

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

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
MARRIAGE AND FAMILY THERAPY, : CR 21-053
PROFESSIONAL COUNSELING, AND :
SOCIAL WORK EXAMINING BOARD :
:
:**

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 proposed rule revises MPSW 17 to bring the chapter into compliance with ch. 111, Stats., as it relates to discrimination in licensing based upon an arrest or conviction record. This chapter was inadvertently not revised when board otherwise updated its rules for conformity with 2017 Wisconsin Act 278 through CR 19-116.

The proposed also rule creates provisions to implement s. 440.09, Stats., as created by 2019 Wisconsin Act 143. Section 440.09, Stats., specifies the requirements for issuing expedited reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

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 October 12, 2021. No public comments were received.

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

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

IN THE MATTER OF RULEMAKING : 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 21-053)

PROPOSED ORDER

An order of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board to amend MPSW 3.12 (1), 11.04 (intro.), and 17.02 (intro.); to repeal and recreate MPSW 17.02 (4); and to create MPSW 3.125, 11.045, and 17.025 relating to application requirements for credentials.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 111.321, 111.322, 111.335, and 440.09, Stats.

Statutory authority: Sections 15.08 (5) (b), and 227.11 (2) (a), Stats.

Explanation of agency authority:

“Each 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.” [s. 15.08 (5) (b), Stats.]

“Each 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...” [s. 227.11 (2) (a), Stats.]

Related statute or rule:

None.

Plain language analysis:

The proposed rule revises MPSW 17 to bring the chapter into compliance with ch. 111, Stats., as it relates to discrimination in licensing based upon an arrest or conviction

record. This chapter was inadvertently not revised when board otherwise updated its rules for conformity with 2017 Wisconsin Act 278 through CR 19-116.

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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 board held a preliminary hearing on the statement of scope at its January 26, 2021 meeting. No comments were received.

Comparison with rules in adjacent states:

Illinois:

Marriage and family therapists, social workers, and professional counselors are regulated by the Illinois Department of Financial and Professional Regulation.

The rules of professional conduct for marriage and family therapists provide that a therapist convicted of any crime, or who engages in conduct which could lead to a conviction, related to the therapist's qualifications or professional responsibilities may be subject to disciplinary action. (s. 1283.100 Professional Conduct).

The rules of professional conduct for social workers provide that the division may revoke, refuse to issue, or renew a license or take other disciplinary action if a social worker providing services or supervising services commits any dishonest, corrupt, or fraudulent act that is substantially related to the social worker's functions or duties. (s. 1470.96 Unethical, Unauthorized, and Unprofessional Conduct).

The Department of Financial and Professional Regulation code does not provide for disciplinary action against professional counselors who face charges or have a conviction record.

Illinois Statutes provide for the expedited licensure of service members and their spouses (20 ILCS 5/5-715). "Service member" includes a person whose active duty service concluded within the 2 years preceding application for licensure. A license issued to a service member or the spouse of a service member may be renewed.

Iowa:

The Board of Behavioral Science within the Iowa Department of Public Health regulates marital and family therapists and mental health counselors. Marital and family therapists and mental health counselors may be disciplined if convicted of a crime related to the profession, or a crime that would affect the ability to practice within the profession (Iowa Administrative Code s. 645.33.2). There is no provision in the rules to discipline a licensee who merely has a pending charge.

The Board of Social Work within the Iowa Department of Public Health regulates social workers. Social workers may be disciplined if convicted of a crime related to the profession, or a crime that would affect the ability to practice within the profession (Iowa Administrative Code s. 645.283.2). There is no provision in the rules to discipline a licensee who merely has a pending charge.

Rules of the Professional Licensure Division of the Iowa Department of Public Health provide for the expedited reciprocal licensure of a veteran or a spouse of an active duty service member (645 IAC 645.20.3). A reciprocal license issued to a veteran or a spouse of an active duty service member may be renewed.

Michigan:

The Michigan Department of Licensing and Regulatory Affairs regulates marriage and family therapists, professional counselors, and social workers. Individuals licensed under the Michigan Public Health Code (including marriage and family therapists, professional counselors, and social workers) must be “of good moral character.” (MCL 333.16174 (1) (b)). The agency may consider a judgment of guilt in a criminal prosecution or a judgment in a civil action in determining whether an individual is of good moral character. The individual can provide evidence showing that they are of good moral character to rebut a previous criminal or civil judgment (MCL 338.42).

The Michigan Statutes provide for temporary licensure of the spouse of an active duty service member (MCL 339.213). A temporary license is valid for 6 months and may be renewed for one additional 6-month term if it is determined the licensee continues to meet the requirements for temporary licensure and needs additional time to fulfill the requirements for initial licensure.

Minnesota:

The Minnesota Marriage and Family Therapy Board regulates marriage and family therapists. The board may suspend, revoke, condition, limit, qualify, or restrict a license if the individual is convicted of a crime that renders the person unfit to practice marriage and family therapy. These crimes are enumerated in 5300.0330 Sup. 2 of the Minnesota Administrative Rules.

The Minnesota Board of Behavioral Health and Therapy regulates professional counselors. A professional counselor may not violate any law in which the facts giving rise to the violation involve the practice of professional counseling.

The Minnesota Board of Social Work regulates social workers. The Board’s rules have all been repealed and codified into statute. Section 148E.210 of the Minnesota Statutes provides that the board may take action against a social worker who “engages in acts or conduct adversely affecting the applicant or licensee’s current ability or fitness to engage in social work practice, whether or not the acts or conduct occurred while engaged in the practice of social work.”

The Minnesota Statutes provide for temporary licensure of an individual who is an active duty military member, the spouse of an active duty military member, or a veteran who has left service in the 2 years preceding the date of license application (2019 Minnesota Statutes, Section 197.4552). A temporary license allows a qualified individual to perform regulated professional services for a limited length of time as determined by the applicable licensing board. During the temporary license period, the individual must complete the full application procedure as required by applicable law.

Summary of factual data and analytical methodologies:

The proposed rule was developed by reviewing the provisions of s. 440.09, Stats., as created by 2019 Wisconsin Act 143, and obtaining input and feedback from the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board.

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

The rule was posted for 14 days on the department’s website to solicit input on possible economic impact. 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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

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.

TEXT OF RULE

SECTION 1. MPSW 3.12 (1) is amended to read:

(1) ~~The~~ Except as provided in MPSW 3.125, the social worker section shall grant a certificate as a social worker under s. 457.08 (1), Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

SECTION 2. MPSW 3.125 is created to read:

MPSW 3.125 Reciprocal credentials for service members, former service members, and their spouses. The social worker section shall grant a reciprocal certificate or a license to practice social work under s. 457.08, Stats., to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09, Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

Note: Application forms are available from the Department of Safety and Professional Services' website at <http://dsps.wi.gov>.

SECTION 3. MPSW 11.04 (intro.) is amended to read:

MPSW 11.04 (intro.) Reciprocal license. ~~The~~ Except as provided in MPSW 11.045, the professional counselor section shall grant a license as a professional counselor to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following:

SECTION 4. MPSW 11.045 is created to read:

MPSW 11.045 Reciprocal credentials for service members, former service members, and their spouses. The professional counselor section shall grant a reciprocal a license to practice professional counseling to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09, Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

Note: Application forms are available from the Department of Safety and Professional Services' website at <http://dsps.wi.gov>.

SECTION 5. MPSW 17.02 (intro.) is amended to read:

MPSW 17.02 (intro.) Reciprocal license. ~~The~~ Except as provided in MPSW 17.025, the marriage and family therapist section shall grant a license as a marriage and family

therapist under s. 457.10, Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

SECTION 6. MPSW 17.02 (4) is repealed and recreated to read:

MPSW 17.02 (4) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a marriage and family therapist.

(b) The applicant has been convicted of a crime substantially related to the practice of a marriage and family therapist.

SECTION 7. MPSW 17.025 is created to read:

MPSW 17.025 Reciprocal credentials for service members, former service members, and their spouses. The marriage and family therapist section shall grant a reciprocal a license to practice marriage and family therapy to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09, Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

Note: Application forms are available from the Department of Safety and Professional Services’ website at <http://dsps.wi.gov>.

SECTION 8. 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)

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 11/2/2021

Agency _____

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

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date April 28, 2021</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) MPSW 3, 11, and 17</p>	
<p>4. Subject Application requirements for credentials</p>	
<p>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</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)</p>
<p>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 type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>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 (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>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</p>	
<p>11. Policy Problem Addressed by the Rule The proposed rule revises MPSW 17 to bring the chapter into compliance with ch. 111, Stats., as it relates to discrimination in licensing based upon an arrest or conviction record. This chapter was inadvertently not revised when board otherwise updated its rules for conformity with 2017 Wisconsin Act 278 through CR 19-116. The proposed also rule creates provisions to implement s. 440.09, Stats., as created by 2019 Wisconsin Act 143. Section 440.09, Stats., specifies the requirements for issuing expedited reciprocal credentials to service members, former service members, and the spouses of service members and former service members.</p>	
<p>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. Service members and former service members discharged under conditions other than dishonorable within the last four years seeking a credential issued by the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board, and their spouses. Individuals required to submit criminal history as part of the application process for a credential issued by the board.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>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) \$4,264.32</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule MPSW 3, 11, and 17 will be brought into compliance with ch. 111, Stats. and s. 440.09, Stats. If the rules are not implemented, MPSW 3, 11, and 17 will be out fo compliance with Wisconsin Statutes.</p>	
<p>16. Long Range Implications of Implementing the Rule</p>	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

MPSW 3, 11, and 17 will be brought into compliance with ch. 111, Stats. and s. 440.09, Stats.

17. Compare With Approaches Being Used by Federal Government
None.

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

Illinois:

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ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

are of good moral character to rebut a previous criminal or civil judgment (MCL 338.42).

The Michigan Statutes provide for temporary licensure of the spouse of an active duty service member (MCL 339.213). A temporary license is valid for 6 months and may be renewed for one additional 6-month term if it is determined the licensee continues to meet the requirements for temporary licensure and needs additional time to fulfill the requirements for initial licensure.

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The Minnesota Statutes provide for temporary licensure of an individual who is an active duty military member, the spouse of an active duty military member, or a veteran who has left service in the 2 years preceding the date of license application (2019 Minnesota Statutes, Section 197.4552). A temporary license allows a qualified individual to perform regulated professional services for a limited length of time as determined by the applicable licensing board. During the temporary license period, the individual must complete the full application procedure as required by applicable law.

19. Contact Name

Kevyn Radcliffe

20. Contact Phone Number

608-266-0797

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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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)

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

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:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

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

- Yes No
-