

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

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**IN THE MATTER OF RULEMAKING :**  
**PROCEEDINGS BEFORE THE :**           **REPORT TO THE LEGISLATURE**  
**MARRIAGE AND FAMILY THERAPY, :**           **CR 24-012**  
**PROFESSIONAL COUNSELING, AND :**  
**SOCIAL WORK EXAMINING BOARD :**  
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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

N/A

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

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.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board held a public hearing on April 16, 2024. The following testified at the hearing:

- Marc Herstand, MSW and CISW, Executive Director of the National Association of Social Workers Wisconsin Chapter (NASW-WI)

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board summarizes the comments received as follows:

- Mr. Herstand expressed concerns on the following:
  - MPSW 1.12 (4), where it says that “a person, who is not a resident of this state, may perform marriage and family therapy, professional counseling or social work practice via tele-health 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.” One of the concerns is that this provision seems to allow a licensee from another state to provide services in Wisconsin for a client from another state without obtaining Wisconsin licensure without a limit on how long this practice can take place. Additional concerns are:
    - 1) Since it does not require that these practitioners obtain Wisconsin licensure, the out of state licensee could engage in a practice considered unprofessional conduct in our state (i.e., Conversion Therapy) that may be accepted in another state.
    - 2) It will undermine the Social Work Compact which will require that a licensee obtain an Interstate Compact License in order to practice out of state or practice with clients out of their state of residence.
    - 3) There might be a legal question as to whether their home state would have jurisdiction over any unprofessional behavior they engaged in while working out of a Wisconsin office.
  - MPSW 2.01 (18), 10.01 (6), and 15.01 (3), where it says that “supervision may be performed face-to-face whether in person or remotely by means of audio, telephone, video or data communication”. Mr. Herstand does not think data communication, telephone, or audio are “face to face” and does not think that data communication is an appropriate medium for supervision. He could see using those mediums on occasion when internet service is interrupted or not working but not as the standard, which he thinks should be in-person or video communication where the supervisor and supervisee can see each other.

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board made the following changes:

- The timeline in MPSW 1.12 (4) was changed from “... not more than 5 days in any one month or more than 15 days in any one year ...” to “... not more than 5 days in any one month and not to exceed 15 days in total...”
- In MPSW 2.01 (18), 10.01 (6), and 15.01 (3) the provision “supervision may be performed face-to-face whether in person or remotely by means of audio, telephone, video or data communication” was changed to “supervision may be performed face-to-face whether in person or remotely.”

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board did not make other modifications for the reasons below:

- The Board considered Mr. Herstand’s comments as it relates to disciplinary act and created a further limitation on the timeline these services may be performed. This provision ensures continuity of care for nonresidents traveling in Wisconsin. The provision also requires that the practitioner’s state of licensure authorizes the license holder to perform such services. After considering the matter, the Board determined the provision should remain with slight modification.
- The Board will proceed to include “data communications” as a term related to telehealth services as this is mentioned in the statutory definition of telehealth in s. 440.01 (1) (hm), Stats.

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

All of the recommendations suggested in the Clearinghouse Report have been accepted in whole.

**VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:**

N/A

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date December 21, 2023
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) MPSW 1 to 20	
4. Subject Telehealth comprehensive review	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected s.20.165(1)(g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$N/A	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule 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: <ul style="list-style-type: none"><li>• Addition of a definition of "telehealth" per 2021 Wisconsin Act 121.</li><li>• Creation of a new subsection that establishes standards of telehealth practice.</li><li>• Amendment of the definitions of "face-to-face" and "supervision" throughout the chapters to include telehealth practice.</li><li>• Amendment of the provisions of unprofessional conduct to incorporate telehealth practice.</li></ul>	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The rule draft will be posted on the department's website for 14 days to solicit economic impact comments from local governments and small businesses.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) DSPS estimates a total of \$5,400 in one-time costs for staffing to implement the rule. The estimated need for 0.1 limited term employees (LTE) is attributed rule promulgation and legal counsel. The estimated costs cannot be absorbed in the currently appropriated agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The benefits of implementing the rule are to clarify the telehealth practice of marriage and family therapists, professional counselors, and social workers and to bring the Code up to current standards of practice. The alternative to promulgating rules would be to not update the rules. This would leave the rules inconsistent with statutory provisions, which could create confusion with stakeholders.

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16. Long Range Implications of Implementing the Rule

The long range implications of implementing this rule is clear requirements for the regulation and licensure of marriage and family therapists, professional counselors, and social workers in Wisconsin.

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17. Compare With Approaches Being Used by Federal Government

N/A

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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.

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19. Contact Name

Sofia Anderson

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20. Contact Phone Number

608-261-4463

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
  - Less Stringent Schedules or Deadlines for Compliance or Reporting
  - Consolidation or Simplification of Reporting Requirements
  - Establishment of performance standards in lieu of Design or Operational Standards
  - Exemption of Small Businesses from some or all requirements
  - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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STATE OF WISCONSIN  
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL  
COUNSELING, AND SOCIAL WORK EXAMINING BOARD

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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 24-012)

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PROPOSED ORDER

An order of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board **to repeal** MPSW 1.02 (2h); **to amend** MPSW 1.04, 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.

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ANALYSIS

**Statutes interpreted:**

Chapter 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:

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**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]



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**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](mailto: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](mailto:DSPSAdminRules@wisconsin.gov).

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TEXT OF RULE

SECTION 1. MPSW 1.02 (2h) is repealed.

SECTION 2. MPSW 1.04 is amended to read:

**MPSW 1.04 Application procedures for all sections of the board.** An application ~~for certification~~ is incomplete until all materials requested are received by the board office, in English or accompanied by a certified English translation.

SECTION 3. MPSW 1.02 (4) is created to read:

(4) “Telehealth” has the meaning given in s. 440.01 (1) (hm), Stats.

SECTION 4. MPSW 1.12 is created to read:

**MPSW 1.12 Telehealth practice.**

(1) Except as provided in sub. (4), a person 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 and not to exceed 15 days in total, 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 5. 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 6. 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.

SECTION 7. 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.

SECTION 8. 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 9. 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.

SECTION 10. 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 11. MPSW 20.03 is created to read:

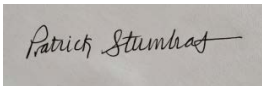
**MPSW 20.03 Telehealth.** The standards of practice and professional conduct under this chapter apply to a licensee regardless of whether health care service is provided in person or by telehealth.

SECTION 12. 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.

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(END OF TEXT OF RULE)  
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This Proposed Order of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board is approved for submission to the Governor and Legislature.

Dated 4/30/2024

Agency 

Chairperson  
Marriage and Family Therapy, Professional  
Counseling, and Social Work Examining Board