

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

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IN THE MATTER OF RULE-MAKING : 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 05-043)

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ORDER

An order of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board to amend MPSW 20.02 (18) relating to recordkeeping by marriage and family therapists, professional counselors and social workers.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

**Statutes interpreted:**

Section 457.03 (2), Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 457.03 (2), Stats.

**Explanation of agency authority:**

Section MPSW 20.02 (18) requires social workers, marriage and family therapists, and professional counselors to maintain adequate records relating to professional services that they provide to clients. However, this provision does not provide any details as to what should be contained in those records or for how long they need to be maintained. Under this proposal, records must contain five key elements and must be prepared in a timely fashion. In addition, clinical records must be maintained for seven years following the conclusion of treatment.

**Related statute or rule:**

There are no related statutes or rules other than those listed above.

**Plain language analysis:**

The current rule specifies a requirement to keep adequate records relating to the service provided to a client; however, there is no specific definition as to the types of records that must be kept, or timeframes for the preparation and retention of client records.

The proposed rule amendment creates a clear recordkeeping requirement of clinical services provided by licensed marriage and family therapists, professional counselors and clinical social workers. The records kept must include: assessment, diagnosis, treatment plan, progress notes and a discharge summary. The reports should be prepared not more than 7 days following client contact and the discharge summary should be prepared promptly upon closure of a client's case. Client case records must be kept for at least 7 years after the final date recorded for service in the record.

The proposed rule change is good because it clarifies the existing recordkeeping rule to better protect the public as well as assist the therapists, counselors and social workers by setting clear expectations and standards for recordkeeping, a standard which was only implied before as "adequate." Small business will only be affected in the sense that recordkeeping is now more clearly defined; however, there should be no fiscal impact as the existing rule already required adequate recordkeeping.

#### **Summary of, and comparison with, existing or proposed federal regulation:**

No proposed or existing federal regulation intended to address recordkeeping for social workers, marriage and family therapists, and professional counselors currently exists.

#### **Comparison with rules in adjacent states:**

##### **Illinois:**

Marriage and Family Therapists as per their rules under section 1283.100 Professional Conduct

Therapists are responsible for insuring that the content and disposition of all records are in compliance with all relevant State laws and rules.

Professional Counselors as per their rules under **Section 1375.225 Unprofessional Conduct**

**1375.225 (c)(4)** – Failing to establish and maintain client records and case notes.

Social Work as per their rules under **Section 1470.96 Unethical, Unauthorized and Unprofessional Conduct**

1470.96(a)(16) – Failing to insure that all records and written data are stored using security measures that prevent access to records by unauthorized persons. Social workers are responsible for insuring that the content and disposition of all records are in compliance with all relevant State laws and rules.

**Iowa:**

Iowa holds Marriage & Family Therapy and Counselors under the Behavioral Science Board and Social Work is on a separate board. They have rules for recordkeeping for Social Work and are currently drafting rules for Behavioral Science. Following are the rules for Social Work and a current draft for the rules in progress for Behavioral Science.

**Practice of Social Workers 282.2(5)**

- a. A licensee shall maintain sufficient, timely, and accurate documentation in client records. A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.
- b. A licensee who provides clinical services in any employment setting, including private practice, shall maintain timely records that include subjective and objective data, assessment of diagnosis, a treatment plan, and any revisions to the assessment, diagnosis, or plan made during the course of treatment.
- c. A licensee who provides clinical services shall store records in accordance with state and federal statutes, rules, and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all client records for a minimum of seven years following the termination of services to ensure reasonable future access.

For MFTs and MHC (Mental Health Counselors) there is no current rule.

**Behavioral Science Rules – Draft only (MFT and PC related)**

**645----31.13(147) Licensee Record keeping.** A licensee shall maintain sufficient, timely, and accurate documentation in client records.

**31.13(1)** A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

**31.13(2)** Clinical services. A licensee who provides clinical services in any employment setting, including private practice shall:

- a. Store records in accordance with state and federal statutes and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all client records for a minimum of seven years after the date of the client's discharge, or, in the case of a minor, three years after the client reaches the age of majority under state law or seven years after the date of discharge, whichever is longer.
- b. Maintain timely records that include subjective and objective data, assessment or diagnosis, a treatment plan, and any revisions to the assessment, diagnosis, or plan made during the course of treatment.
- c. Provide the client with reasonable access to records concerning the client. A licensee who is concerned that a client's access to the client's records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. A licensee may limit a client's access to the client's records, or portions of the records, only in exceptional circumstances when there is compelling evidence that

such access would cause serious harm to the client. Both the client's request and the rationale for withholding some or all of a record should be documented in the client's records.

d. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

**31.13(3)** Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, the licensee shall ensure that a duplicate hard-copy record or a backup, unalterable electronic record is maintained.

**31.13(4)** Correction of records.

a. Hard-copy records. Notations shall be legible, written in ink, and contain no erasures or whiteouts. If incorrect information is placed in a record, it must be crossed out with a single nondeleting line and be initialed by the licensee.

b. Electronic records. If a record is stored in an electronic format, the record may be amended with a signed addendum attached to the record.

**31.13(5)** Confidentiality and transfer of records. Marital and family therapists or mental health counselors shall preserve the confidentiality of client records. Upon receipt of a written release or authorization signed by the client, the licensee shall furnish such therapy records, or copies of the records, as will be beneficial for the future treatment of that client. A fee may be charged for duplication of records, but a licensee may not refuse to transfer records for nonpayment of any fees. A written request may be required before transferring the record(s).

**31.13(6)** Retirement, death or discontinuance of practice.

a. If a licensee is the owner of a practice, the licensee shall notify in writing all active clients and shall make reasonable arrangements with those clients to transfer client records, or copies of those records, to the succeeding licensee upon knowledge and agreement of the client.

b. Upon a licensee's death:

(1) The licensee's employer or representative must ensure that all client records are transferred to another licensee or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The licensee's employer or representatives shall notify all active clients that their records will be transferred to another licensee or entity that will retain custody of their records and that, at their written request, the records will be sent to the licensee or entity of the client's choice.

**31.13(7)** Nothing stated in these rules prohibit a licensee from conveying or transferring the licensee's client records to another licensed individual who is assuming a practice, provided that written notice is furnished to all clients.

These rules are intended to implement Iowa Code chapters 147, 154D and 272C.

### **Michigan:**

As per the manager of Health Licensing Board – their current record keeping standards for MFTPCSW are very general and similar to the existing Wisconsin standard.

### **Minnesota:**

Minnesota has a separate board for Social Work and Behavioral Science. Behavioral Science covers counseling and therapy. Below are the current rules for recordkeeping.

#### Social Worker 8740.0320 PRACTICE REQUIREMENTS.

Subp. 5. Records. A social worker shall make and maintain current and accurate records, appropriate to the circumstances, of all services provided to a client. At a minimum, the records shall contain documentation of:

- A. the assessment or diagnosis and of the plan;
- B. progress with the plan and of any revisions of the assessment, diagnosis, or plan;
- C. any fees charged and related billing information;
- D. copies of all client authorizations for release of information; and
- E. other information necessary to provide appropriate services.

These records shall be maintained by the social worker or by the social worker's agency for at least seven years after the last date of service, or for the time period required by law.

Subp. 6. Reports. A social worker shall submit current, accurate, and complete reports or other required documentation.

MFT/Professional Counseling – none found in online statutes and rules.

#### **Summary of factual data and analytical methodologies:**

No study resulting in the collection of factual data was used in reference to this rule-making effort. The primary methodology for revising the rule is the board's ongoing analysis and determination that a rules change is necessary.

#### **Anticipated costs incurred by private sector:**

The department finds that this rule has no significant fiscal effect on the private sector.

#### **Fiscal estimate:**

The department estimates that this rule will require staff time in the Division of Enforcement and in the Office of Legal Counsel to receive, investigate and prosecute approximately five complaints annually. The value of these staff's salary and fringe benefits for this work is estimated at \$6,206.

#### **Effect on small business:**

Pursuant to s. 227.114 (1), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Review Coordinator may be contacted by email at [larry.martin@drl.state.wi.us](mailto:larry.martin@drl.state.wi.us), or by calling (608) 266-8608.

**Agency contact person:**

Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Pamela Haack, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935. Email [pamela.haack@drl.state.wi.us](mailto:pamela.haack@drl.state.wi.us). Comments must be received on or before August 11, 2005, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. MPSW 20.02 (18) is amended to read:

MPSW 20.02 (18) Failing to maintain adequate records relating to services provided a client in the course of a professional relationship. A credential holder providing clinical services to a client shall maintain records documenting an assessment, a diagnosis, a treatment plan, progress notes, and a discharge summary. All clinical records shall be prepared in a timely fashion. Absent exceptional circumstances, clinical records shall be prepared not more than one week following client contact, and a discharge summary shall be prepared promptly following closure of the client's case. Clinical records shall be maintained for at least 7 years after the last service provided, unless otherwise provided by federal law.

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(END OF TEXT OF RULE)

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These proposed rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated \_\_\_\_\_

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

MPSW 20.02(18) CR05-043 (Recordkeeping) Final for Adoption 9-23-05