

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND	:	PROFESSIONAL SERVICES
PROFESSIONAL SERVICES	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 22-001)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to amend ss. SPS 200.01, 200.02 (intro.), 201.01 (2), (3), (4), (16), and (21); to create ss. SPS 200.02 (1g), (1r), (12), and (13), 201.01 (5) (c), 201.01 (26), (27), (28), and (29), chs. SPS 203 and 204; and to repeal ss. SPS 200.02 (4), (7), and (11), 201.01 (17), and ch. SPS 202, relating to sign language interpreter authority, definitions, scope of practice, professional conduct, and identification cards.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 440.032 (4m), (5m) and (7) (b).

Statutory authority: Sections 440.032 (4m), (5m) and (7) (b).

Explanation of agency authority:

Under s. 440.032 (7)(b), Stats., “The department, after receiving advice from the committee, may promulgate rules governing the professional conduct of individuals licensed under sub. (3). The rules shall incorporate the rules of professional conduct adopted by the National Association of the Deaf, or its successor, and the Registry of Interpreters for the Deaf, or its successor, or a substantially equivalent organization, as determined by the department after receiving advice from the committee.”

Section 440.032 (4m), Stats. provides that “The department, after receiving advice from the committee, may promulgate rules defining the scope of practice of each license granted under sub. (3).”

Section 440.032 (5m) provides the department authority to promulgate rules relating to licensees carrying identification cards.

Related statute or rule: None.

Plain language analysis:

In light of 2019 Wisconsin Act 17, the department must revise its rules to ensure they match new statutory requirements as well as industry practice generally. This includes revising the rules to ensure references to state agencies are correct and that the rule text conforms to current drafting standards. Additionally, the professional code of conduct for sign language interpreters is being revised to add several provisions that are included in the national industry standards, and a provision that is part of other profession's unprofessional conduct rules, but not currently included in ch. SPS 201, the professional conduct chapter. This includes provisions stating that the following acts are unprofessional conduct subject to discipline:

- Failing to maintain a professional demeanor when working with consumers, colleagues, interns, or students.
- Failing to honor professional commitments or terminating assignments, unless fair and justifiable grounds exist.
- Failing to inform appropriate parties in a timely manner when delayed or unable to fulfill assignments.
- Failing to cooperate in a timely manner with the department's investigation of a complaint filed against a credential holder.

Further, the rule project includes new provisions specifying that licensees must carry an identification card and the content of that card. Also, requirements for scope of practice have been added. Finally, the administrative rules relating to a state residency exemption from licensure are repealed.

Summary of, and comparison with, existing or proposed federal regulation: 74 CFR 64 subchapter F outlines the rules for Telecommunications Relay Services, also known as Video Relay Services, which is a method of communication for individuals who utilize American Sign Language.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A.

Comparison with rules in adjacent states:

Illinois: Illinois offers interpreter licenses at four proficiency levels including provisional, intermediate, advanced, and master. Each successive level may perform services that each level beneath it may perform in addition to the services unique to its level. A provisional level licensee can provide vocational rehabilitation services, community education and recreation programs, and live entertainment. Intermediate level interpreters can provide interpretation in a larger variety of education settings, some medical settings, and may interpret via video relay. Advanced level practitioners can provide services in a greater variety of medical settings, including mental health, as well as financial services and civil or misdemeanor legal matters. Finally, a master level credential holder can provide services in felony legal matters (68 IL Admin. Code § 1515.90).

Illinois sign language interpreter's professional code of conduct expressly adopts the RID/NAD standards and also includes provisions making it unprofessional conduct to extend an assignment solely for the purpose of financial gain, interjecting personal opinion, delegating assignments to unqualified or unlicensed persons, accepting or performing assignments that the licensee knows or has reason to know they are not competent to perform, and exploiting a consumer (68 IL Admin. Code § 1515.130).

Illinois law does not appear to require sign language interpreters to carry an identification card.

Iowa: Interpreters and transliterators must be licensed to practice in Iowa, with the exception of out of state licensees performing services no more than 14 days in a year in Iowa, individuals providing interpreting services for religious services, emergency situations, individuals providing interpretation services on a substitute basis in an educational setting so long as it is for no more than 30 school days per year, and students in an interpreting school (IA Stats. § 154E.4).

Iowa statutes require licensees to maintain a professional demeanor while providing services, refrain from interjecting personal opinion, treat people fairly and respectfully, use discretion in accepting assignments, and shall be a life-long learner (IA Stats. § 154E.3 (3)).

Iowa does not appear to require licensees to carry an identification card.

Michigan: In Michigan, individuals are classified as either a level 1, 2, 3 or educational licensee depending on the type of certification they possess. Level 1 licensees must have either a Michigan BEI-I certification or a RID TC, IC or NAD 3 or DI and may perform interpreting services in "low-risk" environments, excluding health, mental health, finance, law, employment, and government. A level 2 licensee can practice in "medium to high" risk environments. This includes finance, tax, employment matters, and healthcare settings. Level 2 licensees must have at least a Michigan BEI-II certification or a RID CI, CT, NIC or OTC, or a NAD 4. A level 3 licensee may perform interpreting services in a legal environment. Level 3 licensees must have a Michigan BEI-III certification plus 4 years of experience, or one of a variety of RID certifications, usually also with at least 4 years of experience (MI Admin Code § R393.5024).

Michigan adopts the NAD-RID code of professional conduct (MI Admin. Rules § R393.5052). Michigan sign-language interpreters must complete at least 8 CEUs of continuing education in each four-year credentialing cycle. A CEU is 10 clock-hours of instruction (MI Admin Rules § R393.5081).

Michigan does not appear to require practitioners to carry an identification card.

Minnesota: Minnesota generally does not require licensure for sign-language interpreters or transliterators. There are also no code of conduct or other regulations regarding scope of practice. Licensure is required to provide services for a public school district must have a certification from NAD or RID and complete a sign language training program from an accredited educational institution (Minn. Stats. § 122A.31).

Summary of factual data and analytical methodologies:

The department must revise its rules relating to sign language interpreter licensure in light of changes to the profession and the credentialing of sign language interpreters enacted by 2019 Wisconsin Act 17.

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

The rule draft was posted for 14 days on the department's website to solicit economic impact comments from small businesses. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The fiscal estimate and economic impact analysis are attached.

Effect on small business:

These proposed rules do not have an 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing, held on February 4, 2022 at 9:00 a.m., to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 200.01 is amended to read:

SPS 200.01 Authority. The rules in chs. SPS 200-~~to 202~~, 201, 203 and 204 are adopted by the department ~~and in consultation with~~ the sign language interpreters ~~council~~ advisory committee pursuant to s. ss. 440.032 ~~(6)-(d)~~ (4m), (5m), and (7) (b), Stats.

SECTION 2. SPS 200.02 (intro.) is amended to read:

SPS 200.02 Definitions. As used in chs. SPS 200-~~to 202~~, 201, 203 and 204:

SECTION 3. SPS 200.02 (1g), (1r), (12) and (13) are created to read:

SPS 200.02 (1g) "Client" has the meaning in s. 440.032 (1) (a), stats.

(1r) "Committee" has the meaning in s. 440.032 (1) (am), stats.

(12) "Interpreter training program" has the meaning in s. 440.032 (1) (bm), stats.

(13) "Support service provider" has the meaning in s. 440.032 (1) (c), stats.

SECTION 4. SPS 200.02 (4), (7), and (11) are repealed.

SECTION 5. SPS 201.01 (2), (3), and (4) are amended to read:

SPS 201.01 (2) Failing to notify the department in writing within 30 days of any certification, verification, or membership required for licensure being revoked, suspended, expired, or invalidated. This may include certification, verification, or membership by or in National Association of the Deaf, Registry of Interpreters for the Deaf, Inc., Wisconsin Interpreting and Transliterating Assessment, Board for Evaluation of Interpreters, or any other certification determined to be substantially similar to certification by the National Association of the Deaf or Registry of Interpreters for the Deaf, Inc. by the department.

(3) Failing to notify the department in writing within ~~30 days of being convicted of any crime~~ 48 hours of being convicted of a felony or misdemeanor as required by s. 440.03(13) (am), Stats.

Note: Required notice under this section should be given by completing and submitting Department of Safety and Professional Services form #2704DLSC which can be found at <http://dsps.wi.gov>.

(4) Violating the terms of any disciplinary order or rule of the department.

SECTION 6. SPS 201.01 (5) (c) is created to read:

SPS 201.01 (5) (c) Disclosure is necessary to comply with state or federal mandatory reporting requirements.

SECTION 7. SPS 201.01 (16) and (21) are amended to read:

(16) Performing services in a medical, mental health treatment, or legal setting for a minor family member or individual under the interpreter's legal guardianship, if there is an existing conflict of interest or if it would create a conflict of interest under sub. (15).

(21) Being convicted of any state or federal crime which substantially relates to the practice of sign language interpreting, subject to ss. 111.321, 111.322, and 111.335, Stats.

SECTION 8. SPS 201.01 (17) is repealed.

SECTION 9. SPS 201.01 (26), (27), (28), and (29) are created to read:

(26) Failing to maintain a professional demeanor when working with consumers, colleagues, interns, or students.

(27) Failing to honor professional commitments or terminating assignments, unless fair and justifiable grounds exist.

(28) Failing to inform appropriate parties in a timely manner when delayed or unable to fulfill assignments.

(29) Failing to cooperate in a timely manner with the department's investigation of a complaint filed against a credential holder, after a request by the department. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the department has not acted in a timely manner.

SECTION 10. SPS 202 is repealed.

SECTION 11. SPS 203 and 204 are created to read:

CHAPTER SPS 203 SIGN LANGUAGE INTERPRETERS; SCOPE OF PRACTICE RESTRICTIONS

SPS 203.01 Definitions. In this chapter:

(1) "Acute mental health crisis" means any situation in which a individual's behavior puts them at risk of hurting themselves or others or prevents them from being able to care for themselves or to function effectively in the community.

(2) "Medical setting" means any interpretation situation involving the diagnosis, treatment, or prevention of illness or injury, not including a mental health treatment setting.

(3) "Mental health treatment setting" means an interpretation situation involving any of the following settings or situations:

(a) Psychiatric, psychological, or neuropsychological evaluations.

(b) Mental health or substance use assessments or screenings.

(c) Court ordered mental health, behavioral health, or substance use disorder treatments.

- (d) State and county facilities that house individuals with mental illness, mental health, or substance use disorder diagnoses.
- (e) Legal settings involving mental health, behavioral health, or substance use disorder concerns.
- (f) An acute mental health crisis.
- (g) Evaluation, diagnosis, or treatment of minors or those under guardianship relating to mental health, behavioral health, and substance use disorder concerns.

(4) “Legal setting” means any interpretation situation involving consultation with an attorney, law enforcement related setting, or during any immigration related proceedings, for the purposes of obtaining legal advice, any interpretation situation involving a negotiation or meeting in which one of the parties is represented by an attorney, or any interpretation situation taking place within a law enforcement setting, immigration proceeding or courts of the state of Wisconsin or United States.

(5) “Team interpreting” means the practice of using two or more interpreters who work together to provide interpretation for an individual, either due to a speech impairment, hearing loss, deafness, deaf-blindness, or other disability, so that the individual can adequately hear, understand, or communicate effectively in English.

(6) “Video Relay Services” means the practice of individuals who use sign language to use video equipment to communicate with other individuals who are using a voice telephone.

(7) “Video Remote Interpreting” means the practice of providing interpreting services through video technology, and the interpreter is offsite or remote while providing services to the client.

SPS 203.02 Provision of services in a medical setting.

Only individuals who meet one of the following criteria may provide sign language interpretation services in a medical setting:

- (1) Holds a sign language interpreter - intermediate hearing license under s. 440.032(3)(c) and is team interpreting with an individual who is licensed either as a sign language interpreter - advanced hearing license under s. 440.032(3)(d) or licensed as a sign language interpreter – advanced deaf license under s. 440.032(3)(f).
- (2) Holds a sign language interpreter – advanced hearing license under s. 440.032(3)(d).
- (3) Holds a sign language interpreter – intermediate deaf license under s. 440.032(3)(e).
- (4) Holds a sign language interpreter – advanced deaf license under s. 440.032(3)(f).

SPS 203.03 Provision of services in a mental health treatment setting. This section only applies to applications for licensure received on or after September 1, 2023.

- (1) Individuals who hold an active qualified equivalency from the Alabama Department of Deaf Services may provide sign language interpretation services in a mental health treatment setting.
- (2) Individuals who do not hold the qualified equivalency must meet the following alternative pathway criteria to provide sign language interpretation services in a mental health treatment setting:
 - (a) Holds either a sign language interpreter – advanced hearing license under s. 440.032(3)(d), or a sign language interpreter – advanced deaf license under s. 440.032(3)(f) and

(b) Submits documentation, satisfactory to the department that they have completed a minimum of 40 clock hours of training within the previous two-year license cycle including the following topics:

1. 'Mentoring and supervision skills.'
 - a. Interpreting methods and appropriate use of simultaneous, consecutive, and narrative interpreting.
 - b. Knowledge of the difference between interpreting and communication assistance or language intervention.
 - c. Identifying care providers, identifying mental health disciplines, and familiarity with milieus and settings.
 - d. The role of an interpreter as a professional consultant.
 - e. Professional boundaries.
 - f. Confidentiality and privilege, including abuse reporting, the duty to warn, and protections specific to Wisconsin statute.
2. 'Mental health knowledge.'
 - a. Mental health issues and treatment options in Wisconsin.
 - b. Specialized vocabulary used in psychiatric settings in both the source and the target languages.
 - c. Psychopathologies, including knowledge of the names of the major mental illnesses treated in both the target and source languages.
 - d. Symptomology of major mental illnesses experienced by the patients as presented within the psycholinguistic context of the target language group.
 - e. Assessment methods and understanding of the impact of interpretation when doing an assessment.
 - f. Etiology and its impact on mental health, hearing loss, and language.
3. 'Cultural competency.'
 - a. Treatment approaches.
 - b. Impact of cultural influences on assessment and treatment.
 - c. Inpatient settings and the various staff that will be working in those settings and how interpreting and cultural differences can influence therapeutic relationships in those settings.
 - d. Outpatient settings, self-help and support groups and the specialized vocabulary used in those groups.
 - e. Influence of interpreting and cultural differences on therapeutic relationships in both inpatient and outpatient settings.
 - f. Cultural views of mental illness, mental health, behavioral health, and substance abuse specific to the populations the interpreter works with.
 - g. Constructs of deafness and hearing loss relative to majority/minority cultures and pathological models.
 - h. Sociological impact of cross-cultural mental health service provision and the impact of an interpreter on the therapeutic dyad.
 - i. The impact of stereotypes on mental health service delivery.
4. 'Substance use disorders.'
 - a. Specialized vocabulary used in substance use disorder treatment in both the source and the target languages.
 - b. Substance use disorder theory and issues involving substance use disorder.

- c. Assessment methods and treatment approaches.
- 5. Issues involving developmental disability and any additional disabilities and the role culture and language plays in providing services to people with developmental disabilities or additional disabilities.
- 6. 'Practice competencies.'
 - a. Personal safety issues, including an understanding of at-risk conduct and personal boundaries as it applies to mental health interpreting work and an awareness of de-escalation techniques and universal precautions.
 - b. Assessing communication effectiveness
 - c. Matching the interpreting method with the client and the setting.
 - d. The impact of emotionally charged language.
 - e. Unusual or changed word or sign selection.
 - f. Linguistic dysfluency or marked changes in linguistic fluency within a psycholinguistic context.
 - g. Conveying information without alteration, emotional language without escalation, and ambiguous or emotionless language.
 - h. Isolating peculiar features of eccentric or dysfluent language use.
 - i. Reading client case documentation and recording appropriate documentation of linguistic significance.
 - j. Personal mental health issues and maintaining the personal mental health of the interpreter.
 - k. The impact of personal issues on the interpreting process.
 - l. Awareness of countertransference in the interpreter and familiarity with transference to the clinician or to the interpreter.
- (c) Submits documentation to the department indicating that they have completed a 40 clock hour supervised practicum within one year meeting all the following requirements:
 - 1. The practicum site must be primarily clinical in nature.
 - 2. The site is approved by the practicum supervisor.
 - 3. The work must be direct interpreting and may not be social in nature.
 - 4. The practicum must involve both in-patient and out-patient practice.
- (d) Submits documentation to the department indicating that they have passed an examination approved by the department on the topics covered in sub. (b).

SPS 203.04 Provision of services via video relay services or video remote

interpreting. (1) A Wisconsin interpreter licensee is required to provide interpreting services via video remote interpreting under all circumstances where the licensee or the client resides in the state.

(2) Video relay services are regulated by the Federal Communications Commission. Wisconsin licensed interpreters should follow federal regulations under all circumstances where video relay services are used.

Note: Federal Communications Commission regulations on video relay services can be found under 47 CFR 64 at <http://www.ecfr.gov>.

SPS 203.05 Maintenance of qualified mental health interpreter status. This section only applies to renewal applications for licensure received on or after September 1, 2023. An individual recognized as an interpreter qualified to provide services within a mental health treatment setting by the department under s. SPS 203.03 must submit documentation indicating completion of one of the following requirements to the department as part of the application for renewal of the individual's sign language interpreter – advanced deaf license issued under s. 440.032(3)(f) or sign language interpreter – advanced hearing license under s. 440.032(3)(d):

- (1) At least 40 clock hours of actual interpretation work in a mental health or substance abuse setting annually. This requirement includes 20 clock hours of actual interpreting and 20 clock hours of health-related training.
- (2) Attending 40 clock hours of mental health related training annually.
- (3) Any combination of the above equaling 80 hours during the two-year license cycle.

CHAPTER SPS 204 SIGN LANGUAGE INTERPRETERS; IDENTIFICATION CARDS

SPS 204.01 Identification card required. Interpreters licensed by the department must carry an identification card as identified under s. 440.032 (5m), Stats. at all times while providing sign language interpretation services to clients for compensation and must be shown by the interpreter upon request. Digital reproductions of the identification card are not sufficient to fulfill this requirement. The physical identification card shall be worn on the interpreter's body at all times while providing services to clients.

SPS 204.02 Content and Format. The identification card referenced in s. SPS 204.01 shall include all the following information:

- (1) The interpreter's full name.
- (2) The interpreter's licensure category, and whether the interpreter is qualified under ch. SPS 203 to interpret in a mental health or legal setting, including color coding as follows:
 - (a) Intermediate hearing and deaf licenses shall be color-coded yellow.
 - (b) Advanced hearing and deaf licenses shall be color-coded green.
 - (c) A blue sticker if the individual is qualified under ch. SPS 203 to interpret in a mental health setting.
 - (d) A silver sticker if the individual is qualified under ch. SPS 203 to interpret in a legal setting.
- (3) Any applicable licensure restriction.
- (4) A statement whether the interpreter is authorized by the supreme court to act as a qualified interpreter in court proceedings under s. 885.38 (2), stats. and whether that authorization is provisional.

SPS 204.03 Identification Card Renewal. The identification card shall be provided with an approved license by the department and be valid until the license expires. An identification card is reissued at renewal and when any personal information or licensure categories listed on the card have changed. Interpreters are required to maintain a valid and correct identification card.

Note: Request for changes in personal information or updated identification cards under this section should be sent to the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708 or online at <http://dsps.wi.gov>.

SECTION 12. EFFECTIVE DATE. The rule adopted in this order requiring licensees to carry an identification card under 204.01 shall take effect on the first day of the sixth month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22(2)(b), Stats. All other 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.

(END OF TEXT OF RULE)

This Proposed Order of the Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Secretary
Department of Safety and
Professional Services