

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 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