

**TESTIMONY BY NASW WI EXECUTIVE DIRECTOR MARC HERSTAND BEFORE
THE SENATE COMMITTEE ON HEALTH, HUMAN SERVICES, INSURANCE AND JOB
CREATION**

ON HFS 35 (CLEARINGHOUSE RULE 06-080) ON SEPTEMBER 18, 2008

My name is Marc Herstand. I have served as the Executive Director for the Wisconsin Chapter of the National Association of Social Workers for the last sixteen years. NASW WI represents 2300 social workers throughout Wisconsin. We have over 143,000 social work members on a national basis. Licensed clinical social workers are the largest providers of mental health services in Wisconsin and the United States providing an estimated 50% or more of mental health services.

For as long as I have been the Director of NASW WI, we have been trying to obtain regulatory relief from DHS for the outpatient mental health clinics. During my tenure with NASW WI I have attended numerous public hearings, listening sessions and met with countless DHFS and now DHS officials requesting regulatory relief.

The outpatient mental health system was established close to 30 years ago when the profession of social work was not licensed and the state needed a way to regulate the provision of mental health services.

In 1992 the profession of social work was certified. The certification law, similar to licensing laws that had passed in many states by that time, stated that certified independent clinical social workers could diagnose and treat and provide psychotherapy without supervision. In 2002 we achieved full licensure of clinical social workers, along with marriage and family therapists and professional counselors. The licensure law reiterated that these professions could provide diagnosis and treatment for mental illness and psychotherapeutic treatment without supervision.

In 2005 after strenuous efforts by NASW WI and our sister professions, DHFS issued a series of variances to ease regulation that included provisions recognizing single person clinics and easing supervision requirements. We were always promised that these variances would be implemented in the new rule.

Two years ago DHFS released their proposed new rule, which is substantially similar to Clearinghouse Rule 06-080. This rule engendered a storm of protest. DHFS received 129 letters or comments. Of these comments only 10 were supportive, while 75 were opposed and 44 took no position. Due to the strong opposition to this rule, which was expressed at the listening sessions, hearings and through written correspondence received, DHFS Secretary Helene Nelson withdrew the rule. On December 13, 2006, at a stakeholders meeting held in 1 West Wilson, Secretary Nelson announced that the rule would be completely rewritten and then the "stakeholders" would be brought back together to review the newly revised rule. On January 8, 2007, Deputy Secretary Sue Reinardy stated in a letter to NASW WI that they hoped to bring together the "stakeholders" group within the next month to review a new proposal. Unfortunately this follow-up meeting was never held and instead of a complete rewrite of the rule, only minor changes were made.

Now I would like to discuss our primary concerns about the rule. Although we have listed seven concerns in our Fact Sheet, given the time constraints I will only be discussing the first three in my testimony. There is one additional concern not listed on our Fact Sheet that I will also be discussing briefly.

Our first concern is that this new rule could put up to 150 outpatient mental health clinics out of business because they do not meet the new minimum standards for number of practitioners in the clinic. Despite a previously released variance, which would permit a clinic to contain one

practitioner the new rule eliminates single person clinics as well as small multi-person clinics where the practitioners are not available to provide 75 hours of service per week. DHS has not provided any research that shows a need to eliminate these small clinics. DHS strongly supports increased access for services for mental health clients in Wisconsin yet this new rule could lead to serious access issues for clients in underserved regions of Wisconsin. This personnel requirement provision that would eliminate these small clinics was also strongly opposed in public hearings, listening sessions and through correspondence two years ago. Recently the Governor's Small Business Regulatory Review Board sent a letter to DHS and Senator Erpenbach expressing their concern about the impact of this provision of the rule. To resolve the concern over this issue we would recommend that small clinics with one or more licensed professionals not be subject to this minimum personnel standard. Those small clinics where the practitioner is not licensed could be subject to this minimum personnel standard.

Secondly this rule contains detailed very prescriptive instructions for orientation, assessment, admission, clinical collaboration/supervision and the development, approval and review of a treatment plan which are appropriate for social work students and practitioners working towards social work licensure but are totally inappropriate for licensed practitioners. Licensed clinical social workers in Wisconsin have had the legal authority to practice independently and without supervision since 2002. These requirements are costly and burdensome and take time away from service delivery. In terms of this section of the rule, we have recommended that for those clinics with all licensed practitioners the clinic manager establish the standards as she or he sees fit based upon the qualifications of their personnel. Clinics that contain non-licensed or certified practitioners could be subject to this rule.

Thirdly this rule requires written agreements for prescribers and substance abuse services that may not be obtainable in many parts of the state. Professional social workers are extremely resourceful in obtaining services for their clients, but some providers will not put in writing for a variety of reasons that they will agree to take a referral. This provision of the rule, like so many other provisions of this rule, is unnecessary, burdensome and in some cases impossible to obtain. We would recommend that this provision of the rule be eliminated.

Finally we would like to request a wording change in HFS 35.06 and HFS 35.08. HFS 35.08 states "A clinic whose certification has expired may not bill Medicaid or private insurance or utilize federal community block grant or state community aids funds for services provided after the expiration date of the clinic's certification." We are concerned about the private insurance provision of this phrase. This sentence seems to restrict the actions of private insurance and private clinics in Wisconsin by stating that if a clinic decided to no longer seek state certification they could not bill private insurance. There is nothing in Wisconsin law that prevents private insurance from reimbursing licensed clinical social workers or clinics for psychotherapy. In fact there are clinical social workers across the state who are not working in state certified clinics who bill and receive reimbursement from private insurance. We met with DHS staff who told us this sentence was not meant to imply that these clinics could not bill private insurance; it was meant to imply that they would not be guaranteed reimbursement. To clarify these sections we would ask that either the references to private insurance be eliminated or the sections be rewritten to state that, under current law, if a clinic did not renew its state certification, private insurance reimbursement could not be guaranteed.

In conclusion we are requesting that Clearinghouse Rule 06-080 be returned to DHS for a complete rewrite as was promised by former DHFS Secretary Helene Nelson in December 2006.