

PRESENTATION BY NASW WI EXECUTIVE DIRECTOR MARC HERSTAND AT
THE DEPARTMENT OF HEALTH AND FAMILY SERVICES LISTENING SESSION
ON THE OUTPATIENT MENTAL HEALTH CLINIC RULES HELD ON
NOVEMBER 7, 2005

Thirteen years ago, shortly after I started as Executive Director of NASW WI, I attended what was supposed to be the last meeting of an advisory committee to rewrite the rules for outpatient mental health clinics. The bill that certified social workers, marriage and family therapists, and professional counselors had recently passed and was being implemented. Clinical social workers were given the authority to diagnose and treat mental and emotional disorders and practice psychotherapy without supervision. We asked at that meeting to eliminate the supervision requirements and ease other regulations to reflect the new certification bill. Unfortunately there was no action taken as a result of this meeting.

Since that time NASW WI, the Wisconsin Association for Marriage & Family Therapy (WAAMFT), the Clinical Social Work Federation-Wisconsin, the Mental Health Counseling Association and the Wisconsin Association of Behavioral Health Services have continually advocated for practice independence to reflect the certification bill and the experience of mental health practitioners in other states. NASW WI and our sister organizations have had meetings with many of the individuals who have been writing the rules including Mr. Dennis Bobo, Mr. Damian Wilson, Dan Zimmerman and others. We have testified at hearings that have been held. In 1988 NASW WI, WAAMFT, the Clinical Social Work Federation-Wisconsin and the Mental Health Counseling Association held a meeting with Otis Woods at the NASW WI office to request a supervision variance. It was rejected but the Department did accept a waiver procedure.

In 2002 as you know the Wisconsin Legislature passed Act 80, which licensed clinical social workers, marriage and family therapists, and professional counselors. Shortly after its passage, NASW WI sent a letter requesting a supervision variance, now based on Act 80. This request was denied. In the last few years after many additional meetings held with DHFS staff, letters written and even meetings held with legislators, some variances with mixed results in the field have been issued.

As the Executive Director of NASW, Wisconsin Chapter, I meet with my colleagues around the country at least once a year and have more frequent email and phone contact with them. I also speak with clinical social workers moving to Wisconsin from all over the country. My experience is that the type of oversight exercised by DHFS over clinics in Wisconsin is rare, if not non-existent today. To the best of my knowledge, in every state that actually licenses clinical social workers, LCSW's are able to practice independently and receive insurance payments. Clinical social workers in other states are subject to the oversight of one regulatory body-the equivalent of the Department of Regulation & Licensing. In speaking with clinical social workers moving to Wisconsin,

they are shocked by the level of oversight exhibited by DHFS and by the fact that, in order to obtain insurance they must work under very onerous requirements at outpatient mental health clinics. In some cases these individuals move away from Wisconsin due to the difficulty of starting a practice.

These rules therefore are out of step with the experience of mental health practitioners from across the country. They discourage mental health practitioners from moving to Wisconsin and setting up their own small business private practice here. They can also have a negative impact on access to services, particularly in rural parts of the state. In looking at the current proposed draft it is astonishing that one change to the existing rules would require two staff at every clinic. This proposed change would put out of business single practitioners around the state and would make it even harder than it already is for a new practitioner to set up her/his own business. This requirement is also contrary to variance # 2 of the June 2, 2005 DHFS "Variance for Requirements for Certified Outpatient Psychotherapy Clinics." It has been our understanding that, at a minimum, the new proposed rules would fully implement all the variances.

NASW WI strongly supports the following four-point plan, which has been developed by the "Coalition of marriage and family therapists, professional counselors and social workers":

1. Clinic staff (minimum of one as expressed in Variance #2 from June 2, 2005) will be licensed mental health professionals regulated (or on a licensing track) to practice psychotherapy by the DRL.
2. Clinics will maintain compliance with:
 - a. Caregiver background checks per HFS 12 and HFS 13
 - b. Confidentiality of Treatment Records per HIPAA, s.51.30, Stats., HFS 92
 - c. Patient/Client Rights per s.51.61, Stats., HFS 94.
 - d. Grievance Procedure HFS 94
3. Clinics will continue to report to DHFS/BQA any cases of suicide of patients using State Form DDE 2470.
4. DHFS/BQA surveyors will only do on-site visits as part of investigating valid complaints. Any clinical practice complaints involving a licensed mental health professional will be sent to DRL.

At a time when the State of Wisconsin is looking for regulatory relief, it is time to support this four-point plan. At a time when Wisconsin is looking to improve the climate for existing small businesses in Wisconsin and for those who might want to move to Wisconsin, it is time to adopt this four-point plan. At a time when there are so many demands on the Department of Health & Family Services to meet the needs of a variety of clients across the state, it is time for DHFS to redirect its resources away from this onerous oversight of outpatient clinics and adopt the four-point plan.

Thank you for listening to our concerns about the rules for outpatient mental health clinics.

