

STATEMENT OF SCOPE

Department of Safety and Professional Services

Rule No.: SPS 160 to 168

Relating to: Comprehensive Review

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The Department of Safety and Professional Services will conduct a comprehensive review and update of chapters SPS 160 to 168 to ensure the rules conform to current statutes, increase clarity in the profession, remove obsolete provisions, correct cross-references, allow for current technologies, and update terminology.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapters SPS 160 to 168 establish definitions and requirements for substance abuse counselors, clinical supervisors and prevention specialists' certification and renewal; supervised practice provisions; unprofessional conduct; and education requirements.

2017 Wisconsin Act 262 made significant changes to the code, which were incorporated by the Act itself. However, some parts of the code were left with confusing or obsolete provisions. Some of the changes the Act made include:

— allowing marriage and family therapists and professional counselors to represent themselves to the public as substance abuse counselors, clinical supervisors, or prevention specialists without holding a separate certification for that purpose;

— establishing reciprocal standards for individuals who hold a similar unexpired certification in another state as long as the other state's certification requirements are not lower than Wisconsin's standards;

— modifying the definition of "clinical supervision" and specifying that a clinical social worker, marriage and family therapist, or professional counselor who provides clinical supervision must be knowledgeable in addiction treatment;

— changing the requirements for certification, including education and continuing education, as a substance abuse counselor, clinical substance abuse counselor, intermediate or independent clinical supervisor, prevention specialist, substance abuse counselor-in-training, clinical supervisor-in-training, or prevention specialist-in-training;

— modifying the scope of unprofessional conduct for substance abuse counselors and other related professionals within the field;

— clarifying the requirements for credential renewal and reinstatement of an expired, surrendered, or revoked certification.

Moreover, the Department of Health Services repealed and recreated the entire chapter DHS 75 in response to the 2017 Governor's Executive Order relating to the implementation of the recommendations

of the Co-Chairs of the Governor's Task Force on Opioid Abuse. The changes became effective in October 2022 and were related to standards for substance use prevention and treatment services. The department will have to review the code to ensure proper alignment within the substance abuse treatment field.

Lastly, 2021 Wisconsin Act 222 made changes to allow advanced practice social workers and independent social workers to treat substance use disorder as a specialty without obtaining a separate certification or satisfying educational and supervised training requirements established by the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board. The Act also allows an advanced practice social worker or independent social worker to represent himself or herself as a substance abuse counselor without obtaining a substance abuse counselor certification. The impact of these changes on the substance abuse counselors, clinical supervisors, and prevention specialist code will have to be reviewed by the department.

The alternative to the proposed changes would be to continue to have conflicts with current statutes and DHS rules which will perpetuate confusion within the profession, for applicants, and for staff. Additionally, if the proposed project is not undertaken, the lack of clarity within the code will persist and the department may need to maintain procedures and practices which are out-of-date.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11 (2) (a), Stats. provides "[e]ach 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..."

Section 440.88 (3) (a), Stats., provides that "the department shall promulgate rules that establish minimum standards and qualifications for the certification of [...] substance abuse counselors and clinical supervisors, as defined by the department of health services by rule."

Section 440.88 (3) (b), Stats., states that "[r]ules promulgated under par. (a) shall include standards based on demonstrated requisite competency, knowledge, skills, and attitudes of professional practice that are culturally competent and evidence based."

Section 440.88 (9) (a), Stats., states that "[t]he department may [...] [e]stablish the minimum number of hours of continuing education required for renewal of certification under this section and the topic areas that the continuing education must cover."

Section 440.88 (10), Stats., provides that "[t]he department shall establish the criteria for the approval of continuing education programs and courses required for renewal of certification of a substance abuse counselor, clinical supervisor, or prevention specialist and the criteria for the approval of the sponsors and cosponsors of those continuing education programs and courses. The department shall approve continuing education programs and courses in accordance with the criteria established under this subsection."

Section 440.88 (11), Stats., states that "[t]he department shall promulgate rules establishing minimum standards for the practice of substance abuse counseling, supervision and prevention."

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

120 hours

6. List with description of all entities that may be affected by the proposed rule:

Substance abuse counselors, clinical supervisors, and prevention specialists as well as the applicants and in training certificates for those professions and the public receiving services from these professionals.

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

None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state's economy as a whole.

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