

STATE OF WISCONSIN
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL
COUNSELING, AND SOCIAL WORK EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MARRIAGE AND FAMILY THERAPY,
MARRIAGE AND FAMILY THERAPY, : PROFESSIONAL COUNSELING, AND
PROFESSIONAL COUNSELING, AND : SOCIAL WORK EXAMINING BOARD
SOCIAL WORK EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board **to amend** MPSW 2.01 (18), 10.01 (2) and (6), 15.01 (3), and 20.02 (12); and **to create** MPSW 1.02 (4), 1.12, 2.01 (10m), 15.01 (1m), and 20.03; relating to telehealth comprehensive review.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 457, Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 440.17, and 457.03 (2).

Explanation of agency authority:

Section 15.08 (5) (b), Stats., states that an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 227.11 (2) (a), Stats., states that “[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 440.17, Stats., states that “[i]f the department, an examining board, or an affiliated credentialing board promulgates rules related to telehealth, the department, the examining board, or the affiliated credentialing board shall define ‘telehealth’ to have the meaning given in s. 440.01 (1) (hm).”

Section 457.03 (2), Stats., states that “[u]pon the advice of the social worker section, marriage and family therapist section, and professional counselor section, promulgate rules establishing a code of ethics to govern the professional conduct of certificate holders and licensees.”

Related statute or rule:

Chs. MPSW 1 to 20.

Plain language analysis:

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board completed a comprehensive review of chapters MPSW 1 to 20 to update the standards of practice regarding telehealth. The Board made revisions to provide clarity, remove obsolete provisions and ensure the chapters are current with professional telehealth standards and practices. The changes include:

- Addition of a definition of “telehealth” per 2021 Wisconsin Act 121.
- Creation of a new subsection that establishes standards of telehealth practice.
- Amendment of the definitions of “face-to-face” and “supervision” throughout the chapters to include telehealth practice.
- Amendment of the provisions of unprofessional conduct to incorporate telehealth practice.

Summary of, and comparison with, existing or proposed federal regulation:

None.

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:

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board held a preliminary hearing on the scope statement for this rule at its October 18, 2022 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois:

Illinois regulates marriage and family therapy, professional counseling, and social work practice through the Department of Financial and Professional Regulation. The Clinical Social Work and Social Work Practice Act establishes two exemptions for social work telehealth practices if the social worker is not a resident of Illinois and performs services for another nonresident if a previously established relationship existed and the social worker holds a proper license to perform the services in the state or country they reside. [225 ILCS 20/4]

Illinois Telehealth Act establishes definitions, practice authority, and use of telehealth services for all professions, occupations, and business operations. [225 ILCS 150]

Iowa:

Iowa Board of Social Work establishes that a licensee shall assess a client's suitability and capacity for online and remote services during the first contact with the client and keep assessing whether in-person or remote consultations should be done before providing social work services. This assessment shall be continually done throughout the course of the professional relationship and the social worker shall take reasonable steps to ensure the client's identity, ability to consent to services, and location. [645 IAC 282.2 (19)]

Iowa Board of Behavioral Scientists, which includes marriage and family therapists and mental health counselors, states that services provided to an individual within the state either through telephone or other electronic means constitute the practice of marital and family therapy and mental health counseling and shall be subject to regulation, regardless of the location of the therapist or counselor. [645 IAC 31.18 (154D)]

Michigan:

Michigan statutes and rules do not specifically address how marriage and family therapists, professional counselors, and social workers should provide services using telehealth.

Minnesota:

Minnesota statutes and rules do not specifically address how marriage and family therapists, professional counselors, and social workers should provide services using telehealth.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing chapters MPSW 1 to 20 and implementing 2021 Wisconsin Act 121 to ensure that the code is compliant with statutory changes and with current standards of practice. No additional factual data or analytical methodologies were used to develop the proposed rules.

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

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is 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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Sofia Anderson, 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 608-261-4463; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Sofia Anderson, 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 on or before the beginning of the public hearing scheduled for TBD to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MPSW 1.01 (4) is created to read:

(4) “Telehealth” is defined under s. 440.01 (1) (hm), Stats.

SECTION 2. MPSW 1.12 is created to read:

MPSW 1.12 Telehealth practice.

(1) A person licensed or credentialed by the board who uses telehealth in the diagnosis and treatment of a patient located in this state shall be licensed to practice by the board.

(2) A person licensed or credentialed by the board located in this state treating patients via telehealth, who are not physically located in this state at the time of treatment, must comply with the regulations in the state the patient is physically located at the time of treatment.

(3) A person licensed or credentialed by the board shall be held to the same standards of practice and conduct including patient confidentiality and recordkeeping, regardless of whether health care services are provided in person or by telehealth.

(4) A person, who is not a resident of this state, may perform marriage and family therapy, professional counseling, or social work practice via telehealth in this state for a nonresident not more than 5 days in any one month or more than 15 days in any one year, if there is a previous established therapeutic relationship with the nonresident, and the person is authorized to perform such services under the laws of the state or country in which the person resides.

(5) A person licensed or credentialed by the board who provides counseling services by telehealth is responsible for the quality and safe use of equipment and technology that is integral to patient diagnosis and treatment. The equipment and technology used to provide counseling services by telehealth shall provide, at a minimum, information that will enable the licensee to meet or exceed the standard of minimally competent counseling practice.

SECTION 3. MPSW 2.01 (10m) is created to read:

(10m) "Face-to-face" means in person or real time video conferencing where all parties can communicate by simultaneous means of audio, telephone, video, or data communications.

SECTION 4. MPSW 2.01 (18) is amended to read:

(18) "Supervision" means supervision of the professional practice of social work in the applied skills of the profession. Supervision may be performed face-to-face whether in person or remotely by means of audio, telephone, video, or data communications.

SECTION 5. MPSW 10.01 (2) and (6) are amended to read:

(2) "Face-to-face" means in person or real time video conferencing where all parties can communicate by simultaneous ~~two-way video and audio transmissions~~ means of audio, telephone, video, or data communications.

(6) "Supervision" is a means of transmitting the skills, knowledge, and attitudes of a particular profession to the next generation of that profession. The supervisory relationship is evaluative, extends over time, and enhances the professional functioning of the developing professional. The supervisor shall monitor the quality of services offered by the supervisee with the purpose of enhancing the quality of skills and services provided by the counselor-in-training. Furthermore, the supervisor shall monitor and provide clinical oversight of the professional services rendered by the counselor-in-training to ensure ethical delivery of services and protection of public health and welfare. Supervision may be performed face-to-face whether in person or remotely by means of audio, telephone, video, or data communications.

SECTION 6. MPSW 15.01 (1m) is created to read:

(1m) "Face-to-face" means in person or real time video conferencing where all parties can communicate by simultaneous means of audio, telephone, video, or data communications.

SECTION 7. MPSW 15.01 (3) is amended to read:

(3) "Supervision" means supervision of the professional practice of marriage and family therapy in the applied skills of the profession. Supervision may be performed face-to-face whether in person or remotely by means of audio, telephone, video, or data communications.

SECTION 8. MPSW 20.02 (12) is amended to read:

(12) Failing to obtain the informed consent of the client or client's authorized representative prior to providing treatment. Informed consent shall be obtained whether the services are rendered in person or via telehealth.

SECTION 9. MPSW 20.03 is created to read:

MPSW 20.03 Telehealth. The standards of practice and professional conduct under this chapter apply to a licensee regardless of whether health care service is provided in person or by telehealth.

SECTION 10. EFFECTIVE DATE. The 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)