. Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources

The estimated time for state employees to develop the rule is 1,040 hours.

7. Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility rate payers who may reasonably be anticipated to be affected by the rule

- Members who access substance use disorder treatment services
- Substance use disorder professionals
- DHS 75 certified providers
- County and tribal agencies
- The department

8. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule

Not applicable – there are no existing or proposed federal regulations intended to address the activities to be regulated by the rule.

9. Anticipated economic impact, locally or statewide

The proposed rule may have a moderate economic impact.

10. Agency contacts

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