

Report From Agency

**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 18-098
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:

2017 Act 262, section 34 repealed s. MPSW 1.09 of the administrative code. Assembly Bill 907, as introduced, initially included a repeal of s. 457.02 (5) and (5m) and the repeal of s. MPSW 1.09, as s. MPSW 1.09 was promulgated under the authority of s. 457.02 (5m), Stats. However, a subsequent amendment to the bill reinserted and amended s. 457.02 (5) and (5m), Stats., but did not reinsert s. MPSW 1.09. Assembly Bill 907 passed with these amendments to become 2017 Act 262. 2017 Act 262 authorizes individuals certified under chapter 457 to treat substance use disorder as a specialty if the individual satisfies the educational and supervised training requirements established in rules promulgated by the examining board. Therefore, the examining board needs to establish the educational and supervised training requirements for those who specialize in treating substance use disorder in order to fully implement 2017 Act 262.

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 March 18, 2019. The following people either testified at the hearing, or submitted written comments:

Melissa Freeman, representing Marinette County HHSD

Mark Herstand, representing National Association of Social Workers – Wisconsin Chapter

Norman Briggs and Roger Frings representing the Intervention and Treatment Committee of the State Council on Alcohol and Other Drug Abuse

Jeremiah Olson

Jeffrey Lockhart

Sandra Adams, representing Cornerstone Counseling Services

Tanya Lettman representing Journey Mental Health Center

Donna Altepeter

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

The Marinette County HHSD is supportive of the 135 hours of training and 200 hours of face-to-face experience in addition to master’s level clinical training.

The National Association of Social Workers – Wisconsin Chapter is supportive of the rule, however, would like the 440.88 exemption to apply to advance practice social workers as it is a training credential similar to the marriage and family therapy and professional counselor training licenses.

The Intervention and Treatment Committee of the State Council on Alcohol and Other Drug Abuse supports the rule to address the specialty authorization gap created by 2017 Act 262. The Committee did raise a concern related to medical assistance billings and the examination requirement in 2017 Act 262.

Mr. Olson does not agree marriage and family therapists, professional counselors or clinical social workers have the training necessary to supervise substance use disorder counselors. Mr. Olson recommends the supervision requirements should remain the same as they have been in the past and require supervisors to hold an intermediate or independent clinical supervisor credential.

Mr. Lockhart requested a clarification in the rule to state that the requirements apply to professional counselors and marriage and family therapists.

Cornerstone Counseling Services, Journey Mental Health Center, and Ms. Altepeter raised issues related to 2017 Act 262 exempting marriage and family therapists, professional counselors and clinical social workers from the requirement to hold either the s. 440.88, Stats., credentials or a MPSW specialty authorization.

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board explains modifications to its rule-making proposal prompted by public comments as follows:

The Board did not make any changes to the list of people who can supervise individuals obtaining the specialty authorization. Professional counselors, marriage and family therapists, and clinical social workers have been eligible to supervise individuals

obtaining the substance use disorder specialty authorization since 2005 under s. MPSW 1.09.

The Board is unable to change by rule the statutory exemption created by 2017 Act 262 for clinical social workers, marriage and family therapy. This rule does not apply to professional counselors, marriage and family therapists, clinical social workers. In addition, the Board does not have the authority to modify the Department of Health or Department of Safety and Professional Services rules

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 1: In the rule summary’s explanation of agency authority, it appears that the description of s. 457.02 (5m), Stats., should be updated to reflect the current language. Also, consider explaining the board’s authority to allow a person who is certified by the board under that provision to use certain titles. A different statute, s. 440.88 (5), Stats., specifies that only specific department-certified counselors may represent themselves as a substance abuse counselor or use a title or description that conveys that impression. Could the titles allowed under s. MPSW 1.09 (1) (a) be considered as conveying that impression for a person certified by the board rather than by the department? Consider either revising the allowable titles to more closely align to the phrasing in s. 457.02 (5m), Stats., such as “substance use disorder specialist”, or explaining how the titles can be differentiated from the titles allowed in s. 440.88 (5), Stats., for a department-certified counselor.

Response: Pursuant to 457.02 (5), Stats., chapter 457 does not authorize any individual who is certified by the Board to use the title “alcohol and drug counselor” or “chemical dependency counselor” unless the individual is certified as an alcohol and drug counselor or as a chemical dependency counselor through a process recognized by the Department. The Department recognizes the Board’s process of authorizing the specialty. The Board is utilizing the titles in s. 457.02 (5), Stats., rather than creating a new title (which does not have any basis for title protection). In fact, s. MSPW 1.09 (intro) is substantially restating s. 457.02 (5), Stats.

Comment 2a: Consider placing the new rule section that is created in the proposed rule within ch. MPSW 6, rather than within ch. MPSW 1. The subject matter and provisions appear to fit better in the context of ch. MPSW 6, relating to authorized social worker practice, rather than ch. MPSW 1, relating to general application and examination procedures.

Response: Section MPSW 1.09 was inadvertently repealed in 2017 Act 262 and this rule recreates the rule which existed prior to the enactment of 2017 Act 262. Chapter MPSW 1 is entitled “Authority and Practice” and contains other sections related to practice including psychometric testing. There are references to s. MPSW 1.09 in other sections of code as well as other agencies have forms which refer to s. MPSW 1.09. In addition, the public recognizes the specialty authorization provisions to be contained in s. MPSW 1.09 and relocation to ch. MPSW 6 would create confusion.

Comment 5b: In s. MPSW 1.09 (1), consider revising pars. (b) and (c) to better identify any distinction between the two paragraphs. Is the authorization under par. (c) to prepare and continue working with a client intended to be in addition to the authorization in par. (b) to “treat” substance use disorder?

Response: Paragraph (1) (c) indicates that a person certified by the Board may prepare a client for substance use disorder treatment; continue to work with the non substance use disorder issues of a person who has been referred for substance use disorder treatment, and continue to treat a client who is in recovery and has completed treatment for substance use disorder. This language was contained in the previous s. MPSW 1.09. It is the Board’s position that the language is understood by the professionals in the field and that no further clarification is necessary due to the fact the Board has not received any requests for clarification on the provision in the years it was in place.

Comment 5c: In s. MPSW 1.09 (1) (c) 1., what is meant by “prepare...by referral”? Does this mean that the practitioner may prepare a client for treatment that is provided by another practitioner? Or that a practitioner may refer a client for treatment and prepare the client for that treatment? Consider revising this provision to clearly identify the intended authorization.

Response: A practitioner may prepare a client for substance use disorder treatment. It is the Board’s position that the language is understood by the professionals in the field and that no further clarification is necessary due to the fact the Board has not received any requests for clarification on the provision in the years it was in place.

Comment 5d: In s. MPSW 1.09 (1) (c) 2. and 3., both instances of the phrase “continue to” are used in reference to the authority of an individual who has been certified by the board to work with, or treat, an individual for substance use disorder. This language may be ambiguous in some cases. Is it intended to apply when the treatment is first initiated? It could be clearer if the words “continue to” are removed, so that the provisions begin with “Work” and “Treat”.

Response: Paragraph MPSW 1.09 (1) (c) indicates what a person who is certified by the Board may do as it relates to substance use disorder treatment. Subdivisions 2. and 3. allow a person certified by the Board who is not authorized to treat substance use disorder to continue to work with the non substance use disorder issues or to treat a client who is in recovery after substance use disorder treatment. The words “continue to” are clarifying that the practitioner may continue treatment being provided to a client in specific circumstances.

Comment 5g: Both s. MPSW 1.09 (2) (b) and (3) (b) use the word “supervision”, but that term is not defined for purposes of ch. MPSW 1. Consider whether the definition in s. MPSW 2.01 (18), for that term, is appropriate, and whether the definition should be made to apply to the proposed rule. If the proposed rule is moved to another chapter within chs. MPSW 2 to 6, the current definition would apply unless a different definition is specified.

Response: The definition in s. MPSW 2.01 (18) is not appropriate for s. MPSW 1.09 in that the definition in s. MPSW 2.01 (18) refers to the supervision of professional practice of social work and s. MPSW 1.09 refers to the substance use disorder treatment.

Comment 3i: In s. MPSW 1.09 (2) (a) 3., the words “Application to addiction practice” are used in reference to a required educational topic. This language may be ambiguous in some cases. What does “application” refer to in the context? Consider revising this provision to clearly identify the required topic.

Response: Application means to put into action or apply to addiction practice. There is no change in this educational topic from the pre-2017 Act 262 version of this section. It is the Board’s position that the language is understood by the professionals in the field and that no further clarification is necessary due to the fact the Board has not received any requests for clarification on the provision in the years it was in place.

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

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

This rule will not have an affect on small business.