

Clearinghouse Rule 22-001

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)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to amend ss. SPS 200.01 and 201.01 (2), (3), and (4); to amend and renumber SPS 200.02 and SPS 201.01 (16) to (24); to repeal ch. SPS 202; and to create ss. SPS 201.01 (5) (c); (25), (26), (27), (28) and chs. SPS 203 and 204, 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: 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: 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, 201, 203 and ~~202~~ 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 is amended and renumbered to read:

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

(1) "Advocate" means an individual who provides assistance to an individual who is deaf, deaf-blind, or hard of hearing and may provide counsel, personal opinions, advice, and assist an individual in making personal decisions.

(2) "Client" has the meaning in s. 440.032 (1) (a), stats.

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

~~(2)~~(4) "Conflict of interest" means a conflict, either actual or perceived, between the private interests, whether personal, financial, or professional, and the official or professional responsibilities of a DSPS-licensed interpreter, deriving from a specific interpreting situation.

~~(3)~~ (5) "Consumer" means any individual or entity that is part of the interpreting situation, including individuals who are deaf, deaf-blind, hard of hearing, and hearing.

~~(4)~~ "Council" means the sign language interpreter council.

~~(5)~~ (6) "Department" means the department of safety and professional services.

~~(6)~~ (7) "DSPS" means the department of safety and professional services.

~~(7)~~ "Family member" means the spouse, child, grandchild, grandparent, aunt, uncle, brother, sister, parent, step-parent, step-child, step-brother, step-sister, foster child, or first cousin.

(8) "DSPS-licensed interpreter" means an individual who provides sign language interpreter services, for compensation, and who is licensed under s. 440.032 (3), Stats.

(9) "Interpreting situation" means any instance of a DSPS-licensed interpreter performing interpreting services for consumers.

(10) "Interpreting" means rendering accurate and equivalent messages using sign language to facilitate cultural and linguistic communication.

~~(11) "Unlicensed interpreter" means an individual who uses sign language to facilitate cultural and linguistic communication who is not licensed under s. 440.032 (3), Stats.~~

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

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

(13) "Wisconsin Interpreting and Transliterating Assessment" has the meaning in s. 440.032 (1) (d).

SECTION 3. 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 4. 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 5. SPS 201.01 (16) to (24) are amended and renumbered to read:

(16) Performing services in a medical, mental health treatment, or legal setting for a minor family member or person 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).

~~**(17)** Performing services for an individual when the DSPS-licensed interpreter is the legal guardian for the individual.~~

~~**(18)**~~ **(17)** Assuming dual or conflicting roles in interdisciplinary settings.

~~**(19)**~~ **(18)** Using confidential interpreted information for personal, monetary, or professional gain or for the benefit of professional affiliations or entities.

~~**(20)**~~ **(19)** Acting as an advocate while functioning as a DSPS-licensed interpreter or as an interpreting team member.

~~**(21)**~~ **(20)** 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.

~~**(22)**~~ **(21)** Failing to maintain ethical business practices whether in private practice or as an employee of an agency or other entity.

~~**(23)**~~ **(22)** Failing to accurately represent the DSPS-licensed interpreter's qualifications, such as certification, education, and experience, failing to provide documentation of the DSPS-licensed interpreter's qualifications when requested, or failing to ensure that the DSPS-licensed interpreter's qualifications are accurately represented by any agencies or entities that contract for or schedule the DSPS-licensed interpreter's services.

~~**(24)**~~ **(23)** Engaging in any harassing, intimidating, or coercive business tactics.

~~(2524)~~ Failing to comply with continuing education requirements as mandated for its members by the Registry of Interpreters for the Deaf, Inc., the National Association of the Deaf, or their successors, or any other certifying organization that the department determines to be substantially equivalent to the Registry of Interpreters for the Deaf, Inc., the National Association of the Deaf, or their successors.

SECTION 6. SPS 201.01 (25), (26), (27), and (28) are created to read:

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

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

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

(28) 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 7. SPS 202 is repealed.

SECTION 8. 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 person'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 treatments that are considered mental health treatments under sub. (3).

(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.

SPS 203.02 Provision of services in a medical setting.

Only persons 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 a person 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. Only persons 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. Persons who do not hold the qualified equivalency must meet the following criteria to provide sign language interpretation services in a mental health treatment setting:

- (1) 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
- (2) 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:
- (a) Mentoring and supervision skills.
1. Interpreting methods and appropriate use of simultaneous, consecutive, and narrative interpreting.
 2. Knowledge of the difference between interpreting and communication assistance or language intervention.
 3. Identifying care providers, identifying mental health disciplines, and familiarity with milieus and settings.
 4. The role of an interpreter as a professional consultant.
 5. Professional boundaries.

6. Confidentiality and privilege, including abuse reporting, the duty to warn, and protections specific to Wisconsin statute.

(b) Mental health knowledge.

1. Mental health issues and treatment options in Wisconsin.
2. Specialized vocabulary used in psychiatric settings in both the source and the target languages.
3. Psychopathologies, including knowledge of the names of the major mental illnesses treated in both the target and source languages.
4. Symptomology of major mental illnesses experienced by the patients as presented within the psycholinguistic context of the target language group.
5. Assessment methods and understanding of the impact of interpretation when doing an assessment.
6. Etiology and its impact on mental health, hearing loss, and language.

(c) Cultural competency.

1. Treatment approaches.
2. Impact of cultural influences on assessment and treatment.
3. 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.
4. Outpatient settings, self-help and support groups and the specialized vocabulary used in those groups.
5. Influence of interpreting and cultural differences on therapeutic relationships in both inpatient and outpatient settings.
6. Cultural views of mental illness, mental health, behavioral health, and substance abuse specific to the populations the interpreter works with.
7. Constructs of deafness and hearing loss relative to majority/minority cultures and pathological models.
8. Sociological impact of cross-cultural mental health service provision and the impact of an interpreter on the therapeutic dyad.
9. The impact of stereotypes on mental health service delivery.

(d) Substance use disorders.

1. Specialized vocabulary used in substance use disorder treatment in both the source and the target languages.
2. Substance use disorder theory and issues involving substance use disorder.
3. Assessment methods and treatment approaches.

(e) 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.

(f) Practice competencies.

1. 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.
2. Assessing communication effectiveness
3. Matching the interpreting method with the client and the setting.
4. The impact of emotionally charged language.
5. Unusual or changed word or sign selection.

6. Linguistic dysfluency or marked changes in linguistic fluency within a psycholinguistic context.
 7. Conveying information without alteration, emotional language without escalation, and ambiguous or emotionless language.
 8. Isolating peculiar features of eccentric or dysfluent language use.
 9. Reading client case documentation and recording appropriate documentation of linguistic significance.
 10. Personal mental health issues and maintaining the personal mental health of the interpreter.
 11. The impact of personal issues on the interpreting process.
 12. Awareness of countertransference in the interpreter and familiarity with transference to the clinician or to the interpreter.
- (4) Submits documentation to the department indicating that they have completed a 40 clock hour supervised practicum within one year meeting all the following requirements:
- (a) The practicum site must be primarily clinical in nature.
 - (b) The site is approved by the practicum supervisor.
 - (c) The work must be direct interpreting and may not be social in nature.
 - (d) The practicum must involve both in-patient and out-patient practice.
- (5) Submits documentation to the department indicating that they have passed an examination approved by the department on the topics covered in sub. (2) of this section.

SPS 203.04 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.

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) 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 9. 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)
